



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 9974/2023

Shalini Savita D/o Vinod Kumar, Aged About 31 Years, R/o 18,
Mount Road, Mohan Nagar, Nahargarh Kile Ke Neeche, Tripoliya,
Jaipur, Rajasthan

----Petitioner

Versus

1. State Of Rajasthan, Through The Principal Secretary,
Department Of Ayurved And Indian Medicine, Government
Of Rajasthan, Secretariat, Jaipur
2. Rajasthan Ayurved University, Through The Registrar, Dr.
S.r. Rajasthan Ayurveda University, Nagaur Road, Near
Karwar, Jodhpur
3. Director, Ayurved Department, Ajmer

----Respondents

For Petitioner(s) : Mr. G.S. Gill with
Mr. Manoj Kumar
Mr. Kapil Bhardwaj
For Respondent(s) : Mr. Hari Kishan Saini, Dy.GC
Mr. Vishesh Sharma

HON'BLE MR. JUSTICE SAMEER JAIN
Order

REPORTABLE

17/01/2024

1. The present writ petition was filed with the following
prayer(s):-

- "i) by passing an appropriate writ, order or direction
the respondents be directed to add the "Spine
Locomotor Disability" in the advertisement No.
02/2023 (Annex.8) under the categories of
Physically Handicapped category and consider the
candidature of the petitioner online or in the
alternative the respondents be directed to accept
off-line application form of the petitioner in
pursuance of the advertisement No. 02/2023
Annex.8 under the disabled category;
ii) by passing an appropriate writ, order or direction
in the nature thereof and thereby the respondents
be directed to allow the petitioner to appear as



physically handicapped category candidate as per her "Spine Locomotor Disability" and she may be given appointment on the post of Ayurved Chikitschik under the Physically Handicapped category as per her merit with all consequential benefits;
iii) Any other appropriate relief, which is deemed just and proper in the above mentioned facts and circumstances of the case, may also be granted to the petitioner alongwith the cost."

2. Learned counsel for the petitioner submits that the petitioner is a physically handicapped under Locomotor Disability with Congenital Scoliosis Deformity of Spine with restriction of bone function, having permanent disability of about 44%. It is submitted that in advertisement no. 02/2023 for the post of Ayurved Medical Officer, the respondent have confined specially abled category to the benchmark disability of OA/OI, which is not in consonance to the Rajasthan Rights Of Persons With Disabilities Rules, 2018 (for short 'Rules of 2018'). In support of his contention, learned counsel for the petitioner has made the following submissions:

2.1. The first submission is that the petitioner acquired graduate as well as post graduate degree under the handicap category. Therefore, now the appointment of the petitioner cannot be denied on the basis of handicapped certificate which specifically does not mention OL.

2.2. The second submission is that the Rights of Persons with Disabilities Act, 2016 (for short 'Act of 2016'), is a beneficial piece of legislation. It is contended that the list of disabilities prescribed in the advertisement was only illustrative and not exhaustive and since there was no specific exclusion of the locomotive disability in the advertisement, the candidature of the petitioner ought to be



considered. It is also highlighted that petitioner does not have any of the disabilities which have been specifically been excluded.

2.3. The third submission is that the Rules of 2018 are promulgated by the State Government to give effect to the provisions of Act of 2016. Reliance is placed on Rule 5 and 6 of the Rules of 2018 read with Section 34 of the Act of 2016 to submit that the respondent are not competent to exclude any category of disability by implication.

2.4 The fourth submission is that respondents have mechanically followed the Central Government Order dated 04.01.2021, whereas there have been a change in law. It is submitted that by way of Notification dated 24.08.2022, issued by Department of Empowerment of Persons with Disabilities (Divyangjan) under the Ministry of Social Justice & Empowerment, the order dated 04.01.2021 has been amended and Spinal Deformity or Spinal Injury without any associated neurological/limb dysfunction was incorporated under Locomotor Disability in addition to OA, OL, etc.

3. *Per contra*, learned counsel for the respondent submits that candidature of the petitioner was not considered as spinal deformity was not mentioned in order dated 04.04.2023 passed by the State Government.

