

Manjit Kaur

Vs

The State of Punjab and Others

Civil Appeal No. 100 of 1987

(O. Chinnappa Reddy, V. Khalid JJ)

19.01.1987

ORDER

1. Special Leave granted.

2. 1981 was declared 'the International Year for the physically handicapped persons'. The Government of India and various State Governments decided, among other things, to make suitable provision for reservation of posts in Government service for physically handicapped persons. But apparently, it is one thing to express a determination to do a thing and another to do it. It appears there is always a gap between pronouncement and performance. Hurdles appeared in the way of giving effect to the policy of reservation of a few posts for physically handicapped person. Only the other day we had to interfere at the instance of a physically handicapped person to secure to him the post which he was entitled to get (*Daya Ram Tripathi v. State of U.P.*, 1986 Supp SCC 497). That was a case from Uttar Pradesh. The present case is from Punjab. As far back as 1973, the Government of Punjab had announced its policy to rehabilitate physically handicapped persons by giving priority to them in the matter of appointment to government posts. In 1982 the Government of Punjab decided to reserve 3 per cent of the posts in Class III & Class IV to physically handicapped persons and conveyed their decision to all Heads of departments, Commissioners of Divisions, Deputy Commissioners and the Registrar of Punjab & Haryana High Court. In the letter conveying the decision of the government it was stated that the Principal Chief Medical Officer/ Chief Medical Officer/ Civil Surgeon of the district or place would be competent to issue the certificates of eligibility to the physically handicapped persons. It was also stated that such certificate would be sufficient for entitlement to age concession and employment. Mr. Manjit Kaur, who is a B.A. and B.Ed. and is admittedly eligible for appointment as Social Studies Mistress applied for such a post to the Director of Punjab, Chandigarh. She claimed that she was a physically handicapped person as she was orthopaedically handicapped having had an amputation of distal phalanx of the right thumb. She also produced a certificate from the Civil Surgeon of Ferozepur to that effect. Earlier she had also been examined by a Medical Board consisting of the Professor of Anatomy, Medical College Amritsar. They had certified "she has amputation of distal phalanx of right thumb. She is orthopaedically handicapped. Keeping in view the above finding she is declared a handicapped person but otherwise fit for the post of Social Studies Mistress/teacher." The medical certificate issued by Civil Surgeon, Ferozepur was rejected on the ground that it was not proper form. It was said that the certificate did not say that the appellant was 'disabled handicapped but otherwise fit for Civil employment' but stated instead that she was orthopaedically handicapped but otherwise fit for employment. The Civil Surgeon insisted that the certificate was in accordance with government instructions. Some correspondence appears to have ensued between Director of Education (Schools) and the Civil Surgeon as to whether the certificate was in proper form or not. The net result was that the appellant was not appointed to the post.

3. The appellant filed a writ petition under Article 226 in the High Court of Punjab & Haryana. The writ petition was dismissed on the ground that according to the government the appellant was not physically handicapped person. The appellant has invoked the jurisdiction of this Court under Article 136 of the Constitution. The instructions of the Government do not define who is physically handicapped person but state that the certificate of being 'handicapped but otherwise fit for civil employment' issued by a Principal Medical Officer/ Chief Medical Officer/ Civil Surgeon would be 'sufficient for age concession and employment'. The appellant did not produce such a certificate and was therefore entitled to be appointed if she fulfilled other requirements. It is not disputed that she fulfils all other requirements. Even the correspondence of the Director of Education with the Civil Surgeon does not show that the Director did not consider that the particular disability of the appellant was not sufficient to classify her as a physically handicapped person. His objection appears to have been to the form of the certificate rather than to the substance of it. We do not think that there was any justification for not appointing the appellant to the post of Social Studies Mistress in the vacancy reserved for physically handicapped persons. A direction will therefore issue to respondents to consider the claim of the appellant to the post of Social Studies Mistress on the basis that she is a physically handicapped person and appoint her to that post if she is otherwise qualified. The appellant is entitled to her costs.

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