

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17528 of 2019

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Atul Ranjan S/o Dr. Nawal Kishore Singh Resident of Road No. 17, Rajeev
Nagar, P.o.- Keshri Nagar, P.s.- Rajeev Nagar, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna
2. The Principal Secretary Department of Personal Administrative Reforms/General Administrative Reforms, Bihar, Patna
3. The Social Welfare Department Bihar, Patna
4. The Bihar Public Service Service Commission Jawarlal Nehru, Bailey Road, Patna
5. The Chairman Bihar Public Service Service Commission, Jawarlal Nehru, Bailey Road, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Bindhyachal Singh Mr. Satya Prakash
For the Respondent/s	:	Mr.Sheo Shankar Prasad (SC-8) With Mr. Anil Kumar, AC to SC-8
For BPSC	:	Mr. Lalit Kishore, Senior Advocate with Mr. Satyabir Bharti, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

12 12-12-2019

I have heard Mr. Bindhyachal Singh, learned counsel appearing on behalf of the petitioner, Mr. Lalit Kishore, learned Senior Counsel, representing the Bihar Public Service Commission(hereinafter referred to as 'the Commission') and Mr. Sheo Shankar Prasad, learned Standing Counsel No.8 for the State of Bihar.

2. The present writ application has been filed seeking direction to the respondents to appoint the petitioner on any suitable post after declaring his result under differently-abled



category by extending the benefit of reservation to persons suffering from 'multiple disability' as contemplated under Section 34 of the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as 'the Act'), based on the recruitment conducted by the Commission through 63rd Combined Competitive Examination.

3. Before I notice the facts asserted in the writ application, it would be apt to notice relevant statutory provisions first, for proper appreciation of the issue, which the case involves. The Rights of Persons with Disabilities Act, 2016 has been enacted by the Parliament to give effect to the United Nations Convention on the Rights of Persons with disabilities and for matters connected therewith or incidental thereto. The Act has made special provisions for persons with benchmark disabilities under Chapter-VI. Section 34 of the Act provides for reservation for persons with benchmark disabilities in the matter of appointment to be made by every appropriate Government. Appropriate Government has been defined under Section 2(b) (ii) of the Act in relation to a State Government or any establishment, wholly or substantially financed by that Government, or a Cantonment Board, as the State Government.

4. Section 34 of the Act reads thus:-



“34. Reservation.-(1) Every appropriate Government shall appoint in every Government establishment, not less than four per cent of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent for persons with benchmark disabilities under clauses (d) and (e), namely:-

(a) blindness and low vision;

(b) deaf and hard of hearing;

(c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;

(d) autism, intellectual disability, specific learning disability and mental illness;

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instruction as are issued by the appropriate Government from time



to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of



vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the give categories with the prior approval of appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.”

(Underlining for emphasis)

5. In the present case, the Court is concerned with the expression ‘multiple disabilities’ as occurring in Section 34 (1) (e) of the Act. The petitioner claims that he suffers from multiple disabilities. It must be noted here that the Rules have been framed in exercise of powers conferred by sub-section (1) and (2) of Section 100 of the Act, christened, ‘Rights of Persons with Disabilities Rules, 2017’ (hereinafter referred to as ‘the Rules’). The Rules have come into force with effect from 15.06.2017, after publication in official Gazette. Rule 18 of the Rules mandates that on receipt of an application under Rule 17, the medical authority or any other notified competent authority shall, verify the information as provided by the applicant and



shall assess the disability in terms of the relevant guidelines issued by the Central Government and after satisfying himself that the applicant is a person with disability, issue a 'certificate of disability' in his favour in Form V, VI and VII, as the case may be. Form VI prescribes the certificate of disabilities in case of multiple disabilities. It is the petitioner's own case that the said certificate under Form VI declaring him to be suffering from 90% locomotor disability, for the absence of upper limb, which is a permanent physical impairment coupled with 40% speech and language disability (bilateral vocal cords palsy) was issued in his favour on 09.04.2019. My attention has been drawn to the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999, sub-section (o) of Section 2 of which defines "severe disability" as disability with eighty percent or more of one or more multiple disabilities. With reference to the said definition, read with the certificate, which has been issued by the notified competent authority as contemplated under Rule 18 of the Rules, which has been brought on record by way of Annexure-1 to the writ application, it is the petitioner's case that he suffers from multiple disabilities and is entitled for benefit of reservation as contemplated under Section 34 of the Act.



