



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.1359/1011/2014

Dated:- 15.05.2014

In the matter of:

Score Foundation & Anr.,
Through Ms. Shabina Bano,
Research Officer,
17/107 LGF, Vikram Vihar,
Lajpat Nagar-4, New Delhi-110024

..... Complainant No..1

All India Confederation of the Blind,
Dr. Anil Kumar Aneja, Vice President,
Braille Bhawan,
(Behind Rajiv Gandhi Cancer Hospital),
Sector 5, Rohini, Delhi-110085

..... Complainant No. 2

Versus

Ministry of Social Justice & Empowerment,
Through its Secretary,
Shastri Bhawan,
New Delhi-110001.

.... Respondent No. 1

Delhi Subordinate Services Selection Board,
Through its Secretary,
FC-18, Institutional Area, Karkardooma,
Delhi-110092.

..... Respondent No. 2

Services Department,
Through its Secretary,
Government of NCT of Delhi,
Delhi Secretariat Complex,
I.P. Estate, New Delhi-110002.

..... Respondent No. 3

Directorate of Education,
Through its Director,
Government of NCT of Delhi,
Old Secretariat, Delhi.

..... Respondent No.4

Municipal Corporations of Delhi (North),
Through its Commissioner,
Dr. S.P.M. Civic Centre, Minto Road,
New Delhi-110002.

.... Respondent No. 5

Municipal Corporations of Delhi (South),
Through its Commissioner,
Dr. S.P.M. Civic Centre, Minto Road,
New Delhi-110002.

.... Respondent No.6

....2/-

Municipal Corporations of Delhi (East),
Through its Commissioner,
Dr. S.P.M. Civic Centre, Minto Road,
New Delhi-110002. Respondent No.7

New Delhi Municipal Council,
Through its Secretary,
Palika Kendra,
Parliament Street,
New Delhi-110001. Respondent No. 8

Maulana Azad Institute of Dental Sciences,
Through its Registrar,
Maulana Azad Medical College Campus,
Bahadur Shah Zafar Marg,
New Delhi-110002. Respondent No.9

Health & Family Welfare Department,
Through its Secretary,
Govt. of NCT of Delhi,
9th Level, A-Wing,
I.P. Extension,
Delhi Secretariat,
New Delhi-110002. Respondent No.10

Date of hearing : 12.05.2014

Present :

1. Shri Pankaj Sinha, Ms. Sharika, Ms. Nupur, Advocates, Ms. Shabina Banno on behalf of Complainant No. 1.
2. Dr. Anil Aneja, Shri Deepesh Aneja, Advocate on behalf of Complainant No. 2.
3. Dr. Madhu Teotia, Additional Director (Education), Directorate of Education.
4. Ms. Mini Sharma, Deputy Director of Education, Education Department, and Ms. Lakshmi Krishnan, Admn. Officer, East Delhi Municipal Corporation on behalf of Respondent No.7.
5. Shri R.P.Rana, Assistant Director (Edn.)
6. Shri R.C. Baweja, School Inspector, Education Department, South Delhi Municipal Corporation on behalf of Respondent No.6.
7. Shri K.K. Singh, Superintendent on behalf of DSSSB (Respondent No. 2)

ORDER

Hon'ble High Court of Delhi vide Order dated 08.05.2014 in W.P. (C) 1675/2014 – Score Foundation & Anr. Vs. Ministry of Social Justice & Empowerment & Ors. and in W.P. (C) 2848/2014 – All India Confederation of Blind vs. Delhi Subordinate Services Selection Board & Ors. directed as under:-

“14. In our opinion the Chief Commissioner for Persons with disabilities should look into the grievance raised in the writ petitions and issue necessary directions. The reason is that a factual adjudication is necessary. This would mean that the Chief Commissioner for persons with disabilities would grant a hearing to the petitioners and the representative of the User Department of the 7 posts. With reference to the posts identified and notified to be filled up by way of reservation for the visually differently abled persons as per the notification dated July 29, 2013, if he finds that a post is required to be reserved for the visually differently abled persons, direction to be issued. The said direction would be complied with by the User Department as well as by the DSSSB.

