



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Spl. Appl. Writ No. 453/2023

1. State Of Rajasthan, Through Its Principal Secretary, Higher Education Department, Government Of Rajasthan, Secretariat, Jaipur.
2. Commissioner, College Education, Rajasthan, Jaipur.
3. Joint Director (Hrd), College Education, Rajasthan, Jaipur.

-----Appellants

Versus

1. Manish Chauhan S/o Shri Shyam Singh Chauhan, Aged About 36 Years, Village Post Ganiyawar, Tehsil Chakarnagar, District Etawah (Up), Presently Residing At 52-B, Ashok Nagar, Mahamandir, Jodhpur (Raj.).
2. Rajasthan Public Service Commission, Through Its Secretary Ajmer

-----Respondents

For Appellant(s) : Mr. Sandeep Shah, AAG with Ms. Akshiti Singhvi.
For Respondent(s) : Mr. Yashpal Khileree & Ms. Vinita

**HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE MUNNURI LAXMAN**

Order

Reportable

09/02/2024

Heard.

2. This appeal arises out of the order dated 9th January, 2023 passed by the learned Single Judge in the matter of dispute relating to entitlement of the respondent-writ petitioner to avail the benefit of reservation for especially abled person under the provisions of the Rights of Persons with Disabilities Act, 2016 (for short, 'the Act of 2016) and the Rajasthan Rights of



Persons with Disabilities Rules, 2018 (for short, 'the Rules of 2018').

3. The relevant facts, unfolded from the record of the case and the order of the learned Single Judge and not in dispute, are that the respondent petitioner applied for the post of Assistant Professor(Mathematics), which was kept reserved for especially abled person in Hearing Impaired (HI) category, in response to the advertisement dated 18.12.2020. The writ petitioner successfully passed the examination and was kept in the merit list prepared by the Rajasthan Public Service Commission, which recommended the petitioner's name for appointment against the single post reserved for specially abled HI category. The State, however, did not accept the recommendation and refused to grant appointment to the petitioner, which led to filing of the writ petition before this Court.

4. As against the claim of the writ petitioner that he being the only successful and meritorious candidate for appointment against one reserved vacancy for specially abled HI category, the stand of the State was that if the benefit of reservation under the Rules of 2018 is accorded to the writ petitioner, it will be against the interest of the persons with disabilities in the State of Rajasthan. It was also argued that the reservation of PH category being vertical reservation, the principles applicable in caste based reservation will equally apply to the PH category reservation.



5. The learned Single Judge while negating the submission of the State, accepted the contentions of learned counsel for the writ petitioner and upon consideration of the scheme of examination, as contained in the advertisement and the provisions with regard to reservation as contained in the Rules of 2018, proceeded to hold that in the absence of there being any bar under the rules or under any other provisions of any law for the time being in force much less under the constitutional scheme, denial of appointment against reserved category only on the ground that the writ petitioner, though a person belonging to reserved category, hails from another State, is constitutionally impermissible. The finding led to issuance of mandamus to the State to provide appointment to the petitioner with all notional benefits.

6. The present appeal has been filed by the State against the aforesaid order.

7. The learned Additional Advocate General would only repeat the submissions which have already been advanced before the learned Single Judge on behalf of the State by submitting that the basis for rejection of petitioner's claim for appointment against reserved category post is that even though he may be a person belonging to specially abled HI category, he is a person hailing from another State and as he is not a domicile of the State of Rajasthan, denial has taken place.

8. The learned Additional Advocate General also submits that in view of the provisions of Section 57 of the Act of 2016, in relation to respondent writ petition or, the appropriate





Government would be his native State and not the State of Rajasthan and that is the reason why his certificate of disability issued from the another State has not been accepted by the State of Rajasthan.

9. On the other hand learned counsel for the writ petitioner/respondent submits that the order passed by the learned Single Judge has taken into consideration the provisions of the Act of 2016, scheme of the Constitution, applicable rules and the clauses contained in the advertisement. Therefore, no interference is called for with the order of the learned Single Judge.

