

(2002) 07 AHC CK 0144

Allahabad High Court (Lucknow Bench)

Case No: Civil Miscellaneous Writ Petition No's. 2915 (S/S) of 1999 and 2964 (S/S) of 2001

Akhilesh Kumar Pandey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: July 11, 2002

Citation: (2002) 3 UPLBEC 2803

Hon'ble Judges: R.K. Agrawal, J

Bench: Single Bench

Advocate: Pt. S. Chandra, for the Appellant; G. Beg, for B.S.A. and C.S.C., for the Respondent

Final Decision: Allowed

Judgement

R.K. Agrawal, J.

These two writ petitions have been filed by one and same petitioner involving common question of law, hence, they are being decided together by a common Judgment.

2. The petitioner is a handicapped person. An advertisement, was published in the year 1999, inviting the applications from eligible candidates for Special B.T.C. Training for the purpose of making appointment on the post of Assistant Teachers in Primary Schools, run by the U.P. Basic Education Board. In the advertisement, it was mentioned that the reservation would be made as per the Government policy. However, in the Proforma application form, Column No. 7 related for claiming the benefit of reservation pertaining to the candidates of reserved category. In the column, only the categories mentioned were Scheduled Castes, Scheduled Tribes, Backward classes, Ex-Army Men and Dependent of Freedom Fighters. But, there was no column pertaining to physically handicapped persons. The petitioner did not mention that he is physically handicapped person in the prescribed application form instead he claimed to be dependent of serviceman.

3. According to the petitioner, even though in the application form there was no mention for claiming reservation for physically handicapped person, yet, alongwith application form, he had sent the certificate dated 8.9.1997 issued by the Chief Medical Officer, Ambedkar Nagar. It appears that his case was considered under the general category candidates, in as much as, he had not claimed any benefit of reservation available to physically handicapped person in the application form. He had obtained 46.43 quality point marks and was not selected for Special B.T.C. Training. Subsequently, the State Govt. by way of general order which was given wide publicity through the newspaper, invited the application/representation from the aggrieved candidates for redressed of their relevance, and permitted to file certificate in proof of their claim.

4. The petitioner made a representation and this time he filed his certificate dated 2.7.1999 issued by the Chief Medical Officer concerned, certifying that the petitioner is physically handicapped. The claim of the petitioner has been rejected on the ground that it had been issued after the last date of submission of the application form i.e. March, 1998.

5. I have heard Pt. S. Chandra learned Counsel for the petitioner and the learned Standing Counsel and Shri Gaus Beg learned Counsel for the respective respondents.

6. The learned Counsel for the petitioner submitted that in the absence of any column in the application form for claiming the benefit of reservation in respect of physically handicapped person, the petitioner could not claim the reservation in the application form itself but had enclosed the certificate issued the Chief Medical Officer (supra). However, when he was not selected for training he made representation and in the representation he filed a fresh certificate issued by the Chief Medical Officer.

7. It is not in dispute, according to the certificate issued by the Chief Medical Officer, that the petitioner does belong to the category of physically handicapped person. The Division Bench of this Court in the case [Anuradha Vs. Director, U.P. Rajya Shikshak Anusandhan Evam Prakashan Sansthan and Others](#), has held that even if a certificate not been filed along with the application, the petitioner's application for admission to the B.T.C. course for the relevant year or for the subsequent year treating the filing of the certificate by the petitioner as an accomplished fact but later on and not alongwith application, should be considered.

8. The Court also takes judicial notice of the fact that there is shortage of Assistant Teachers in Primary Schools and 6 thousands of vacancies have remained unfilled. Respectfully, following the aforesaid Judgment and order in the case of Anuradha (supra), it is directed that the claim of the petitioner be considered under the reserved category of physically handicapped person if he is otherwise found eligible and if the petitioner, thus, comes in the merit, he shall be called for Special B.T.C.

Training.

9. In the result both these petitions succeed and are allowed.