15. The two petitions are disposed of issuing the mandamus as above with emphasis on the fact that the decision taken by the Chief Commissioner for disabled persons would be implemented without demur by the User Department.

16. *The representative of the petitioners which would include their lawyers as also the representatives of the seven User Departments are directed to appear before the Chief Commissioner for persons with disabilities in his office at 11.00 AM on May 12, 2014. Necessary exercise shall be carried out by the Chief Commissioner for persons with disabilities within 3 days reckoned from May 12, 2014. Necessary orders/directions shall be issued by him latest by May 16, 2014.*

17. *Liberty is granted to the parties to move an application if any impediment is found in the implementation of the mandamus issued.*

18. *Copy of this order be supplied dasti under signatures of the Court Master today itself to learned counsel for the petitioners as also the respondents.*

19. *No costs.*

Sd/-
PRADEEP NANDRAJOG, J.

Sd/-
JAYANT NATH, J.

MAY 08, 2014.”

2. In compliance to the above directions of the Hon'ble High Court of Delhi, the representatives of Score Foundation and All India Confederation of Blind submitted a copy each of the above mentioned Writ Petitions and appeared at 11.00 A.M. on 12.05.2014. Score Foundation also submitted a copy of the reply dated 20.03.2014 to its Writ Petition filed by DSSSB.

3. While both the complaints have sought reservation of vacancies for persons with blindness and low vision in the posts of Special Educator and TGT (Computer Science) advertised by DSSSB on behalf of Municipal Corporation of Delhi and Directorate of Education, NCT of Delhi respectively, Score Foundation has also sought reservation of vacancies for the persons with blindness and low vision in the posts of Special Education Teacher in Directorate of Education, Assistant Teacher (Primary) in NDMC, Stenographer and LDC in Maulana Azad Institute of Dental Sciences (MAIDS) and Telephone Operator in Health & Family Welfare Department, Govt. of NCT of Delhi. The complainants alleged that an advertisement No. 01/14 was published by the DSSSB on behalf of various Departments/autonomous bodies under the Government of NCT of Delhi including Directorate of Education, MCD, NDMC, MAIDS and Health & Family Welfare Department. However, no reservation for persons with blindness and low vision was provided in the identified posts which was in contravention to section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act and the instructions issued by DoP&T .

4. The details of posts in which reservation to persons with blindness and low vision was not provided in the advertisement No.01/2014 of DSSSB are given below:-

S.No.	Name of the post	Organization	No. of vacancies	Whether identified for persons with blindness and low vision	Serial No. in the list of identified posts (2013)
1.	Special Education Teacher	Directorate of Education,	670		S.No. 82 *

		GNCT of Delhi			
2.	TGT (Computer Science)	Directorate of Education, GNCT of Delhi	2026		S.No. 71***
3.	Special Educator	Municipal Corporation of Delhi	1692		S.No. 82
4.	Assistant Teacher (Primary)	NDMC	88		S.No.76 and 77**
5.	Stenographer	MAIDS	4		S.No. 125, 126, 131
6.	Lower Division Clerk	MAIDS	14		S.No. 987
7.	Telephone Operator	Health & Family Welfare Deptt., GNCT of Delhi.	12		S.No. 226, 227, 228

*Identified with different nomenclature, namely, Special Educator.

**Identified with different nomenclature, namely, Primary School Teacher.

***Higher Secondary and Secondary School Teacher identified for all subjects and also to be read with S.No. 305 where Lecturer, Reader and Professor in Computer Science identified for blind and low vision.

5. Department of Disability Affairs, Ministry of Social Justice & Empowerment had issued the list of identified posts for persons with disabilities vide Notification No.16-15/2010-DD.III dated 29.07.2013 under Section 32 of the Act, which provides as under:-

“32. Appropriate Government shall –

- (a) identify posts in the establishments which can be reserved for the persons with disability;
- (b) at periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the developments in technology.”

{All the 7 posts in question stand identified for persons with blindness and low vision.}

6. Section 33 of the Act provides, “Every appropriate Government shall appoint in every establishment such percent-age 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) locomotor disability or cerebral palsy, in the posts identified for each disability.

