
(2016) 2 JKJ 776

Jammu & Kashmir High Court

Case No: SWP No. 1863 of 2007

Versha Parihar

APPELLANT

Vs

State of J&K

RESPONDENT

Date of Decision: Feb. 18, 2016

Acts Referred:

- Jammu and Kashmir Persons With Disabilities (Equal Opportunities, Protection of Rights And Full Participation) Act, 1995 - Section 22

Citation: (2016) 2 JKJ 776

Hon'ble Judges: Mr. Justice N. Paul Vasanthakumar, C.J.

Bench: Single Bench

Advocate: Mr. Nirmal Kotwal, Advocate, for the Appellant/Petitioner; Mr. Ravinder Gupta, AAG., Mr. Shashi Pal, Advocate, vice Mr. Nadeem Bhat, Advocate, for the Respondents

Final Decision: Disposed off

Judgement

Mr. Justice N. Paul Vasanthakumar, C.J. - This writ petition is filed praying to issue direction to the respondents to consider

selection/appointment of the petitioner in view of section 22 of Persons with Disabilities (Equal Opportunities Protection of Rights and full

Participation) Act, 1998. Further prayer is for issuance of direction to respondent Nos. 1 to 4 to provide 3% reservation to the category of

handicapped as provided under the persons.

2 The petitioner passed 10+2 and Bachelor Degree in Arts from Jammu University. She is handicapped in the category of low vision.

3. An advertisement notice No. 10 of 2005 dated 29.12.2005 was issued inviting applications for the post of Teachers in District Doda issued by

Service Selection Board. The total number of posts in all the categories were stated as 150. The petitioner being eligible, applied for the said post

under the category of low vision (disabled). The petitioner was considered under the said category of disability and was also interviewed. She was

not selected on the ground that the Government has excluded the post of teacher under the said category namely low vision by order No. 62-SW

of 2001 dated 13.03.2001.

4. Respondent Nos. 5 and 6 were selected under handicapped category and both of them were orthopaedically handicapped.

5. When the writ petition was posted for admission on 18.10.2007, this Court passed an interim order to the effect that if one post is lying vacant

in the open category, same shall be kept reserved.

6. Learned counsel appearing for the petitioner submits appointed and she having resigned from the post of teacher, the said post is vacant.

7. When the matter was heard by this Court on 22.07.2013, a direction was issued to the respondents to ascertain as to whether one post in

Handicapped category is lying vacant on account of non joining of the selected candidate and also apprise this Court of the rule position as

amended up to date.

8. On 26.08.2013, this Court directed that the interim order dated 18.10.2007 shall continue till final disposal of the writ petition and the same is in

operation as on today.

9. Learned counsel for the petitioner has heavily relied on Government Order No. 231 SW of 2011 dated 22.12.2011 to the effect that teachers

can also be selected under the handicapped category. Learned counsel submits that the said order nowhere states about the applicability of the

said inclusion from which date and therefore, the vacant posts can be filled up under the said Government Order including post of teachers for

physically handicapped category. The respondents are bound to reserve 1% of the post for blind-low vision in terms of section 22 of the Persons

with Disabilities (Equal Opportunities, Protection of Rights and full Participation) Act, 1988.

10. Since one post of teacher is lying vacant due to resignation of 6th respondent and in the light of Government Order dated 22.12.2011, this

Court is of the view that the petitioner is entitled to be selected and appointed on the said vacant post as the petitioner has already participated in

the interview and not selected only because of the reason that low vision category of physical disability was not included for providing appointment

under the physically challenged quota as per Government order dated 13.03.2001. In such circumstances, respondent Nos. 2 and 3 are directed

to do the needful to select and issue the appointment order to the petitioner under the physically challenged quota as teacher which is vacant within

a period of four weeks from the date of receipt of copy of this order.

11. On selection and appointment of the petitioner to the post of teacher, she shall be placed in the bottom of the seniority list and the said seniority

shall only be notional i.e for future promotions alone.

12. This writ petition is disposed of in the above terms.