

SUPREME COURT OF INDIA

Mahesh Gupta

Vs.

Yashwant Kumar Ahirwar

C.A.No.3984 of 2007

(S.B. Sinha and Harjit Singh Bedi JJ.)

30.08.2007

JUDGMENT

S.B. SINHA, J:

1. Leave granted.

2. Interpretation of an advertisement in the light of a circular of the State of Madhya Pradesh as regards recruitment of handicapped persons to some posts is in question in these appeals which arise out of judgments and orders dated 1.5.2003 and 23.08.2004 passed by the High Court of Madhya Pradesh in Writ Petition No. 40 of 2000 and M.C.C. (Contempt) No. 222 of 2003.

3. The State took recourse to a special drive for filling up the vacant posts in the reserved category candidates, viz., Scheduled Castes, Scheduled Tribes and Backward Classes. In a circular letter issued on 29.03.1993, it was stated:

"SUBJECT: SPECIAL DRIVE FOR FILLING UP RESERVED POSTS FOR HANDICAPPED PERSONS The State Government has reserved 3% posts (1% for blinds and 2% for other physically handicapped persons) for disabled persons. By the Notification of the State Government vide No. 50-2532-1(3)/80 dated 12th of February, 1991, exemption for 10 years in the prescribed age limit has been granted to the candidates belonging to blind, dumb, deaf and disabled persons eligible for services for the posts of the categories of 3rd and 4th grades, to be filled in the services of the State Government through Employment Exchanges (copy enclosed). In the orders of the Finance Department No. L-17-1-87-B-7-4 dated 4th of June, 1987 in paragraph 2, exemption has also been granted from the ban imposed for appointment in the government services, prescribed only for handicapped persons against the reserved posts.

It has been brought to the knowledge of the State Government that this quota for the handicapped persons is not being fulfilled due to absence of knowledge about reservation and procedural complications. Extending the full benefit against the reserved posts in the government services as per the prescribed quota for the handicapped persons, cannot be determined as a fair situation."

It was inter alia directed:

"In this connection, it is worth mentioning that for the successful conduct of the aforesaid campaign and for the implementation of the said policy of the State Government, call for the names from the

Employment Exchanges, for the vacancies at District level, the District Collector, and for the vacancies at Divisional level, the Divisional Commissioner, and for the vacancies at Heads of the Department, the concerning Heads of Department have been authorized. These authorization shall be limited only up to the posts of 3rd and 4th grades. So far as the question about 2nd Grade is concerned, this authority shall vest with the State Government, but the procedure regarding examination, interview etc., could be conducted at the level of the Head of the Department."

4. Pursuant to or in furtherance of the said circular letter, the Commissioner, Chambal Division, Morena issued an advertisement, the heading whereof is as under:

"SPECIAL RECRUITMENT DRIVE FOR FILLING UP THE VACANT RESERVED POSTS OF SCHEDULED CASTE AND SCHEDULED TRIBE:"

However, while providing for the details of the posts, it was categorically laid down:

"

Name of Post (s) Vacant Posts SC ST Handi- capped Minimum Qualifications Pay- Scale

1. Higher Grade Teachers = English 14 and Sanskrit - 8 - 20 02 Graduate in relevant subject passed in 2nd Div. & Trained (B.Ed. B.T.C.) 1400- 2640

2. Industries Craft Teacher - 17 02 Hr. Sec. Exam (Intermediate) &

Diploma in concerning craft by an Institute recognized by the Government 1400- 2640

3. Assistant Teacher (Science) - 08 03 Hr. Sec. Exam (Intermediate) Science with the Subjects, Physics, Chemistry, Biology 1200- 2040

4. Artists cum- - 01 - Graduate Degree in Arts from J.J. School of Arts and one year experience in commercial photography 1400- 2340