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.”

7. The representatives from Directorate of Education, GNCTD, Municipal Corporations of Delhi and DSSSB appeared at 11.00 A.M. on 12.05.2014 and made their submissions.

8. Appearing on behalf of Score Foundation, the Ld. Counsel, Shri Pankaj Sinha submitted that as per the Notification dated 29.07.2013 issued by the Department of Disability Affairs, Ministry of Social Justice & Empowerment with respect to identification of posts to be held by persons with disabilities, all teaching posts of the Senior Secondary Schools and Middle Schools are identified for persons with disabilities at sr. no. 71 and 74 respectively for persons with blindness and persons with low vision which fact implies that the visually impaired people are found competent to teach Computer Science to the students studying in Middle Schools and Secondary Schools.

9. Representing All India Confederation of the Blind (Complainant No. 1), Dr. Anil Aneja and Shri Deepesh Aneja, the Ld. Counsel submitted that the posts of Lecturer, Assistant Professor, Reader and Professor in Computer Science have been identified for persons with blindness and low vision at Sr. No.305 and the post of Higher Secondary and Secondary School Teachers for all subjects have been identified for persons with blindness and low vision at Sr. No.71 which also include the Computer Science.

10. Dr. Madhu Teotia, Additional Director (Education), Directorate of Education, GNCT of Delhi submitted that Directorate of Education had sought clarification from Ministry of Social Justice and Empowerment, who vide their letter dated 07.05.2014 clarified that as per Notification No. 16-15/2010-DD-III dated 29.07.2013, the post of Special Education Teacher is suitable for persons with blindness and low vision. Accordingly, vide DOE's letter dated 09.05.2014, DSSSB has been requested that a corrigendum inviting applications for persons with blindness and low vision may be issued reserving 13 vacancies for persons with locomotor disability and 14 vacancies for persons with blindness and low vision. As regards the TGT (Computer Science), Department of Disability Affairs has stated that at S.No. 71 in the list of Group C posts, the post of Higher Secondary and Secondary School Teacher (for all subjects arts, social science, humanities, music etc.) has been identified for persons with blindness and low vision also. However, the working conditions/remarks mentioned against these posts indicate that some of the subjects like arts, biology, science may require colour identification. The incumbent should be considered with aids and appliances. This implies that barring the posts of teachers which require visual and colour identification while teaching, the post of other teachers are identified for persons with visual impairment including blindness and low vision. It is also stated therein that the list of posts identified vide the above stated notification dated 29.07.2013 is not exhaustive. The Govt. of NCT of Delhi may further supplement the list keeping in view of the requirement of the post.

11. She further stated that in the light of the submission of the complainants that the posts of Lecturer, Reader and Professor in Computer Science have been identified for persons with blindness and low vision, among other disabilities, the issue would be examined and this Court would be apprised of the decision of the competent authority by 5.00 p.m. on 12.05.2014 itself.

12. The representative of South Delhi Municipal Corporation, Education Department :HQ submitted a copy of letter dated 05.05.2014 addressed to Deputy Secretary (P&P), Delhi Subordinate Services Selection Board. The said letter states that the reserved vacancies for persons with disabilities for the post of Special Educator were forwarded on 12.12.2013 in

pursuance of the jobs identified in 2007 issued by the Ministry of Social Justice and Empowerment. As the said notification did not indicate the post suitable for persons with visual impairment, no vacancy was reserved for persons with visual impairment. It further says that in the light of the fact that Ministry of Social Justice and Empowerment issued subsequent Notification No. 16-15/2010-DD-III dated 29.07.2013 as per which the post of Special Educator is identified for persons with OA, OL, OAL, BL, B and LV, DSSSB has been requested vide the said letter to make suitable amendment in the Advertisement No. 01/2014 dated 20.01.2014 earmarking 26 posts under OH category and 26 posts under VH category.

13. After hearing out the parties, they were advised to submit, if they so desired, brief Synopses or any relevant paper by 5.00 p.m. on 12.05.2014.

