



न्यायालय मुख्य आयुक्त निःशक्तजन
Court of Chief Commissioner for Persons with Disabilities
सामाजिक न्याय एवं अधिकारिता मंत्रालय
Ministry of Social Justice & Empowerment
निःशक्तता कार्य विभाग / Department of Disability Affairs

Case No.759/1011/11-12

Dated:- 06.08.2014

In the matter of:

Suo motu

Versus

Ministry of Labour & Employment,
Through the Welfare Commissioner,
Labour Welfare Organization,
No.06/07/12, Crescent Road,
Kumarapark East, Bangalore – 560 001.

..... Respondent

Date of hearing : 03.07.2014

Present :

Shri S.C. Mahadevamurthy, Central Govt. Counsel, on behalf of Respondent.

ORDER

Ministry of Labour & Employment, Bangalore published an advertisement in the Employment News dated 17 – 23 March, 2012 for the posts of Staff Nurses & Pharmacist, which were identified as suitable for persons with disabilities as per Ministry of Social Justice & Empowerment, Govt. of India, Notification No. 16-70/2004-D.D.-III dated 15.03.2007. the said list of identified posts is available in the websites of this office www.ccdisabilities.nic.in and Ministry of Social Justice and Empowerment www.socialjustice.nic.in and is applicable to all the organizations/establishments of Govt. of India/CPSUs.

2. In the said advertisement, no provision for reservation of atleast 3% of the vacancies was made for persons with disabilities in accordance with Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act, which provides as under:-

“Section 33. Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering from –

(i) Blindness or low vision; (ii) Hearing impairment, (iii) Loco motor disability or cerebral palsy, in the posts identified for each disability;

.....2/-

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.”

3. As per Department of Personnel & Training (DoP&T)'s O.M. No.36035/2004-Estt. (Res) dated 29.12.2005, for computing the reserved vacancies for persons with disabilities, separate 100-point vacancy based reservation rosters are to be maintained for Group 'A', Group 'B', Group 'C' and Group 'D' posts, in which points No.1, 34 & 67 are to be reserved for them. The said O.M. contains detailed procedure for effecting reservation of vacancies for persons with disabilities and is available in the website of this office and of DOP&T at www.persmin.nic.in.

4. DoP&T vide their O.M. No. 36038/2/2008-Estt.(Res) dated 28.07.2011 re-launched special recruitment drive and asked all concerned to make concerted efforts to fill the backlog reserved vacancies for persons with disabilities.

5. Suo motu notice of non-compliance of the provisions of Section 33 of the said Act/procedure prescribed by DoP&T u/s 59 of the Act was issued by this Court on 17.04.2012 and respondent was directed to show cause as to why he/she should not issue corrigendum to the advertisement referred to in para 1 and provide for reservation of vacancies for persons with disabilities in accordance with Section 33 of the Act and the instructions issued by DoP&T and submit his/her version of the case in writing alongwith the details of Group 'A', 'B', 'C' & 'D' posts in his/her establishment in the enclosed proforma within a period of 30 days from the date of receipt of this notice.

6. The respondent vide reply dated 22.05.2012, inter-alia, submitted that the posts of Staff Nurses and Pharmacist which are suitable for persons with disabilities were not considered by the respondent because Staff Nurses and Pharmacist with disabilities are not able to perform/discharge their duty effectively under different circumstances which is not conducive. The Staff Nurses have to treat many patients in the dispensary which has only one post in each unit and further the Staff Nurses have to give injections to the patients, whereas the pharmacist is to look after the duty during the leave period of Staff Nurses and in the absence of Staff Nurse has to maintain reports and Registers and also issue medicines to patients. Further the Staff Nurse and Pharmacist have to visit field units situated at remote places for giving treatment to poor Mine/Beedi workers. The non-consideration of PH persons for the recruitment of the post of Staff Nurse and Pharmacist is decided by the Head of the Estt. as per the discretionary power given to him vide para No.15(d) of the O. M. dated 29.12.2005 of Govt. of India, DoP&T. the respondent has followed cent percent roster system and Office Memorandum dated 29.12.2005 issued by DoP&T, in particular of 15(c) which says that point 1, 34 and 67 of the rosters shall be earmarked for persons with disabilities – one point for each of the three categories of disabilities.

7. The respondent further submitted that the respondent has 187 total posts i.e., Group-C and Group-D, in which 3% will be 5.61 to be recruited persons with disabilities and respondent's office has already appointed the following three persons with disabilities and they are in strength:-

- | | | | | | |
|----|-----------------------|---|-----------|---|----|
| 1. | Shri C. Kuppan | - | Chowkidar | - | OH |
| 2. | Shri T. Gulam Hussain | - | Peon | - | OH |
| 3. | Shri B. Ramdas | - | Chowkidar | - | OH |

A post of Junior Clerk under physically disabled category (OH) had been referred to SSC, Bangalore to sponsor the candidate. The SSC also had sponsored the candidate but the candidate did not report for duty. Hence, a fresh request to sponsor a physically disabled candidate is again sent to SSC, Bangalore as stated by them considering above 2 backlog posts of PH persons (2 for VH and 1 for HH) are remained due to be recruited by the office of the respondent and the respondent will fill up the posts of Junior Clerks shortly by referring the same to SSC and No Objection Certificate for these posts has already been received by the Surplus Cell (DoP&T). The respondent further submitted that the respondent has no where violated the terms and conditions as prescribed under the Act. The process was already begun, call letters were sent for interview and written test on 04.5.2012. Even the written test and interview also conducted to those candidates who participated. The respondent respectfully prays that this Hon'ble Court may be pleased to drop proceedings against the respondent in the interest of justice and equity.

8. The respondent vide this Court's letter dated 31.01.2013 was directed to submit (i) details of vacancies filled since 1996 in Group 'A', 'B', 'C' and 'D' in the enclosed proforma as was sought vide notice dated 17.04.2012 and (iv) intimate whether exemption was obtained from the Government and, if so, a copy of the Notification may be submitted to this Court.

9. The respondent vide reply dated 14.06.2013 submitted that the reservation of roster for PH was opened from the year 2006 as per the letter dated 26.05.2006 issued by Ministry of Labour and Employment and there were no recruitment as far as Group 'C' is concerned during 2006-07 and as far as Group 'D' is concerned, there was no recruitment from the year 2001 onwards. The respondent further submitted that out of 143 sanctioned strength in respect of Group 'C' is concerned, four posts are earmarked for PH in which three posts are identified for Junior Clerk, one each for OH, HH and VH. One post of OH is earmarked for Pharmacist/Staff Nurse and the same will be recruited at the time of appointment in future.

10. Upon considering the replies dated 22.05.2012 and 14.06.2013 of the respondent, a hearing was scheduled on 03.07.2014.

11. During the hearing on 03.07.2014, the Ld. Counsel on behalf of respondent submitted that they do not have any intension to violate Persons with Disabilities Act, 1995 but just keeping in mind the chart of duty of Staff Nurses and Pharmacist, which is heavy, these posts were not reserved with the due approval of their head of the establishment.

12. This Court feels that if this is the case, Ministry of Labour and Employment should have taken the exemption for the two posts from the Ministry of Social Justice and Empowerment for not giving reservation. Therefore, they need to follow Section 33 of the Persons with Disabilities Act, 1995 and calculate the backlog vacancies from 1996 and fill the vacancies in a defined time frame. Action initiated in this regard as well as the present position of the case should be intimated to this Court within 45 days from the date of receipt of this order.

13. Matter stands disposed off with the above observations.

Sd/-
(P. K. Pincha)
Chief Commissioner
for Persons with Disabilities