6. The Commission held 63rd Combined Competitive Examination on the basis of an advertisement issued on 09.11.2017 and 64th Combined Competitive Examination on the basis of an advertisement issued on 02.08.2018. Advertisement for holding 65th Combined Competitive Examination was published on 04.07.2019. There does not appear to be any dispute over the factual position that the selection process based on 63rd Combined Competitive Examination is over. So far as 64th Combined Competitive Examination is concerned, it is not in dispute that after declaration of the results of the preliminary test, main examinations have been held and the results are likely to be published soon. The preliminary test of 65th Combined Competitive Examination has been held but the result has not been published.

7. The basic question, which the petitioner has raised in the writ application is that the respondents have defied the statutory requirement as contemplated under Section 34 of the Act. Section 34 of the Act mandates appropriate Government (in the present case the State Government) to appoint in every Government establishment, not less than four per cent of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark



disabilities of which, one per cent each shall be reserved for persons with benchmark disabilities under clauses (a) (b) and (c) and one per cent for persons with benchmark disabilities under clauses (d) and (e). It is clear from the language of Section 34(1) of the Act that while one per cent each reservation is mandatorily required for persons benchmark disabilities under (a) blindness and low vision; (b) deaf and hard of hearing and (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy; one per cent reservation is required to be provided to the persons with benchmark disabilities, namely, (a) autism, intellectual disability, specific learning disability and mental illness; and (b) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness, in the posts identified for such disabilities. The petitioner has a grievance that in none of the advertisements issued by the Bihar Public Service Commission for holding either of the 63rd, 64th, and 65th Combined Competitive Examination, any provision of reservation was made for persons with 'multiple disabilities' as mandated under sub-section (1) of Section 34 of the Act.

8. This is indubitable that no such provision for reservation was made under the aforesaid advertisements for



persons suffering from multiple disability. The petitioner had applied against the advertisement issued on 09.11.2017 for 63rd Combined Competitive Examination and had succeeded in preliminary test. He had participated in the written (main) examination also but was unsuccessful. This is to be noted that he had claimed his reservation on the basis of locomotor disability while making application for 63rd Combined Competitive Examination. The petitioner has, accordingly, a grievance that since there was no provision in the advertisement, inviting applications providing reservation to persons suffering from 'multiple disabilities', he had no occasion to submit his certificate of his sufferance from multiple disabilities and accordingly, he had submitted his application with a certificate of his locomotor disability.

9. There is another grievance, which has been raised on behalf of the petitioner. It is his case that sub-section (2) of Section 34 of the Act mandates that if in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not



available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability. Heavy reliance has been placed by Mr. Bindhyachal Singh, learned petitioner's counsel on the language of the *proviso* to sub-section (2) of the Act which states that if the nature of vacancies in an establishment is such that a given category of a person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government. He has submitted that in utter disregard to the provision in sub-section (2) of Section 34 of the Act, which requires unfilled vacancies because of non-availability of suitable person with benchmark disability to be carried forward, the General Administration Department, Government of Bihar has taken a contrary decision, as contained in the resolution dated 12.10.2017, paragraph (ix) whereof reads thus:-

