

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: May 12, 2023

+ W.P.(C) 1096/2019

DILIP KUMAR

..... Petitioner

Through: Mr. Dinesh S. Badiar, Adv. with
petitioner in person

versus

GOVT. OF NCT OF DELHI AND ORS.

..... Respondents

Through: Mrs. Avnish Ahlawat, Standing
Counsel, GNCTD (Services) with
Ms. Tania Ahlawat, Mr. Nitesh
Kumar Singh, Ms. Palak Rohmetra,
Ms. Laavanya Kaushik and Ms. Aliza
Alam, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

V. KAMESWAR RAO, J

1. The challenge in this writ petition is to two orders dated January 02, 2019 and November 26, 2018 passed by the Tribunal in RA 261/2018 and in OA 1656/2015, respectively. The Tribunal vide the above orders had dismissed the RA 261/2018 and O.A. 1656/2015 filed by the petitioner herein.

2. The challenge of the petitioner in the OA was in respect of appointment made by the respondent Nos.1, 2 and 3, to the post of Deputy Commissioner for Persons with Disabilities ('DCPD', for

short). The Government of NCT of Delhi had on February 04, 2009 invited applications to fill up the post of DCPD. The qualification for appointment to the afore-said post is that a candidate must have educational background in Social Work, Sociology or Social Anthropology with 7 years experience in Rehabilitation Work.

3. The case of the petitioner before the Tribunal was that he had submitted his application for appointment to the post of DCPD and his case had been sponsored by an NGO in proof of his experience. However, subsequently the selection committee had selected one Mrs. Sandhya Roy Chowdhury as DCPD and the said appointment was challenged by the petitioner in OA 1743/2009. This OA was allowed on December 10, 2010 in favour of the petitioner and the appointment of Mrs. Sandhya Roy Chowdhury was set aside and a direction was also issued to the respondent Nos. 1, 2 and 3, to fill up the post of DCPD within three months.

4. Pursuant thereto, a fresh notification dated April 19, 2011 was issued by the respondent No1. The petitioner also challenged the same by filing an OA 2203/2011. It was his case, in the OA that the post of DCPD should have been filled by considering the case of the persons who had earlier applied in response to the earlier notification dated February 04, 2009. The said plea of the petitioner was not accepted and thus the OA was consequently dismissed by the Tribunal.

5. Aggrieved by the order passed by the Tribunal in OA 2203/2011, the petitioner approached this Court in W.P.(C) 2169/2012. The said writ petition was disposed of on April 25, 2012

whereby the respondent Nos. 1, 2 and 3, were directed to issue a fresh notification to fill up the post of DCPD. A direction was also given that the selection to the said post shall have to be made in accordance with the rules that were existing as on February 10, 2012.

6. Pursuant thereto, a notification dated June 26, 2012 was issued. In total, five applications were received including that of the petitioner. On September 21, 2012, the Screening Committee was constituted and held its deliberations. The Screening Committee observed that as there are limited number of applicants and wide publicity has not been given through newspapers, so, fresh advertisement through newspapers need to be given for transparency and better publicity. Thereafter, wide publicity was given and 18 applications were received and placed before the Search-cum-Selection Committee. The Search-cum-Selection Committee in its meeting held on January 16, 2014 recommended a panel of three candidates in order of merit. On the basis of recommendations of the aforesaid committee, the Lt. Governor of Delhi had approved the name of one Dr. B. Ramaswamy to the post of DCPD. However, on a complaint with regard to fake experience certificate received by the department, the appointment letter was not issued to Dr. B. Ramaswamy and this resulted in issuance of a fresh notification by respondent Nos.1, 2 and 3.

7. It was further ordered by the Lt. Governor that the department may re-advertise the post of DCPD and the individuals who were earlier under consideration, were also allowed to apply again.

