

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

1. Civil Writ Petition No. 21854 of 2015 (O&M)

Date of Decision : February 27, 2020

**The Director General, National Council for Cooperative Training,
Chandigarh and another**

..... PETITIONER(S)

VERSUS

**The Chief Commissioner for Persons with Disabilities, New Delhi and
another**

.... RESPONDENT(S)

2. C.O.C.P. No. 2146 of 2015

Shish Pal

..... PETITIONER(S)

VERSUS

Shri R.K. Sharma

.... RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. Puneet Gupta, Advocate, for the petitioners in CWP-
21854-2015 and the respondent in COCP-2146-2015.
None for respondent No.1.
Ms. Sunita Singh, Advocate, for respondent No.2 in CWP-
21854-2015 and the petitioner in COCP-2146-2015.

...

Sanjay Kumar, J.

The Director General of the National Council for Cooperative Training, New Delhi, an autonomous body under the control of the Ministry of Agriculture, Government of India, and the Director of the Regional Institute of Cooperative Management, Chandigarh, the petitioners in this writ petition, assail the order dated 26.03.2015 passed by the Court of the Chief Commissioner for Persons with Disabilities, New Delhi. Thereby, the Chief Commissioner required the Deputy Director (Personnel) of the National Council for Cooperative Training to reconsider the decision with regard to termination of the 2nd respondent herein from service, so as to ensure that the legitimate rights of a disabled person were not infringed. The Chief Commissioner accordingly disposed of Case No. 85/1011/2013/R3/42 filed by the 2nd respondent.

Independently, the 2nd respondent filed COCP-2146-2015 alleging disobedience to the order dated 26.03.2015 passed by the Chief Commissioner and seeking exercise of contempt jurisdiction by this Court under Sections 10 and 12 of the Contempt of Courts Act, 1971.

Facts, to the extent relevant, are as follows: The Regional Institute of Cooperative Management, Chandigarh, issued Advertisement dated 26.05.2010 seeking to undertake recruitment to various posts. One such post was that of Stenographer (English). This post was reserved for physically handicapped category and was stated to be of permanent nature. The qualification prescribed therefor was Graduation with shorthand speed of 80 words per minute and typing speed of 40 words per minute, in English. The advertisement made it clear that the initial

appointment would be on contract for two years on consolidated salary and that the appointee would be placed later in the scale of ₹5200-20200 Grade pay ₹2400/-. The 2nd respondent was one of the candidates who aspired for this post. However, out of the 12 candidates who applied, only 6 appeared for the Stenography English test but all 6 of them, including the petitioner, failed.

Despite the same, in the light of the urgent need felt by the Institute and owing to the pressure of work, a Computer Typing test was held, followed by an interview. Five candidates participated and the 2nd respondent was placed at serial No.1 in the merit list. He was accordingly appointed on a consolidated monthly salary of ₹8500/- for a period of one year or till the post was filled up on regular basis. The Memorandum of appointment dated 18.01.2011 addressed by the Regional Institute to the 2nd respondent made it clear that in terms of his test and interview dated 15.01.2011, he was offered the post of Stenographer (English) for one year on the terms and conditions stipulated therein. Condition No.7 stated that the Institute could dispense with his service with one month's notice without assigning any reason. Condition No. 9 recorded that his services would be purely temporary and on contract basis. While so, the Regional Institute dispensed with the services of the 2nd respondent with effect from 31.08.2013. Memorandum dated 31.07.2013 was issued to him in this regard, giving him one month's notice, as per Condition No.7 of the Memorandum of appointment dated 18.01.2011.

Aggrieved by his removal from service, the 2nd respondent addressed a complaint to the Chief Commissioner for Persons with

Disabilities, New Delhi, on 10.06.2013. Therein, he stated that the Selection Committee had adopted three criteria (English typing test, Computer typing test and Interview) and that he had passed only two criteria (Computer typing test and Interview). He however claimed that he was eligible to be appointed to the post and prayed that necessary action be taken to ensure his appointment and for grant of all the benefits of permanent appointment, with effect from 28.01.2013.

The National Council for Cooperative Training offered its reply to the Chief Commissioner on the aforesaid complaint made by the 2nd respondent. Therein, it asserted that there was no deprivation of the rights of the complainant. It pointed out that none of the candidates who had responded to its advertisement had qualified for appointment to the regular post and the appointment of the 2nd respondent on contractual basis was made only due to heavy pressure of work and urgent need, for a period of one year, *vide* the memo dated 18.01.2011. The National Council therefore justified dispensing with his services with effect from 31.08.2013, by giving him one month's notice in terms of the conditions of his contractual appointment.

Thereupon, the Chief Commissioner passed the impugned order dated 26.03.2015. Perusal of the same reflects that the Chief Commissioner was of the opinion that the National Council had never intimated the 2nd respondent that he had not qualified for appointment to the regular post and that he had been offered appointment due to the urgent need of manpower. The Chief Commissioner further noticed that the 2nd respondent was allowed to continue to work for more than 2½

years without being regularised. He observed that the initial appointment of the 2nd respondent was contractual in nature, in consonance with the provisions of the advertisement, but after completion of two years, instead of being regularised in service, his services were terminated.

