

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

MAT 547 of 2021

CAN 1 of 2021

CAN 2 of 2021

Sukchand Mondal

-Vs-

Kolkata Municipal Corporation & Ors.

For the Appellants : Mr. D N Roy
Mr. Biswarup Nandy
Mr. R K Shah
Mr. Sourav Halder

For the respondent
KMC : Mr. Alok Kr. Ghosh
Mr. Swapan Kr. Debnath

Heard on : 29.7.2024 & 05.08.2024

Judgment on : 05.08.2024

Joymalya Bagchi, J. :-

1. Appellant had applied as a scheduled caste/exempted category candidate for appointment to the post of Junior Assistant Commissioner in the Kolkata Municipal Corporation. He was issued an admit card and was successful in the written examination

conducted by the Municipal Service Commission. Thereafter, the appellant was directed to appear for medical examination on 19.11.2012 an offer letter was issued in his favour on 27.11.2012. One of the conditions in the offer letter was that he was required to submit a fitness certificate upon examination by a medical officer of Kolkata Municipal Corporation. Notwithstanding the issuance of aforesaid letter appellant was not intimated of his date of joining. As a result, he approached the Hon'ble Single Bench praying for a direction to join the post of Junior Assistant Commissioner.

2. During hearing, Kolkata Municipal Corporation submitted a letter of cancellation of appointment dated 8.3.2013 on the ground that the appellant was found to be 100% blind and there was no scope of utilising him meaningfully in the said post. Relying on the said cancellation letter, the Hon'ble Single Bench dismissed the writ petition.
3. Mr. Roy for the appellant contends his client was successful in the written examination and had been provisionally appointed. His appointment ought not to be cancelled on the ground of visual impairment.
4. On the other hand Mr. Ghosh contends appellant had not challenged the order of cancellation before the first court. He had applied in the scheduled caste/exempted category and had not availed of reservation as a person with disability. In support of his contention he placed on record affidavit wherein it is stated five general

candidates with physical disability were recommended. Two of the candidates were recommended in unreserved category in light of their higher merit. Amongst the five candidates with physical disability, four candidates were with locomotor disability and one with hearing impairment. No candidate with visual impairment had applied and was neither recommended nor appointed.

5. The selection of candidates to the post of Junior Assistant Commissioner was undertaken in 2011 'Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995' (hereinafter referred to as the Act of 1995) was the law applicable to the selection process for reservation of persons with disability in the matter of public employment.
6. Chapter VI of the Act of 1995 laid down manner in which the reservation for various categories of persons of disabilities were to be made in public appointment.
7. Section 33 provided for at least 3 percent reservation for persons with disabilities, one percent each in three categories, namely visual impairment, hearing impairment and locomotor impairment or cerebral palsy. The provision reads as follows :

“33. Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three percent for persons or class of persons with disability of which one percent each shall be reserved for persons suffering from
(i) blindness or low vision;
(ii) hearing impairment;

(iii) locomotor disability or cerebral palsy

8. The *proviso* to section 33 empowers the appropriate government to issue notification, to exempt any establishment from the provisions of this Act. No such exemption had been granted with regard to post of Junior Assistant Commissioner in the Corporation. On the other hand affidavit placed on record shows that reservation envisaged in section 33 of the Act of 1995 had been made for the selection process.
9. Section 36, inter alia, provided for carry forward of the reserved vacancy for persons with disability for the succeeding recruitment year and if no such candidate was available in the said succeeding year, the post could be filled up by person other than a person with disability.
10. The law also provided that if a vacancy could not be filled up with a given category of person with disability, the said vacancy may be interchanged among the other categories of disability as envisaged in section 33 of the Act.
11. In addition to reservation, the law also calls upon appropriate government and local authorities to formulate schemes for ensuring employment of persons with disabilities by providing :
 - (a) The training and welfare of persons with disabilities;
 - (b) The relaxation of upper age limit;
 - (c) Regulating the employment;

- (d) Health and safety measures and creation of a non-handicapping environment in places where persons with disabilities are employed;
- (e) The manner in which and the persons by whom the cost of operating the schemes is to be defrayed; and
- (f) Constituting the authority responsible for the administration of the scheme.

12. Section 47 of the Act provided that no establishment shall dispense with or reduce in rank, an employee who acquires a disability during service. Nor would a person with disability be denied promotion.

13. The aforesaid scheme of the law makes it amply clear that it is incumbent upon the appropriate government including a local authority as a model employer not only to ensure affirmative action in the matter of public employment for persons with disability but also to create a non-discriminatory and conducive work environment for employment of such persons in public office.

14. The present case portrays a clear apathy to a deserving candidate who had on his own merit qualified for appointment notwithstanding visual impairment. Appellant had applied in scheduled caste/exempted category candidate and was successful in the written examination. He was provisionally issued an offer letter subject to medical examination. When he was not given a place of posting, he approached this court. During hearing it came to light the

medical officer had opined that he was 100% visual impairment and accordingly he could not be appointed.

15. Mr. Ghosh has sought to support this decision on the ground that the appellant had not applied in the persons with disability category. This attitude taken by an employer in denying appointment to a deserving candidate with disability appears to be in clear contravention of the letter and spirit of the Act of 1995. To give effect to the provisions of the Act, it is not only incumbent on an part of the employer to reserve posts for various categories of persons with disabilities but it is its bounden duty to ensure that a deserving candidate if falling in the said categories, is given an opportunity to avail of the said reservation when admittedly the reservation in the visual impairment category had not been availed of by a more deserving candidate.

16. Unfortunately the Hon'ble Single Bench relied on hypertechnicalities and held as the letter of cancellation not being formally assailed, the appellant was not entitled to relief. Appellant had prayed for joining the post to which he had been selected and an offer letter issued subject to medical examination. His prayer was resisted by the Corporation on the score he was 100% visual impaired. Validity of such rejection was intrinsically a matter in issue in the writ petition and it was within the ambit of the court under Article 226 of the Constitution to mould relief and issue a direction

on the Corporation to consider appellant's case in the reserved category by setting aside the cancellation letter.

17. We are further fortified to come to such conclusion as the Corporation in its affidavit has admitted that no candidate with visual impairment who was more meritorious than the appellant had been appointed in the reserved category.

18. Under such circumstances we allow the appeal and direct the respondent-corporation to consider the case of the petitioner in the reserved category of a visually impaired candidate and appoint him in any available vacancy and in the event there is no such vacancy, in the next available vacancy in accordance with law. The entire exercise shall be completed within two months from the date of communication of this order.

19. Appeal and other connected applications are disposed of.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)