8. Even this Court vide order dated July 02, 2015 directed the respondent Nos.1, 2 and 3 to recommence the process of appointment to the post of DCPD. Accordingly, fresh applications were invited on August 25, 2015 to which the petitioner also responded, however, he was not selected and one Madan Mohan Vidyarthi (respondent No.4, herein), was selected and appointed to the post of DCPD. It is in this background that the aforesaid OA being 1656/2015 was filed in which the petitioner *inter alia* challenged the very appointment of respondent No.4, and sought a relief for setting aside his appointment to the aforesaid post and a direction to respondent No.1 to appoint the petitioner as DCPD.

9. One of the grounds on which the afore-said challenge was made by the petitioner was that the rules for appointment to the post in question were amended to the prejudice of the petitioner inasmuch as he lost his eligibility to the said post.

10. Whereas the case of the respondents before the Tribunal was that though the selection and appointment made in pursuance to the Notification dated February 04, 2009 was set aside, the Tribunal directed the appointments to be made thereafter, and when a further Notification was issued on April 19, 2011, the challenge made to it by the petitioner was unsuccessful. They had also relied upon the judgment of this Court in W.P.(C) 2169/2012, wherein this Court had directed the respondent Nos.1, 2 and 3 herein, to issue a fresh Notification for appointment to the post of DCPD and also consider the case of the petitioner, if found eligible, in terms of the rules which existed as on February 10, 2012. It was their case that it is in

compliance of the said judgment that a Notification dated April 04, 2015 was issued by the respondent No.1.

11. Suffice to state that the Tribunal while rejecting the said OA has in paragraphs 6 and 7 held as under:

"6. Three notifications had to be issued in the course of selection of a candidate for the post of DCPD, The first notification dated 04.02.2009, and the selection of the candidate made in pursuance thereof was set aside by the Tribunal in OA " No.1743/2009 filed by the applicant. The second notification was issued on 19.04.2011. That was unsuccessfully challenged by the applicant himself in OA IMo.2203/2011. WP(C) No.2169/2012 was filed by the applicant thereupon before the Delhi High Court, and it was disposed of with the following directions:

"8. For the reasons stated above, we direct the respondents to issue a fresh notification for appointment to the post of Deputy Commissioner for Persons with Disabilities, with two months from today. The rules which were applicable to fill up the said post, at the time order dated 10.12.2010 was passed by the Tribunal, would be applied by the respondents while issuing notification inviting applications/ nominations for making appointment in terms of this order. The post shall be filled up by the respondents within six months from today. The petitioner if found eligible in terms of the rules which existed on 10.02.2012, shall also be considered for the said post."

It is in compliance of this direction, that the notification dated 04.04.2015 was issued. Therefore, the very challenge to the notification by the applicant, on whatever grounds, becomes untenable,

6. The second limb of the prayer of the applicant is equally untenable. On the one hand, the validity of the notification dated 04.04.2015 is challenged, and on the other, a direction is sought for his appointment. Once the High Court repelled

the contention of the applicant that his case ought to have been considered without inviting fresh applications, he cannot repeat that very contention at this stage. A perusal of the counter-affidavit filed in this OA discloses that in the 3rd round of selection, one Mr. Ramaswamy was found fit and selected, and since the genuineness of his certificates could not be established, the next candidate, i.e., Mr. M. M. Vidyarthi, was appointed. It is not the case of the applicant that he is in anyway superior to that candidate.

7. The plea of the applicant that the procedure for selection was changed, is equally incorrect. The High Court categorically directed that though the recruitment rules for the post were changed, the selection must be made on the basis of the unamended rules.”

12. The petitioner and his counsel who have argued the matter before us would contend that the impugned order of the Tribunal dated November 26, 2018 is clearly untenable inasmuch as the Tribunal did not consider the fact that the Notification dated April 04, 2015 was issued contrary to the order dated April 25, 2012 passed by this Court. According to them, the respondent No.4 was not eligible for the post of DCPD, inasmuch as, he did not have 7 years special knowledge and practical experience in rehabilitation work in the disability field and also was not registered with the Rehabilitation Council of India. Moreover, it is their case that the educational qualifications and requisite experience, as stipulated under the Persons with (Disabilities) Equal Opportunities, Protection of Rights and Full Participation Act, 1995 ('PwD Act', for short), had not been fulfilled by the respondent No.4, in order to have a valid appointment to the post of DCPD. They also submitted that the Tribunal has also

