

Rajasthan High Court

(Rajasthan Public Service ... vs . Hunny Chugh & Anr.) on 20 August, 2015

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH JAIPUR

O R D E R

IN

S.B. CIVIL WRIT PETITION NO.11071/2014

(Rajasthan Public Service Commission Vs. Hunny Chugh & Anr.)

Date of Order :

August 20th, 2015

HON'BLE MR. JUSTICE ALOK SHARMA

Mr. S.N. Kumawat, for the petitioner.

Mr. Himanshu Jain with

Mr. Manish Acharya, for respondent No.1.

BY THE COURT

The main issue in the writ petition is whether a medical certificate of disability issued by a Medical Officer of the Union Territory of Delhi is valid to avail the quota reserved for persons with disabilities in services of the State of Rajasthan.

The Rajasthan Public Service Commission (hereinafter RPSC) has challenged the order dated 24/25.07.2014, passed by the Commissioner, Persons with Disabilities, Rajasthan, Jaipur (hereinafter the Commissioner) so holding on a complaint (No.70/2014) filed by the respondent No.1Hunny Chugh. The Commissioner has directed that the respondent No.1's disability certificate issued by the Medical Officer in the Office of the Medical Superintendent, Sanjay Gandhi Memorial Hospital, Mangol Puri, Delhi be accepted by RPSC and the respondent No.1's name be recommended consequent to his selection to the State Government for appointment to the post of Programmer whereupon the Secretary, Department of Personnel Government of Rajasthan take necessary action.

The background facts are that RPSC issued an advertisement on 02.05.2013 for appointment of 173 Programmers under the Rajasthan Computer State and Subordinate Service Rules, 1992 (hereinafter the Rules of 1992). Reservation to various categories as mandated by law was provided including for persons suffering with disability as per the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter the Act of 1995). General instructions in the advertisement on the issue of reservation provided that reservation on posts in issue would be as provided under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 2011 (hereinafter the Rules of 2011). Candidates with physical disability were required to submit a certificate of disability above 40% as issued by the authorized Medical Officer of the State of Rajasthan in the prescribed format.

Respondent No.1 applied for the post and was provisionally allowed to participate in the selection process. In the result declared on 10.03.2014, he was placed at merit No.182. On then receiving a detailed form submitted by the petitioner, RPSC noticed that the requisite certificate of disability had not been issued by a Medical Officer of the State of Rajasthan, but by one in the office of the Medical Superintendent, Sanjay Gandhi Memorial Hospital, Mangol Puri, Delhi. In the circumstances, vide letter dated 14.07.2014, the respondent No.1 was required to furnish a certificate of disability as per its instruction i.e. from a Medical Board of a hospital in the State of Rajasthan.

Aggrieved of the letter dated 14.07.2014, respondent No.1 filed a complaint before the Commissioner under Rule 52 of the Rules of 2011. Notices were issued to RPSC. In defence, it was reiterated that a certificate of disability issued by a Medical Officer authorized by the State of Rajasthan alone was required but in any event a clarification had been sought on the issue from the State of Rajasthan, reply where to was awaited. It was stated that in the event of the respondent No.1 submitting the requisite disability certificate issued by a three members Medical Board of a hospital in the State of Rajasthan, in the prescribed format, further action on the respondent No.1's selection would be taken. The Commissioner considered the matter and relied upon a office memorandum dated 26.02.2013 issued by the Ministry of Social Justice & Empowerment Department of Disability Affairs, Government of India, New Delhi providing that a disability certificate issued by a competent medical authority at any place be accepted across the country. It was held that the certificate of disability submitted by the respondent No.1 as proof of his medical disability of over 40% hearing impairment was valid and it be accepted by RPSC. Hence this petition.

Mr. S.N. Kumawat, appearing for the petitioner-RPSC has generally submitted that the order dated 24/25.07.2014, passed by the Commissioner is in contravention of the Rules of 2011. No specific rule has though been specified. His more specific case is that in terms of instructions issued by RPSC for recruitment to the post of Programmer under its advertisement dated 02.05.2013, it was provided that those applying under the category of disabled persons should submit the requisite certificate in the prescribed format as issued by a Medical Officer authorized by the State of Rajasthan. It has also been submitted that Rules of 2011 made under the exercise of powers under Section 73 of the Act of 1995 are applicable for physically handicapped persons of the State of Rajasthan only (emphasis mine). It was then submitted that the office memorandum dated 26.02.2013 under the hand of the Deputy Secretary to the Government of India, in the Ministry of Social Justice & Empowerment Department of Disability Affairs cannot have overriding effect over the Act of 1995 and the Rules of 2011 and is not binding on RPSC. The jurisdiction of the Commissioner under the Act of 1995 to pass the impugned order dated 24/25.07.2014 with mandatory directions has been challenged on the ground that the powers of the Commissioner under the Act of 1995 read with Rules of 2011 are not adjudicatory but merely recommendatory and administrative in nature i.e. to coordinate with departments, monitor and utilize the funds, take steps to safeguard the interest of persons with disabilities by communicating with the concerned Department and submit annual report to the State Government. The State Government then, according to the counsel for the RPSC, is competent to take steps on the recommendations and reports submitted by the Commissioner.