14. Directorate of Education, Govt. of NCT of Delhi vide letter No. DE.4/1/417/E-IV/Court Case/2014, received by fax on 12.05.2014, has informed as under:-

“DIRECTORATE OF EDUCATION, GOVT. OF NCT OF DELHI
OLD SECRETARIAT; DELHI-110054 (ESTABLISHMENT IV BRANCH)

No. DE.4/1/417/E-IV/Court Case/2014

Dated:

To

The Deputy Chief Commissioner
For Persons with Disabilities,
Ministry of Social Justice & Empowerment,
6, Bhagwan Dass Road, New Delhi.

Subject:- WP(C) 1675/2014 titled Score Foundation Vs Ministry of Social Justice & Empowerment, Government of India and WP(C) 2848/2014 titled All India Confederation of Blind Vs DSSSB and Ors.

Sir,

Reference proceedings of Hon'ble Court of Chief Commissioner for Persons with Disabilities dated 12.05.2014 in the above stated Court matter.

In the Court, it was brought to the notice of Addl. D.E., Education Department, Govt. of NCT of Delhi that the post of Lecturer (Computer Science) is identified suitable for persons with visual impairment (Blind & Low Vision) by the Ministry of Social Justice and Empowerment, GOI.

The Competent Authority was informed that the post of Lecturer (Computer Science) has been identified by the Ministry of Social Justice and Empowerment, GOI suitable for VH category, the post of TGT (Computer Science) in Directorate of Education may also be identified suitable for VH category as nature of work of both the posts are more or less similar.

Accordingly, I am directed to inform you that the Competent Authority has granted approval for providing reservation to visually handicapped persons (Blind & Low Vision) for the post of TGT (Computer Science”.

This is for your kind information and further necessary action.

Yours faithfully,

Sd/-

(BHUOPENDRA SINGH)
SUPERINTENDENT (E-IV)”

15. Smt. Sushma Singh, Deputy Secretary, Department of Health & Family Welfare appeared in this Court on 13.05.2014 at 1.15 P.M. She submitted that the copy of the Order dated 08.05.2014 of the Hon'ble High Court of Delhi was received on 12.05.2014 in the evening and, therefore, neither she nor any other officer from the Department could appear at 11.00 A.M. on 12.05.2014. She also submitted that in the advertisement (Post Code 87/14), the Department had mentioned that the post of Telephone Operator has been identified suitable for persons with disabilities (OA, OL, BL, B and LV). As regards the reasons for not reserving any vacancy for persons with disabilities, she will have to check the records of the Technical Recruitment Cell (TRC) which makes recruitment for various hospitals in G.N.C.T.D. She however, submitted that apparently, the 12 vacancies of Telephone Operator did not fall against the reserved points (1,34,67) for persons with disabilities. If required, necessary action to ensure reservation for persons with disabilities will be taken as per the directions of this Court.

16. AICB submitted its short submissions dated 12.05.2014 through email on 13.05.2014, which are re-produced below:-

“SHORT SUBMISSIONS BY AICB NOTE:IN HEARING HELD ON 12th MAY, 2014 AS PER THE DIRECTIONS OF THE HON'BLE HIGH COURT IN CASE NO. WP(C) 2848 OF 2014.