5. Dietician 01 - - M.Sc. (Home Science) or B.Sc.

(Home Science) 2nd Division &

essentiality of Food craft subject 1400- 2340

6. II Gr. Clerk - 01 -

1. Hr. Secy. or High School passed

2. Hindi Typing passed from M.P.

Board 950- 1530

7. Steno-Typist - 05 - 1 & 2 ==ditto==

3. Knowledge in Hindi Stenography 950- 1530 + 75

8. Stenographer - 05 - 1 & 2 as above +

3. Dictation in Hindi Stenography with the speed of 60 words per minute as prescribed by Govt.

9. Tracer - 01 -

1. Hr. Secy./High Sch. with I.T.I.

passed

2. Drawing Diploma or Civil Engineering Diploma 950- 1530

10. Assistant Cartographer - 02 - Passed Hr. Secy.

Exam. and Degree/ Diploma in the Craft or Certificate of Draftman in Civil Engineer from I.T.I.

or Surveyor Trade Certificate Pay as prescribed by Govt.

Total :

01 60 07 "

5. We are concerned with the posts of Assistant Teacher (Science).

Appellants herein belonged to the general category. They, however, suffer from disability. They are handicapped persons. Respondent No. 1 Yashwant Kumar Ahirwar, a handicapped person but also belonging to the reserved category candidate was not selected. He approached the Administrative Tribunal. The Administrative Tribunal by a judgment and order dated 27.11.1999 opined that he had no right of appointment on the post of Assistant Teacher (Science) having not been selected by the Selection Committee stating:

"4. On perusal of the advertisement published in the Rojgar Nirman dt. 26th May, 1994 (Ann. P.8), it appears that the respondent had advertised 8 posts for the reserved category for scheduled castes and 8 posts for the handicapped persons. The respondents showed the reserved category separately in the body of the advertisement, though the heading of such advertisement is misleading that applications are also invited from the candidates belonging to the category of S.C. & S.T. but the body of the advertisement leaves no room for doubt that 8 posts were got reserved for the candidates belonging to the Scheduled Castes and 3 posts for handicapped persons without having any caste wise reservation. The respondent made it clear in their return that there was also special drive to fill the vacancies belonging to the handicapped persons pursuant to the circular issued by the State Government on 29th March, 1993 (Ann.J-1). There was clear direction therein that such vacancies should be filled by the end of 30th June, 1993"

6. On a writ petition having been filed by him, the High Court, however, by reason of the impugned judgment while setting aside the order of the Tribunal, directed:

"Therefore, in the said facts of the case it will be appropriate that the State Government should examine minutely and decide whether the posts could be filled from the general category when advertisement was for reserved category mentioned in the advertisement. The State Government shall also examine whether these posts are to be filled from the members of scheduled tribes only or from the members of scheduled castes only or from the category of other backward castes or these posts were for all the categories mentioned above.

State Government should also consider whether the reservation was in accordance with the reserved proportion shown in the Annexure-R/1 filed by the State. Annexure R/1 is issued by the State Government on 29th March, 1993. State shall also examine whether at the relevant date any post of the handicapped candidate in general category was vacant. If no post was vacant then no person from general category could be appointed against these posts. State shall determine that the category advertised had been properly filled.

The entire exercise be conducted within a period of three months from the date of communication of the order..."

7. The stand of the State before the Tribunal as also the High Court had been that the posts reserved for the handicapped persons were open to all.

Even after the direction of the High Court, the State was of the view:

"1 The filling of the three posts of Assistant Teachers (Science) as mentioned in the Advertisement, could be carried out from the handicapped candidates of any category.

2 The Advertisement published by the Commissioner, Chambal Division, regarding special drive for recruitment of Scheduled Caste/Tribes and filling of the posts of handicapped persons, was issued in compliance of the instructions issued from time to time by the General Administration Department and the Circular vide No. F.9- 2/93/1/Res.Cell, Bhopal Dated 29th of March, 1993, but in the language of the heading of the Advertisement, the words " and handicapped" should have been used along with Scheduled Caste/Tribes, which has not been done so.

3 At that time in the quota for the handicapped persons, 3 posts of Assistant Teacher (Science) were vacant, for filling of the same, proposals were forwarded by the Joint Director, Education, Gwalior Division, vide its letter No.

Estt.3/DRA/Gwalior/268 dated 1st of March, 1994, to the Commissioner, Chambal Division.