Mr. Kumawat has relied upon the judgment of the Hon'ble Supreme Court in the case of Bank of Patiala & Ors. Vs. Vinesh Kumar Bhasin [(2010) 4 SCC 368] to point out the limitations of the power of the Commissioner. Mr. Kumawat finally submitted that as the respondent No.1 has not supplied the requisite certificate of disability in terms of RPSC's letter dated 14.07.2014, his candidature was rejected, no challenge has been made thereto and consequently the rejection has attained finality. It has been prayed that the writ petition therefore be allowed and the impugned order dated 24/25.07.2014 be set aside.

Per contra, Mr. Himanshu Jain appearing for respondent No.1 has submitted that the Statement of Objects & Reasons of the Act of 1995 evidences that it is legislative action by Parliament to remove any discrimination against persons with disability in the sharing of benefits of development vis a vis non-disabled persons and to facilitate the integration of such persons into the social mainstream. And in consonance with the mandate of the Act of 1995, the Central Government, State Government & the other State Instrumentalities have inter alia provided for reservation to persons with disabilities in matter of appointment & promotion. Counsel submitted that with an object to facilitate the implementation of the Act of 1995, the Central Government framed the Rules of 1996 while exercising powers conferred under Section 73 of the Act of 1995 as did the State Governments as by framing rules of 2011 by Rajasthan and Rules of 2001 by Delhi. The rules are pari materia. Counsel submitted that Rule 3 of the rules of 1996 & Rules of 2011 provides for an application for issuance of disability certificate. Clause 2(i) of Rule 3 states that the application of disability certificate can be submitted to the Medical Authority in the district of applicant's residence. Thereupon the said Medical Authority to which the application is submitted, is to issue a certificate of disability under Rule 4 which under Rule 6 is valid for all purposes. Counsel submitted that being a disabled person resident in Delhi, the respondent No.1 made the requisite application under Rule 3 of the Delhi Rules of 2001. Thereupon a certificate of disability dated 10.07.2009 was issued to him as per the Disability Rules of 2001 enacted by the Delhi Government. Counsel submitted that the rejection of the candidature of the respondent No.1 with reference to the general instructions issued by RPSC to candidates applying for the post of Programmer under the advertisement dated 02.05.2013 is without any authority as RPSC instructions qua the persons with disability cannot override the Act of 1995 and Rules made therein either by Central Government in 1996, Delhi Government in 2001 and the Rajasthan Government in 2011, all made only to carry out the provisions of the Act of 1995. None of the aforesaid Rules made in pursuant of the power under Section 73 of the Act of 1995 mandate that a medical certificate evidencing the disability as defined under the Act of 1995 would be valid only within the jurisdiction of the authority issuing such certificate and not across the country. Mr. Himanshu Jain then very emphatically submitted that persons with disability are a class by themselves and any classification for the purpose of benefits under the Act of 1995 with reference to their residence in the context of the object of the Act of 1995 would not only be intelligible but the differentia created would not have any nexus with the object sought to be achieved under the Act of 1995. Thus non-consideration of a medical certificate issued under any Rule made under Section 73 of the Act of 1995 would wholly arbitrary and fail the litmus test of Article 14 of the constitution of India As is RPSC's decision in refusing to accept a medical certificate pertaining to the petitioner's physical disability as defined under the Act of 1995 issued by a duly authorized Medical Officer of the Union Territory of Delhi.