10. We have perused the record of the case, order of the learned Single Judge and given our anxious consideration to the submissions made by learned counsel for the respective parties.

11. The short issue which arises for consideration in this case is whether a person suffering from disability and otherwise entitled for consideration for appointment against post reserved for disabled category, could be denied that benefit only on the ground that he is native of another State and not the State in which the recruitments are taking place.

12. Reservation for persons with disabilities and other benefits are regulated and provided under a comprehensive scheme engrafted under the Act of 2016. Amongst other provisions, Section 34 of the Act of 2016 mandates reservation of posts for being filled up with persons with benchmark disabilities as below:



"34. **Reservation.**—(1) Every appropriate Government shall appoint in every Government establishment, not less than four per cent. of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:—

(a) blindness and low vision;

(b) deaf and hard of hearing;

(c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;

(d) autism, intellectual disability, specific learning disability and mental illness;

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be



interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit."

13. The aforesaid provision clearly lays down the mandate of law that every appropriate Government is obliged to appoint in every Government establishment, not less than 4% of the total number of vacancy of the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, 1% each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) enumerated therein and 1% for persons with benchmark disabilities under clauses (d) and (e) mentioned therein.

14. In order to give effect to the aforesaid legislative mandate under the Central enactment, the State of Rajasthan has also framed rules in exercise of rule making power known as Rajasthan Rights of Persons with Disabilities Rules, 2018. The aforesaid rules make special provision with regard to reservation for persons with benchmark disabilities, which reads as under:

5. Reservation of Vacancies.- (1) *In every establishment 4% percent of the vacancies of direct recruitment in the cadre shall be reserved for persons or class of persons with benchmark disabilities according to the section 34 of the Act. In the posts identified for each disability by the Government of India under section 33 and such reservation shall be treated as horizontal reservation and the vacancies for persons with benchmark disabilities shall be maintained as a separate class:*

Provided that where the nomenclature of any post in the State Government is different from the



post in Government of India or any post in the State Government does not exist in any department of the Government of India, the matter shall be referred to the Committee constituted under rule 6 for identification of the equivalent post in the State Government. The Committee shall identify the equivalent post on the basis of nature of job and responsibility of each post.

(2) Reservation in posts identified for one or more categories,-

- (a) If a post is identified suitable only for one category of disability, reservation in that post shall be given to persons with that disability only;
- (b) Reservation of 4% shall not be reduced in such cases and total reservation in the post will be given to persons suffering from the disability for which it has been identified;
- (c) If in case the post is identified suitable for two categories of disabilities, reservation shall be distributed between persons with those categories equally, as far as possible.

(3) Maintenance of Rosters,-

- (a) All establishments shall maintain a separate 100 point roster register for determining/effecting reservation for the persons with benchmark disabilities.
- (b) The register shall have cycle of 100 points and each cycle of 100 points shall be divided into four blocks, comprising the following points:
 - 1st Block — Point No. 1 to point No.25
 - 2nd Block — Point No. 26 to point No.50
 - 3rd Block — Point No. 51 to point No. 75
 - 4th Block — Point No. 76 to point No.100

The above block shall be earmarked and reserved for persons with benchmark disabilities — one point for each of the three categories of benchmark disabilities mentioned in clauses (a), (b) and (c) and one point for categories of benchmark disabilities mentioned in clauses (d) and (e) of sub-section(1) of section 34.

(c) All the vacancies shall be entered in the relevant roster register which shall be maintained by the head of the establishment.

(d) After all the 100 points of the roster are covered, a fresh cycle of 100 points shall start.”





15. A conjoint reading of the provisions contained in the Act of 2016 and Rules of 2018 clearly reveals that in the matter of appointment against the post in public employment, reservations are required to be provided to persons with benchmark disabilities in the manner and to the extent provided therein.

16. The learned Single Judge has rightly come to the conclusion that neither in the Act of 2016 nor in the Rules of 2018, there is any provision which denies benefit of reservation to a person with benchmark disabilities, who is otherwise qualified and meritorious enough to find place in the merit list, only on the ground that he belongs to or is native of State of any other State than the State of Rajasthan.