4. Heard and considered.

5. It is undisputed that the petitioner is suffering from Locomotor Disability. The only reason attributed for non-consideration of candidature of the petitioner is due to the fact that the disability of the petitioner is not provided in the advertisement nor specifically covered under order dated





04.04.2023. Having perused the order dated 04.04.2023, it is quite clear that the same was passed after considering the Central Government Order/Notification dated 04.01.2021. However, the committee formulated under Rule 6 or the Rules of 2018, who has passed the order dated 04.04.2023, has completely ignored the amendment made to order dated 04.01.2021 by way of Notification dated 24.08.2022 (supra). The notification dated 24.08.2022 is reproduced as under:

"Ministry: Ministry of Social Justice and Empowerment

Department/Board: Empowerment of Persons with Disabilities (Divyangjan)

Notification No.: 30-12/2020-DD-III

Date of Notification: 24.08.2022

Date of Publication: 29.08.2022

Subject: Human Rights

Central Government makes amendments in the
notification number 38-16/2020-DD-III dated
04.01.2021

F. No. 30-12/2020-DD-III.--In exercise of powers conferred upon by Section 33 of the Rights of Persons with Disabilities Act, 2016, the Central Government hereby makes the following amendments in the notification number 38-16/2020-DD-III dated 04.01.2021 as under:

After Note 9 the following Note shall be inserted namely;

"Note 10: A separate sub category i.e. Spinal Deformity (SD) and Spinal Injury (SI) without any associated neurological/limb dysfunction shall be incorporated under Locomotor Disability in addition to OA, OL, BA, BL, OAL, BLOA and BLA. Thus, all the posts



identified in the list stands identified suitable for persons with SD/SI without neurological/limb dysfunction. Persons with SD/SI with associated limb dysfunction shall be covered under the respective sub category such as OA, OL, BA, BL, OAL, BLOA and BLA, as the case may be."

RAJESH KUMAR YADAV, Jt. Secy."

6. Subsequent to passing of the aforesaid notification, an Office Memorandum dated 07.09.2022 has also been passed by the Department of Empowerment of Persons with Disabilities (Divyangjan) under the Ministry of Social Justice & Empowerment, the relevant portion of which is reproduced as under:

"Subject: Inclusion of persons with spine deformity/spine injury in the list of posts identified to be reserved for persons with benchmark disabilities – amendment to notification dated 04.01.2021 issued by DEPwD – regarding

...

*As per the notification dated 29/08/2022, it has now been mandated that a separate sub category i.e. Spinal Deformity (SD) and Spinal Injury (SI) without any associated neurological/limb dysfunction shall be incorporated under Locomotor Disability in addition to OA, OL, BA, BL, OAL, BLOA and BLA. **Thus, all the posts identified in the list stands identified suitable for persons with SD/SI without neurological/limb dysfunction."***

7. A bare perusal of the notification dated 24.08.2022 along with OM dated 07.09.2022 would reveal that the State



Government has failed to consider the amendment in law and therefore passed an order in total disregard to the updated position of law. The order dated 04.04.2023, having failed to consider the notification dated 24.08.2022, cannot be countenanced.

8. Therefore, since the Central Government itself recognizes Spinal Disability and Spinal Injury without any associated neurological/limb dysfunction under the broad category of Locomotor Disability in addition to the ones mentioned in order dated 04.04.2023, there exists no reason whatsoever to deny the petitioner the prayer as asked for.

9. Further, considering that the petitioner was forced to approach this Court despite the law being settled in her favour, the tenets of justice require that the petitioner must be compensated for the unnecessary hardships faced by her on account of the State functionaries not being apprised about the updated position of law. Therefore, this Court imposes a cost of Rs. 50,000/- upon Respondent No.1, which shall be paid to the petitioner within a period of three months. If the said amount is not released to the petitioner within a period of three months, the same will carry simple interest at the rate of 10% per annum, recoverable from the officer(s) responsible for the delay.

10. The writ petition is, accordingly, allowed. Pending application(s), if any, shall stand disposed of.

(SAMEER JAIN),J

ANIL SHARMA /s-320