Mr. Jain further submitted that the Commissioners appointed under Section 60 of the Act of 1995 have been empowered under Section 62 thereof to look into the complaints with respect to matters relating to deprivation of rights of persons with disability and on an application of an aggrieved person or otherwise can address the complaints and take up the matter with appropriate authorities. He further submitted that under Section 61(c) of the Act of 1995, the Commissioner is entitled to take steps to safeguard the rights and facilities made available to persons with disability under the Act of 1995. For the exercise of powers under Sections 61 & 62 of the Act of 1995, the Commissioners have been conferred powers vested in a Court under the Code of Civil Procedure, 1908 while trying a suit in respect of matters detailed in clause (a) to Clause (e) of Section 63 of the Act of 1995. Reference has been made to Rule 52 of the Rules of 2011 to submit that a complaint by a person suffering with disability is maintainable before the Commissioner. On a receipt of the complaint, a copy thereof is to be sent by the Commissioner to the opposite party directing it/him to give its/his version of the case within a period of 30 days or as otherwise directed. Thereafter on the date of hearing, it is obligatory on part of the parties, complainant and non-complainant, to appear before the Commissioner, who is to hear them but failing which the Commissioner has the discretion to address the complaint on merit even in the absence of the parties. It has been submitted that the powers of the Commissioner under Sections 61 and 62 of the Act of 1995 and the procedure prescribed under Rule 52 of the Rules of 2011 evidence that the Commissioner exercises quasi judicial powers for determination and protection and rights of persons with disability under the Act of 1995. The directions issued by the Commissioner on a complaint are thus binding in nature to be followed by the department concerned. Reliance in support of the contention that the Commissioner also exercises quasi judicial powers under the Act of 1995, has been placed on the judgment of the Hon'ble Supreme Court in the case of Geetaben Ratilal Patel Vs. District Primary Education Officer [AIR 2013 SC 3092]. Therein the Hon'ble Apex Court held that the powers of the Commissioner under the Act of 1995 sitting on a complaint filed before him are not an empty formality as the Commissioner is required to apply his mind on the issues raised by the complainant, consider the defence thereto and determine whether the persons with disability has been deprived of his right or that the authority concerned has flouted any law, rule, guidelines and instructions. Counsel has pointed out that the fact that the Hon'ble Supreme Court recognized the quasi judicial powers of the Commissioner under the Act of 1995 is evidenced from the Court having upheld an order by the Commissioner under the Act of 1995 setting aside an order of termination qua a person suffering from disability. It has been submitted that the adjudicatory powers of the Commissioner and the power to issue binding directions following determination of the complaints before him have also been upheld by this Court in the case of Union of India & Anr. Vs. Nahari Thakkar & Anr. [2014 (1) WLC (Raj.) 369] where an order passed by the Commissioner under the Act of 1995 directing reinstatement of a person with disability finding his request for voluntary retirement accepted by the Department to have been unfair, arbitrary and illegal.

Heard. Considered.

Contentions of Mr. S.N. Kumawat, counsel for the petitioner-RPSC in impugning the order dated 24/25.07.2014, passed by the Commissioner are wholly untenable. Persons with disability under the Act of 1995 are a homogenous group. No bifurcation with regard to their rights under the Act of 1995 based on residence has been made under the said Act. Rule 73 of the Act of 1995 empowers the

appropriate Governments to make rules for carrying out the provisions of this Act (underlining mine). The rules made under Section 73 of the Act of 1995 therefore cannot limit the rights under the Act of 1995. Be as it may, a perusal of the Rules of 2011 indicates that Rule 3 provides for the manner of making an application for issuing a disability certificate. It makes no specific reference to the medical authority whose certificate alone would be relevant and admissible for the benefits under Act of 1995. Rule 3(2) of the Rules of 2011 merely states that a medical authority competent to issue a certificate shall be the one situate in the district of the applicant's residence or in the alternative the concerned medical authority in a government hospital where he may be undergoing or may have (underlining mine) undergone treatment in connection with his disability. The second part of Rule 3(2) aforesaid thus makes a medical certificate issued almost anywhere valid and clearly negates a residence certification. Under Rule 4, the disability certificate has to be issued by the concerned medical authority on satisfying himself that the person is indeed one with disability as defined in sub-clause (t) of Section (2) of the Act of 1995. It is thus clear that as long as the medical certificate of disability is issued by a competent medical authority anywhere in the country, it is operative through out with no geographical boundaries within the country. This is also the view which has been correctly taken by the Ministry of Social Justice and Empowerment Department of Disability Affairs with the approval of the Hon'ble Minister (Social Justice & Empowerment) under its office memorandum dated 26.02.2013 where it has been inter alia stated that the disability certificate issued by the competent medical authority at any place should be accepted across the country. I am of the considered view that in the context of the aforesaid legal position, the instructions to candidate applying for appointment to the post of Programmer in pursuance to RPSC's advertisement dated 02.05.2013 that disability certificate for availing the benefit of reservation under the Rule of 2011 has to be one from a medical officer authorized by the Government of Rajasthan cannot bind and have to be construed as only as directory as in the alternative, the said instructions would be liable to be held ultra vires the Act of 1995, the rules thereunder and thus liable to be struck down. In the circumstances, I am of the considered opinion that the disability certificate submitted by the respondent No.1 as issued by the Medical Officer, Union territory of Delhi on 10.07.2009 in respect of which no issue of genuineness has been raised was adequate for the respondent No.1 being entitled for consideration for appointment to the post of Programmer in the quota of disabled person in terms of the advertisement dated 02.05.2013. Aside of that, with the reply to the writ petition, the respondent No.1 also submitted a disability certificate issued by a Medical Board of three doctors constituted at the Rajeev Gandhi Government Hospital, Alwar on 29.01.2015 recording the petitioner permanent disability above 40% with regard to a hearing impairment.