17. The certificates which are issued by the competent authorities under the scheme of the Act of 2016 have Pan-India effect and they are not limited in its applicability and effect within the four corners of the State or authorities of the State in which the certificate was issued. This is clear from bare reading of the provisions of Section 58 of the Act of 2016, which is extracted hereinbelow:

"58. Procedure for certification.—(1) Any person with specified disability, may apply, in such manner as may be prescribed by the Central Government, to a certifying authority having jurisdiction, for issuing of a certificate of disability.

(2) On receipt of an application under sub-section (1), the certifying authority shall assess the disability of the concerned person in accordance with relevant guidelines notified under section 56, and shall, after such assessment, as the case may be,—



(a) issue a certificate of disability to such person, in such form as may be prescribed by the Central Government;
(b) inform him in writing that he has no specified disability.

(3) The certificate of disability issued under this section shall be valid across the country."

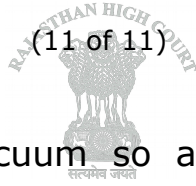
18. Sub-Section (3) of Section 58 of the Act of 2016 makes it abundantly clear that the certificate of disability issued under the said provision shall be valid across the country.

19. That means, wherever the certificate may have been issued, the certificate is applicable in the matter of public employment for a person with benchmark disabilities in the matter of appointment against posts reserved for persons with benchmark disabilities in special category. Thus, the certificate of disability issued in accordance with the provisions of Act of 2016 and rules made thereunder by the Central Government and the respective Governments, is required to be recognized and given full effect to across the country. Consequently, any person who belongs to reserved specially abled category and possessed of a valid certificate issued in his favour by the competent authority under the law is entitled to be recognized as such in the matter of public employment across the country and in the absence of there being any constitutional impediment, denial of his status as specially disabled category candidate only on the ground that he belongs to and native of another State is de-hors the scheme of the Act of 2016 and in the present case, the rules of 2018 applicable and in force in the State of Rajasthan.



20. The submission of the learned Additional Advocate General that under the scheme of Section 57 of the Act of 2016, the certificates are required to be issued by the appropriate Government, cannot be accepted as the provisions of Section 57 are not an impediment in giving pan-India effect to certificate of disabilities once validly issued by competent authority of any State. The present is not the case where, on facts, the denial of benefit of reservation is based on rejection of the disability certificate. It is not the case of the appellant that the certificate of disability is not valid or not issued by the competent authority. The only reason behind denial of benefit to the respondent writ petitioner appears to be that he is native of another State and therefore the benefit of reservation for specially abled category will not be available to him in the matter of seeking appointment against the post reserved for persons with benchmark disabilities in the State of Rajasthan.

21. Such a discrimination is otherwise constitutionally impermissible in view of provisions under Article 16(2) of the Constitution which mandates against discrimination based on place of residence. There is no provision which has been brought to our notice which provides that scheme of any law made by the Parliament or by the State legislature or any rules framed by any rule making authority under the Central enactment has provided for any scheme whereunder a person otherwise eligible to be appointed against the post reserved for persons with benchmark disabilities would be confined only to the residents of State of Rajasthan. Thus, the domicile rule



cannot be applied in vacuum so as to deny the benefit of reservation only on the ground that the applicant is resident of another State.

22. Learned counsel for the respondent has rightly pointed out that clause (8) of the advertisement clearly states that the certificate of disability issued by the competent authority of any State would be acceptable. The aforesaid prescription is in consonance with the statutory requirement as contained under Section 58(3) of the Act of 2016.

23. In view of the aforesaid consideration and analysis, we are of the view that the denial of benefit of reservation to the respondent writ petitioner against the post reserved for specially abled HI category only on the ground that he is native of the State of U.P. is unconstitutional and illegal. Therefore, the view taken by the learned Single does not warrant any interference.

24. The appeal filed by the State is accordingly dismissed with costs of Rs.10,000/- payable to the respondent-writ petitioner.

(MUNNURI LAXMAN),J

(MANINDRA MOHAN SHRIVASTAVA),CJ

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