1. The Petitioner organization inter alia challenged advertisement No. 1 of 2014 issued by Delhi Subordinate Services Selection Board advertising various posts in autonomous bodies in the NCT, Delhi. The challenge of the petitioner organization pertained to the non-observance of the provisions of Persons with Disabilities Act and subsequent applicable instructions in not providing reservation to the blind and the low vision persons in the said recruitment notice. The posts in reference are that of TGT Computer Science (having 2026 vacancies) and Special Educator (having 1692 vacancies). No reservation has been provided for the visually impaired persons on these two posts despite these posts having been identified by the Ministry of Social Justice and Empowerment in its notification dated 29 July, 2013 (MSJE notification) as being suitable for the visually impaired persons issued as per Section 32 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The advertisement is contrary to law as follows:
 - a. The advertisement seeks to exclude visually impaired persons from applying to posts identified for such category of persons in MSJE notification. Therefore, the advertisement violates Section 32 of the PWD Act, 1995.
 - b. The advertisement fails to make 1% reservation for Blind and Low Vision persons despite a specific mandate to this effect in Section 33 of the PWD Act, 1995. Therefore, the advertisement violates Section 33 of the Act.
 - c. The advertisement further affects in excluding the Blind and the low vision from applying under the unreserved category on the posts in reference despite these posts being identified for this disability sub-category in the MSJE list of identified posts issued on 29th July 2013. Thus, the advertisement in reference violates provisions as contained in Para 6 of the DOPT. OM of 29th December, 2005. Therefore, the advertisement is discriminatory as well as in violation of Clause 6 of 2005 OM of DOPT.
2. The MSJE notification identifies the post of TGT Computer Science at Serial No. 71 and 74 [Teachers All Subjects Higher Secondary, Senior Secondary and Middle School] in Grade C read with Serial No. 305 (Professor, Reader, Lecturer). In this regard, it is submitted that once the post of Professor, Reader, Lecturer is deemed fit for visually impaired persons,

therefore, posts of Trained Graduate Teacher would also be seen as identified [Kindly Refer: Clause 4 of 2005 Office Memorandum issued by Department of Personnel and Training].

3. From joint reading of the MSJE notification with DOPT Office Memorandum [Annexure P-2 of AICB Writ Petition], it is clear that the reference to Higher Secondary, Senior Secondary and Middle School Teachers would be covered under the reference of "All Subjects" and "etc." mentioned at Serial No. 71 and 74 of MSJE notification.
4. The MSJE notification identifies the post of Special Educator at Serial No. 82 of Group 'C' posts of the MSJE notification of 29th July, 2013 as being suitable for the visually impaired.
5. From a bare perusal of the DSSSB advertisement in respect of the posts of Special Educator [Post Code: 147 / 14-1692 Vacancies – 52 reserved for PH (OH)] and TGT Computer Science [Post Code 192 / 14 – 2026 Vacancies – 60 reserved for PH (OH-30 and HH-30)], it is evident that these posts despite having been identified as suitable for visually impaired, have not been reserved for such category of persons. Further, these deficiencies are also noted:
 - a. The requisition of MCD in Special Educator to DSSSB is dated 19.1.2012 i.e. prior to the MSJE notification. No new requisition has been sent as per the MSJE notification.
 - b. The requisition of Directorate of Education to DSSSB is dated 13.2.2013 i.e. after the MSJE notification. However, the same is not as per the identification made in the MSJE notification for the visually impaired persons.
6. The DOPT has issued consolidated instructions in its 2005 OM [See Annexure P-2 of WP 2848 of 2014], whereby, in Clause 4 and 6 the following is set out:
 - a. No department shall exclude any identified posts / job from the purview of reservation at its own discretion – Clause 4.
 - b. The nomenclature used for any job / post shall mean and include nomenclature used for other comparable Jobs – Clause 4.
 - c. Persons with disabilities can be appointed against an unreserved vacancy provided the post is identified for persons with disability of the relevant category – Clause 6.

Again in 2014, DOPT issued a OM dated 8.1.2014 in furtherance of the 2014 OM requesting the user department to use to MSJE notification for creating reservation for disable persons [See Annexure P-6 of WP 2848 of 2014]. Moreover, no exemption has been sought by the user departments under proviso to Section 33 of the Act is they sought to exclude these identified posts for the visually impaired persons.

7. The petitioner organization had earlier challenged the 2011 notification of DSSSB before the Honourable High Court of Delhi in WP © 3411 of 2012 on same grounds in respect of certain posts identified for the visually impaired but excluded in the DSSSB advertisement. On 1.6.2012, the Honourable High Court was pleased to quash the advertisement holding that when an advertisement is not in accordance with law, it is liable to be quashed [See Annexure P-3 of WP © 2848 of 2014].