“(ix) “जहाँ किसी भर्ती वर्ष में दिव्यांगजन अधिकार अधिनियम, 2016 की धारा-34 के अधिन किसी रिक्ति के विरुद्ध उपर्युक्त दिव्यांग व्यक्ति की अनुपलब्धता के कारण या किन्ही अन्य पर्याप्त कारण से भरा नहीं जा सकता है, तो इसे उसी समव्यवहार में चारों प्रवर्गों के बीच परस्पर परिवर्तन द्वारा भरा जा सकेगा और केवल तभी जब वर्ष में पद के लिए कोई दिव्यांग व्यक्ति उपलब्ध नहीं है,



नियोजक दिव्यांग व्यक्ति से भिन्न किसी अन्य व्यक्ति की नियुक्ति करके रिक्ति को भरेगा, वहां ऐसी रिक्ति अगले वर्ष में अग्रणित नहीं की जायेगी।”

10. Following is the near translation of the said part of the resolution:-

“Where in a recruitment year the vacancy is not filled up due to unavailability of the aforesaid disabled person or any other sufficient reasons against any vacancy, under Section 34 of Rights of Persons with Disabilities Act, 2016, it shall be filled up by mutual change among all the four sub categories of disability in the same transaction, but only when no disabled person is available for the post in that year, the employer shall fill up the vacancy by appointing person other than disabled person (Differently abled) but in that case such vacancy shall not be carried forward in the next year.

11. He contends that whereas the law mandates carrying forward, of unfilled vacancies due to non-availability of persons with benchmark disability, the State Government has taken a decision not to carry the vacancies forward for subsequent processes of selection, which is illegal and against



clear mandate of law.

12. A counter affidavit has been filed on behalf of the Bihar Public Service Commission. There is no denial of the fact that the advertisements for 63rd, 64th and 65th Combined Competitive Examinations did not disclose reservation for persons suffering from multiple disabilities as contemplated in sub-section (1) of Section 34 of the Act. It is, however, the case of the Commission that in compliance of the provisions under Rights of Persons with Disabilities Act, 2016, the State Government has published resolution dated 27.12.2016 under which though reservation has been provided for the four categories including mental disability, it does not make provision for any reservation for persons suffering from multiple disabilities. It is, accordingly, the case of the Commission that in view of the aforesaid resolution of the State Government the Commission could not have made provision for reservation of persons suffering from multiple disabilities, in the advertisements. The upsum of the contention of the Commission is that its decision is based on the decision of the State Government, which has not provided any reservation for multiple disabilities. A copy of the resolution dated 12.10.2017 has been brought on record by way of Annexure-C to the



counter affidavit.

13. In my opinion, the language of Section 34 (1) of the Act is clear and does not suffer from any ambiguity. There should also not be any doubt that the provisions of the Act are mandatory and deviations cannot be permitted as the Act has been enacted for ameliorating the condition of differently-abled persons and to give effect to the United Nations Convention on the Rights of Persons with Disabilities. In clear terms it provides that there shall be one per cent of the reservation jointly for the persons suffering from benchmark disability viz;-

(i) autism, intellectual disability, specific learning disability and mental illness; and (ii) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities.

14. Since this is an admitted fact that the advertisements for 63rd, 64th Combined Competitive Examinations and 65th Combined Competitive Examination did not provide for reservation in respect of persons suffering from multiple disabilities within the meaning of item (e) of Section 34(1) of the Act, the said lapse on the part of the respondents cannot have any justification and is accordingly held to be illegal. The resolution of the State Government dated



12.10.2017 (Annexure-C) to the extent it does not provide for any reservation to person suffering from mental disabilities cannot be justified. The respondents State of Bihar is obligated to include the persons belonging to such category as contemplated under Item (e) of sub-section (1) of Section 34 of the Act.