Mr. Puneet Gupta, learned counsel, would contend that it was not within the scope of the Chief Commissioner to issue a direction to reconsider the termination, as has been done in the case on hand. He would place reliance on case law in support of his contention.

In All India Indian Overseas Bank Scheduled Castes and Scheduled Tribes Employees Welfare Association and others v/s. Union of India and others [1996(6) SCC 606], the Supreme Court was considering the scope of jurisdiction exercised by the National Commission for Scheduled Castes and Scheduled Tribes. Observing that the said Commission had the powers of the Civil Court while investigating any matter, the Supreme Court noted that the Civil Court's power to grant injunctions, temporary or permanent, had not been conferred or granted to the Commission. The Supreme Court accordingly held that the Commission lacked authority to issue any positive order.

In State Bank of Patiala and others v/s. Vinesh Kumar Bhasin [2010(4) SCC 368], the Supreme Court considered the scope and import of the powers of the Chief Commissioner under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996. The Supreme Court observed that neither the Chief Commissioner nor any Commissioner functioning under the Disabilities Act had the power to issue any mandatory or prohibitory

injunction or other interim directions. It was further observed that merely because the Commissioner was clothed with certain powers of the Civil Court for discharging his functions, it did not enable him to assume other powers of the Civil Court, which were not vested in him by the Statute.

While so, in **Geetaben Ratilal Patel v/s. District Primary Education Officer [(2013) 7 Supreme Court Cases 182]**, the Supreme Court considered whether the Commissioner, in exercise of power under Section 62 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, could look into the legality of an order of dismissal from service of a disabled person, if it came to his notice that such a person had been deprived of his rights. Significantly, the earlier judgment in **Vinesh Kumar Bhasin**, referred to *supra*, was not brought to the notice of the Supreme Court. The Supreme Court held that the statutory provision empowered the Commissioner to look into complaints in respect of matters relating to deprivation of rights of persons with disabilities and the same was not an empty formality, as the Commissioner was required to apply his mind and find out the truth, and if it came to light that a person with disability had been deprived of his right or that the authorities had flouted any law, rule or guideline issued by the appropriate Government or local authority, the Commissioner was required to take up the matter with the appropriate authority to ensure restoration of the rights of such a disabled person and/or implementation of the law, rule, guidelines or instructions, if not followed. The Supreme Court accordingly answered the question framed by it in the affirmative.

This Court does not propose to go into the issue as to whether the later decision of the Supreme Court in **Geetaben Ratilal Patel** can be taken to lay down the law as the earlier judgment in **Vinesh Kumar Bhasin (*supra*)** was not considered therein. Leaving that issue open, it may be noticed that even in terms of the decision in **Geetaben Ratilal Patel (*supra*)**, it is necessary for the Commissioner to verify and ascertain as to whether there is any deprivation of the rights of a disabled person. Without undertaking such exercise, it would not be proper for the Commissioner to issue any direction under the statutory provision.

In the case on hand, the exercise undertaken by the Chief Commissioner, as manifested in the impugned order dated 26.03.2015, falls woefully short of the required standard. As already noted *supra*, the 2nd respondent admittedly did not clear the eligibility criteria to be appointed to the permanent post of Stenographer which was advertised on 26.05.2010. He did not pass the stenography test with regard to taking down shorthand of 80 words per minute, wrongly mentioned as English typing test by the 2nd respondent. The Memorandum dated 18.01.2011 made it evident that his appointment was not in consequence of and in keeping with the said advertisement. The said Memorandum also made it clear that the services of the 2nd respondent were purely temporary on contract basis and that the same could be dispensed with by the Regional Institute with one month's notice without assigning any reason. Further, in his complaint to the Chief Commissioner, the 2nd respondent himself admitted that he had failed to clear the 'three criteria' stipulated for appointment to the permanent post.

Therefore, both parties were aware of the nature of the subject appointment and its contours. That being so, the assumption by the Chief Commissioner that the 2nd respondent was appointed to the permanent post was against the understanding of both the parties before him. When the 2nd respondent, a disabled person, settled for a contractual appointment out of his own volition, it would not be open to him to seek regularization thereafter, in violation of the prescribed eligibility criteria. The observations and direction of the Chief Commissioner had precisely that effect, as the 2nd respondent admittedly did not possess the requisite speed of 80 words per minute to pass the shorthand test.

The impugned order dated 26.03.2015 therefore cannot be sustained and is accordingly set aside. The matter is remitted to the file of the Chief Commissioner for consideration afresh on facts and in accordance with law. The matter shall be dealt with expeditiously and in any event, not later than 2 months from the date of receipt of a certified copy of this order.

The writ petition is accordingly disposed of.

In the light of the final order now passed, this Court does not deem it necessary to deal with the allegation of contempt levelled by the 2nd respondent. COCP-2146-2015 is accordingly dismissed.

There shall be no order as to costs.

February 27, 2020
Kang

(Sanjay Kumar)
Judge

Whether speaking/reasoned	Yes
Whether reportable	Yes/No