

Manish Chauhan And Another vs State Of Uttarakhand And Another on 27 July, 2022

IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

THE CHIEF JUSTICE SHRI VIPIN SANGHI
AND
JUSTICE SHRI RAMESH CHANDRA KHULBE

WP(S/B) No.49 OF 2022

27TH JULY, 2022

Manish Chauhan and another

..... Petitioners

Vs.

State of Uttarakhand and another

..... Respondents

Presence: -

Ms. Snigdha Tiwari, learned counsel for the petitioners.

Shri S.S. Chaudhary, learned Brief Holder for the State.

JUDGMENT:

(Per Shri Vipin Sanghi, Chief Justice) We have heard learned counsel for the petitioner as well as learned counsel for the respondent no.1. Though respondent no.2 has filed its counter affidavit, but none appears for the said respondent when the matter is called out. We proceed to dispose of this petition at this stage. The petitioner seeks the following reliefs in this writ petition:-

i. Issue a writ, order or direction in the nature of Certiorari, to quash and set aside the impugned advertisement dated 04.12.2021 issued by Respondent No.2 as it is violative of Rule 11(4) of the Rights of Persons with Disabilities Rules, 2017 (hereinafter referred to as RPD Rules 2017), and is also in contravention of settled position of law through various pronouncements of honourable apex court including and in addition to Indra Sawhney and Others vs Union of India and Others, Union of India & Another vs National Federation of The Blind & Others.

Or Issue a writ, order or direction in the nature of Certiorari, to quash and set aside the impugned advertisement dated 04.12.2021 issued by respondent no.2 qua the disabled category.

ii. Issue a writ, order or direction in the nature of Mandamus, commanding the respondents to for issuance of a fresh advertisement in accordance with the Rights of Persons with Disabilities Act, 2016, the Rights of Persons with Disabilities Rules, 2017, Indra Sawhney and Others vs Union of

India and Others, Union of India & Another vs National Federation of The Blind & Others Or Issue a writ, order or direction in the nature of Mandamus, commanding the respondent no.2 to issue a corrigendum qua the disabled category with regard to the advertisement dated 04.12.2021.

iii. Issue a writ, order or direction in the nature of Mandamus, commanding the respondents to maintain roster for persons with benchmark disability for Group A and Group B employees in accordance with the Rights of Persons with Disabilities Act, 2016, the Rights of Persons with Disabilities Rules, 2017, Indra Sawhney and Others vs Union of India and Others, Union of India & Another vs National Federation of The Blind & Others and other settled principle of law. iv. To issue a writ, order or direction in the nature of Mandamus, commanding the respondents to keep one post vacant for petitioner no.1 for the post of Assistant Professor in Political Science and one post vacant for the petitioner no.2 for the post of Assistant Professor in History under the category of persons with disability during the pendency of the present petition.

v. To issue any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

2. The aforesaid reliefs have been sought in the background that on 04.12.2021, respondent no.2 i.e. the Uttarakhand Public Service Commission issued an advertisement bearing No.A-1/D.R/Degree/Service- 2/2021-22, dated 04.12.2021, wherein 455 vacancies for the post of Assistant Professors in Government College were declared. The last date for submission of On-line application form was 24.12.2021. The advertisement categorized the posts in various subjects for the Scheduled Castes, Scheduled Tribes, Other Backward Classes, Economically Weaker Sections and Unreserved categories. Since we are concerned with the subjects of Political Science and History, we extract hereinbelow the relevant entries in the said tabulation (22) S.No. Subject SC ST OBC EWS UR Total Posts Science

3. The respondents also tabulated, within each reserved class and unreserved category, the break-up of the seats reserved within the class, inter alia, for the physically disabled category candidates. We extract herein-below the relevant extract from the said tabulation in relation to Political Science and History subjects.

Scheduled
Caste

0

S.N Sub

Vacant posts

U.K. Women

U.

Dependents

Disabled

Fr. Fighters

Ex Serv.

Science

4. The submission of learned counsel for the petitioner is that the respondents have completely misunderstood the manner in which the Horizontal

reservation works. The result of the manner in which Horizontal reservation is sought to be granted by the respondents, is that in the Un-reserved category, no reservation is available to the physically handicapped candidates in the subject of Political Science. Similarly, in the History, there is no reserved seat shown for a physically handicapped candidate who may also be a Scheduled Tribes candidate.

5. Learned counsel submits that the physically handicapped category candidates are entitled to be accommodated cutting across the vertical categories for which reservation is granted, as well as in the Un- reserved /Open category. In support of her submission, learned counsel for the petitioner has placed reliance on the observations made by the Supreme Court in *Indra Sawhney vs. Union of India* and another, reported in AIR 1993 Supreme Court page 477. The relevant extract from the decision in *Indra Sawhney (Supra)*, relied upon by the petitioner, reads as follows:-

"95.all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes [under Article 16(4)] may be

called vertical reservations whereas reservations in favour of physically handicapped [under Clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations - what is called inter-locking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to Clause (1) of Article

16. The persons selected against this quota will be placed in the appropriate category; if he belongs to S.C. category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (O.C.) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains and should remain the same."