failed to appreciate the fact that the respondent Nos. 1, 2 and 3, had committed a serious error in appointing respondent No.4, to the post of DCPD as being contrary to the provision of Section 60 of the PwD Act. It is also their submission that the petitioner has been litigating before the Tribunal and this Court since 2009, seeking his appointment to the post of DCPD and unfortunately, the attempt on the part of the respondent Nos. 1, 2 and 3, is to ensure that the petitioner does not get appointed to the post of DCPD. It is primarily for this reason that even the rules dealing with the appointment to the post of DCPD have been amended several times, to the prejudice of the petitioner.

13. In any case, the issue of denial of appointment of the petitioner to the post of DCPD has been taken care of by this Court in W.P. (C) 2169/2012, when it directed the respondent Nos.1, 2 and 3, for making the appointment in terms of the rules as in existence in 2012. Unfortunately, the plea qua ineligibility of the respondent No.4 has not been considered by the Tribunal in the impugned order dated November 26, 2018. In the end, the petitioner and his counsel do concede to the fact that the tenure of the respondent No.4 as DCPD is long over.

14. On the other hand, Mrs. Avnish Ahlawat, learned standing counsel appearing for the respondent Nos. 1, 2 and 3, would justify the impugned order dated November 26, 2018. According to her, today, the issue which is pending consideration in this petition is academic as the post to which a claim is made by the petitioner i.e., DCPD, has now been abolished in view of the new the Rights of

Persons with Disability Act, 2016 read with Delhi Rights of Persons with Disability Rules, 2018. Nevertheless, the post of Commissioner is still there under the aforesaid new Act and the Rules.

15. In fact, I may also note that the petitioner herein had also challenged the appointment made to the post of Commissioner in OA 100/425/2021 before the Tribunal by challenging the appointment of respondent No.4 therein to the said post. The said OA was dismissed by the Tribunal and even this Court has rejected the challenge to the judgment in the aforesaid OA in W.P.(C) 4505/2021 vide order dated July 07, 2022. Hence, Mrs. Ahlawat submits that nothing further survives in this petition.

16. Having considered the rival submissions made by the counsel for the parties, in substance, the challenge of the petitioner before the Tribunal was to the appointment of respondent No. 4 to the post of DCPD on the ground that the respondent No.4 was not eligible to be considered and appointed to the post of DCPD.

17. We have been informed that the respondent No.4's tenure is long over i.e., his term came to an end on January 31, 2019. We have also been informed and so conceded by the petitioner and his counsel that the post of DCPD as created in accordance with Section 60 of the PwD Act (old Act) read with Rule 48 of the Delhi Right of Persons with Disabilities Rules, 2018, has now been abolished, as the new Rules of 2018 do not contemplate the post of DCPD. The new Rules only contemplate about the appointment of the State Commissioner. If that be so, the prayers as made before the Tribunal and reiterated in this petition, cannot be granted, for the simple reason that the

challenge is to the appointment of respondent No. 4, on the post of DCPD, which is now ceased to exist. If that be so, the issue which has been raised by the petitioner as to the non-eligibility of respondent No.4 to the post of DCPD is purely academic as no directions can be given by this Court to the respondent Nos. 1, 2 and 3 to appoint the petitioner to the non-existing post of DCPD, even by coming to a conclusion that the respondent No.4 was not eligible to be appointed as DCPD.

18. Hence, Mrs. Ahlawat is justified in stating that the instant petition has become infructuous. The additional reason for this Court to say so is that the claim of the petitioner for his appointment to the post of Commissioner (Persons with Disabilities) has also been rejected by the Tribunal and by this Court in W.P.(C) 4505/2021 on July 07, 2022. It is true that the petitioner has been litigating since 2009, but the fact remains that the post of DCPD having been abolished, this Court cannot give any direction to fill an abolished post. In light of the facts of the instant petition, this Court is of the view that the challenge of the petitioner to the impugned orders dated January 02, 2019 and November 26, 2018, is unsustainable. The petition is dismissed. No order as to costs.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J.

MAY 12, 2023/jg