15. Further, I find substance in the submission made on behalf of the petitioner that clause (ix) of the resolution dated 12.10.2017 (Annexure-C to the counter affidavit of Commission) to the extent it prohibits carrying forward the vacancies for subsequent selection process, if the persons suffering with disabilities are not available, is in clear breach of Section 34 (2) of the Act, which mandates that in the event in any recruitment year, any vacancy could not be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, vacancies may be filled up by interchange among the five categories and only if there is no person with disability is available for the post in the subsequent year, the appropriate Government shall fill up the vacancy by appointment of a



person, other than a person with disability. Clause (ix) of the resolution dated 12.10.2017, in my view, is not legally sustainable and, therefore, this Court has no other option but to declare the same illegal and consequently stands struck down. The respondents, as consequence thereof will have the obligation to proceed, in letters and spirit and in accordance with the prescription under sub-section (2) of Section 34 of the Act.

16. Coming back to the case of the petitioner, Mr. Lalit Kishore, learned Senior Counsel appearing on behalf of the Commission, has argued that the petitioner cannot successfully establish infringement of his legal right in respect of 63rd Combined Competitive Examination as he did not submit his application with Form VI under the Rules certifying his multiple disabilities. He has contended that in any view of the matter, after having participated in the process of selection, he cannot subsequently turn around to question the process of selection itself. He has further submitted that in any view of the matter, since for the first time, the petitioner has obtained a certificate of his sufferance from multiple disabilities in accordance with the statutory Rules on 09.04.2019 (Annexure-1), he cannot question absence of provision for reservation for the said



category under the advertisements for 63rd and 64th Combined Competitive Examinations, since he did not hold the requisite certificate in support of his claim. He has further submitted that now, since the selection process based on the advertisement for 63rd Combined Competitive Examination is over and 64th Combined Competitive Examination is underway and there has been substantial progress already, the petitioner cannot be granted any relief, even if the Court has noticed any illegality in the said advertisements. He has reiterated his stand that since the petitioner did not have the qualification to claim reservation of his multiple disabilities prior to acquisition of certificate in April, 2019, he cannot raise any grievance with respect to the advertisements of 63rd and 64th Combined Competitive Examinations. He has, however, not been able to justify the absence of provision for reservation in respect of persons suffering from multiple disabilities in the advertisement for 65th Combined Competitive Examination and petitioner's statutory claim on the basis of the certificate, which he acquired, of his sufferance from multiple disabilities under the Act, prior to publication of the advertisement for the said examination on 04.07.2019.

17. He has submitted that the preliminary examination



based on 65th Combined Competitive Examination has been held and the result of the said examination is likely to be published very soon.

18. This writ application was filed on 06.08.2019, much before preliminary test was held, wherein the petitioner claimed his statutory right to avail benefit reservation in the light of the provisions under Section 34(1) of the Act.

19. Considering the facts and circumstances, noted above, keeping in mind the fact that the action of the respondents in not providing any reservation for persons suffering from multiple disabilities in the advertisements of 63rd, 64th and 65th Examinations is illegal, I am of the view that the grievance of the petitioner can be redressed and interest of justice will be sub-served, if the Court directs the Bihar Public Service commission to hold a separate preliminary test for candidates who are suffering from multiple disabilities within the meaning of Item (e) of sub-section (1) of Section 34 of the Act, for 65th Combined Competitive Examination. This direction is being issued in the light of the fact that the petitioner was possessing statutory certificate issued under Rule 18 of the Rules framed under provisions of the Act from before publication of advertisement by the Commission. It is ordered



accordingly.

20. The Bihar Public Service Commission is, thus, directed to issue an advertisement, inviting applications from such candidates who fall within item (e) of Section 34(1) of the Act, suffering from multiple disabilities. Their results shall be published in appropriate category, with the result of other candidates, who have already participated. The Commission shall proceed with the process of selection thereafter, but strictly in accordance with the provisions of the Rights of Persons with Disabilities Act, 2016, preamble of which in my opinion, throws adequate light and is enough for respondents to be sensitized about the purpose for which the Act has been enacted.

21. This application is allowed to the extent indicated above.

22. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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