8. In view of the above, the Honourable Court of the CCPD is requested to issue appropriate directions pursuant to order dated 8 May, 2014 passed by the Honourable High Court in WP 1675 of 2014 and WP 2848 of 2014 to the user departments and DSSSB to declare the two posts in reference as identified for the blind and the low vision. It is further prayed that the applicable process in respect of the two posts in reference, as commenced through the impugned advertisement no. 1/2014 of DSSSB may be re-opened after providing due reservation to the blind and the low vision. Persons belonging to this disability sub-category must be allowed to submit their applications both in respect of reserved and unreserved vacancies in respect of the two posts in reference before any further action in respect of the recruitment process commenced through the said impugned advertisement is further undertaken. It is further prayed that this exercise is done in a time-bound manner.

Dr. Anil K. Aneja Deepesh Aneja
Vice President, AICB and Council for the Petitioner respectively.

Date: 12.5.2014
Place: New Delhi”

17. It is observed that there is no dispute about the suitability of the post of Special Education Teacher, Special Educator, Assistant Teacher (Primary), Stenographer, LDC and Telephone Operator for persons with blindness and low vision among other categories of disabilities as reflected in the Notification No. 16-15/2010-DD.III dated 29.07.2013 issued by Department of Disability Affairs, Ministry of Social Justice & Empowerment.

18. After the clarification given by Department of Disability Affairs, Ministry of Social Justice & Empowerment to Directorate of Education, Government of NCT of Delhi vide letter dated 07.05.2014 and the decision in the matter by Directorate of Education, Govt. of NCT of Delhi following the hearing held in this Court on 12.05.2014, it is clear that the post of TGT (Computer Science) is also to be deemed identified as suitable for persons with blindness and low vision in accordance with the Notification dated 29.07.2013 of Department of Disability Affairs, Ministry of Social Justice & Empowerment. Hon'ble High Court of Delhi have also observed in para 8 of its order dated 08.05.2014 that the notification issued under Section 32 identifying posts which could be filled up by the persons with disabilities shows that even the persons with blindness and low vision have been found fit to hold teaching posts in schools pertaining to the discipline of computer science.

19. Para 6 of DoP&T's O.M. No.36035/3/2004-Estt(Res) dated 29.12.2005 provides that in the posts which are identified suitable for persons with disabilities, a person with disability cannot be denied the right to compete for appointment against an unreserved vacancy also. Thus a person with disability can be appointed also against an unreserved vacancy provided the post is identified suitable for persons with disability of the relevant category.

20. In the above view of the matter, Delhi Subordinate Services Selection Board is directed to issue a corrigendum to the Advertisement No. 01/14 reserving 1% of the vacancies for persons with blindness and low vision in the post of Special Education Teacher (670 vacancies) and TGT (Computer Science) (2026 vacancies) in Directorate of Education, Special Educator (1692 vacancies) in the Municipal Corporation of Delhi and in the post of Assistant Teacher (Primary) (88

vacancies) in NDMC in consultation with the concerned Department/organization within two weeks of receipt of this order. The corrigendum should also clearly mention that persons with disabilities including those with blindness and low vision for whom the posts have been identified as suitable, can compete for appointment against unreserved vacancies as well in accordance with Para 6 of Department of Personnel & Training's O.M. dated 29.12.2005 referred to above. Maulana Azad Institute of Dental Science and Health & Family Welfare Department are directed to check their records, particularly the 100% vacancy based reservation roster to be maintained for reservation of vacancies for persons with disabilities to see whether any of the advertised vacancies fall against a reserved points for persons with disabilities, namely, point no.1, 34 and 67 of the roster respectively. If so, the said organizations shall intimate the number of vacancies to be reserved for persons with disabilities (blindness or low vision, hearing impairment, locomotor disability or cerebral palsy) to DSSSB so that reserved vacancies for persons with disabilities including for persons with blindness and low vision are included in the corrigendum. Irrespective of any vacancy being reserved for persons with disabilities in the post of Stenographer, LDC and Telephone Operator in MAIDS and Health & Family Welfare Department, the Delhi Subordinate Services Selection Board shall make a mention in the corrigendum that persons with disabilities of relevant category for whom the posts have been identified can apply. A copy of the corrigendum shall be submitted to this Court and to the complainants within a week of its publication.

21. The matter stands disposed off with the above directions.

Sd/-

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