This Court also finds that the objection with regard to the powers of the Commissioner to issue a binding direction to a Department/RPSC is without any merit. The Hon'ble Supreme Court in the case of Geetaben (Supra) has held that the powers of the Commissioner to entertain complaints, require the concerned Department/State/ instrumentality to file its reply and determine the question of rights of a person with disability would be rendered redundant and otiose in the event they were not binding in nature. The judgment of the Hon'ble Supreme Court in the case of Bank of Patiala (Supra) was in a different context and the issue before the Hon'ble Supreme Court was as to whether the Chief Commissioner under the Act of 1995 had the power to issue any interim direction. Such is not the issue before this Court and the Court is presently not seized of a challenge to interim

directions issued by the Commissioner. In the present case, the Commissioner on having considered the complaint after due notice to RPSC and taking into consideration its reply decided it in terms of the Central Government circular dated 26.02.2013 holding that a certificate of disability issued by a competent medical officer was valid across the country. The conclusion of the Commissioner, in my considered opinion, for reasons detailed earlier in this judgment is a legally valid conclusion based on a holistic reading of the Act of 1995, its objective and purpose.

For the aforesaid reasons, I find no force in the writ petition.

It is dismissed.

The issue that remains to be addressed is of cost. Even though the question of locus standi of RPSC to challenge the order dated 24/25.07.2014 passed by the Commissioner was not raised in the reply to the writ petition, it is extremely odd that RPSC without being adversely affected by the directive of the Commissioner has sought to invoke the equitable extraordinary jurisdiction of this Court. No doubt RPSC is the constitutional authority in terms of Article 315 of the Constitution of India. However it hard to imagine that it would be not bound by an Act of Parliament as the Act of 1995 or the judgment of the Hon'ble Supreme Court as rendered in the case of Geetaben (Supra) where the Hon'ble Supreme Court had clearly recognized the powers of the Commissioner under the Act of 1995 in protecting and enforcing right of persons suffering with disability as in the said case. The Hon'ble Supreme Court had upheld the powers of the Chief Commissioner under the Act of 1995 to quash and set aside an order of termination of a person suffering with disability without an opportunity of hearing. It would have been a different matter if the merits of the case set up by RPSC against the order passed by the Commissioner were even remotely made out on the issue of the respondent No.1 being a disabled person. The case oddly set up by the RPSC in the writ petition is that reservation for persons suffering with disability on the post of programmer in terms of its advertisement dated 02.05.2013 was confined to disabled persons from within the State of Rajasthan. This is stated very categorically in para 3 of the writ petition. Although it has been submitted in para 8 that a clarification was sought from the State of Rajasthan under Rule 57 of the Rules of 2011 on the question as to whether a certificate of disability issued by a competent medical authority from the union territory of Delhi was valid for the purpose of appointment to a post in the quota of persons with disability in pursuance of the advertisement dated 02.05.2013. A perusal of the instructions with regard to the certification/s necessary for candidates applying under various reserved category indicates that it has been clearly stated at serial No.2 (page 40 of the writ petition) that other than persons with disability (underlining mine), the reservations were available only to the bona fide resident of the State of Rajasthan. The condition makes it implicit that reservation qua persons with disability was not confined to the State of Rajasthan, yet RPSC overlooked its own advertisement, the directions of the Commissioner, Disability based on Office memorandum dated 26.02.2013 in the Ministry of Social Justice and Empowerment Department of Disability Affairs, Government of India issued with the approval of the Hon'ble Minister (Social Justice and Empowerment) to obstruct the respondent No.1's right on the specious ground of his certificate of disability being invalid for reason of being issued by a competent Medical Officer in Delhi and not the State of Rajasthan. In the facts of the case mere dismissal of the writ petition, in the circumstances would not suffice. The respondent No.1 having been unnecessarily drawn into

litigation is entitled to costs of Rs.50,000/- only to be paid by the petitioner RPSC within a period of 60 days. The Secretary, RPSC, subject to any order in appeal, is directed to ensure compliance with the payment of cost to the respondent No.1 within time specified.

(ALOK SHARMA), J MS/-

All corrections made in the judgment/order have been incorporated in the judgment/order being emailed.- Manoj Solanki, P.A