6. Learned counsel has also relied upon the Rights of Persons With Disabilities Rules, 2017 and in particular on Rule 11(1) and 11(4) of the said Rules, which read as follows:-

"11. Computation of vacancies. - (1) For the purposes of computation of vacancies, four percent of the total number of vacancies including vacancies arising in the identified and non-identified posts in the cadre strength in each group of posts shall be taken into account by the appropriate Government for the persons with benchmark disabilities:

Provided that the reservation in promotion shall be in accordance with the instructions issued by the appropriate Government from time to time.

(2)

(3)

(4) The reservation for persons with disabilities in accordance with the provisions of section 34 of the Act shall be horizontal and the vacancies for persons with benchmark disabilities shall be maintained as a separate class."

7. The stand taken by respondent no.2 in their counter affidavit before this Court is that the manner in which horizontal reservation has been worked out, has been prescribed by the State of Uttarakhand.

8. The State of Uttarakhand has also filed its counter affidavit. The stand taken by the State in their counter affidavit in paragraphs no.4 reads as follows:-

"4. That in reply to the contents of para no. 2 of the writ petition, it is submitted that Advertisement dated 4 December, 2021 was issued in lieu of instructions of roster as mandated in GO no. 124/XXX(2)2020-53(01)/2001 dated 22 May, 2020 issued by

Department of Personnel and Vigilance Section-2 Govt. of Uttarakhand. In the appendix 1 to 3 of the said GO, Table for Calculation of vertical reservation, horizontal reservation and Model Roster has been provided to be followed by recruitment agency for the process of direct recruitment by any department under Govt. of Uttarakhand. This G.O. aims to provide equal opportunity to all section of society by formulating a fair roster policy as per said G.O. Para 6 and 7 of the G.O. dated 22 May, 2020 especially protects the rights of person with disabilities. In Para 6 of the said G.O. it has been clearly stated that if under horizontal reservation no eligible candidate is found fit for selection, the selection for the said post will be done as per norms of general selection except for the posts reserved for Divyang (Disabled Person). In para 7 of the said G.O. it has been again clarified that, horizontal reservation for Divyang (disabled person) would be applicable only in such Service Cadres for which department of social welfare has adopted the same for such department and Cadre vide G.O. No. 196/xvii-2/2011-29 (lo do)/2003 dated 25 March, 2011. In the said para, it has been again said that, implementation of Disability Act 2016 (Divyang Jan Adhiniyam 2016) has to be ensured following the procedures and directions issued vide office notification no.232 dated 26 Sept., 2018 by Department of Personnel Govt. of Uttarakhand. In the said G.O. of Department of Personnel, Govt. of Uttarakhand, rights of disabled persons has been protected in the process of direct recruitment by the concerned department under Govt. of Uttarakhand as per the norms, laws and policy formulated and adopted by Govt. time and again. The advertisement dated 04 December, 2021 was issued in consonance with G.O. dated 22 May, 2020, protecting every right of disabled persons as per Govt. Policy and norms. Thus the prayer made by the petitioner for quashing the advertisement has no ground and logic, and thus not liable to be accepted. (True Photocopy of Govt. Order dated 22 May, 2020 is hereby filed and annexed as Annexure No. CA-02 to this affidavit."

(emphasis supplied)

9. The manner in which the State has sought to apply Horizontal reservations is completely contrary to the decision of the Supreme Court in Indra Sawhney (Supra) as extracted hereinabove. Persons with disabilities are entitled to horizontal reservation cutting across all categories. This means, that an otherwise eligible and qualified candidate/person with disability would first be allocated a seat and depending on whichever category that person belongs to, i.e. whether the person is a Scheduled Caste, Scheduled Tribe, Other Backward Classes, or is a General Category candidate, the seat in that category would stand exhausted. In fact, the action of the respondents complained of by the petitioner, goes contrary to their stand which has been highlighted by us in the above extracted paragraph No.4 of the Counter Affidavit.

10. In the light of the aforesaid, the impugned advertisement issued by the respondent is legally unsustainable and we are inclined to quash the same, since the same is violative of Rule 11(4) of the Rights of Persons with Disability Rules, 2017 read with the decision of the Supreme Court in Indra Sawhney (Supra).

11. We, accordingly, allow this petition and quash the advertisement dated 04.12.2021, impugned in this petition.

12. It shall, however, be open to the respondents to come out with a fresh advertisement strictly in compliance with Rule 11(4) of the Rights of Persons with Disability Rules, 2017 and the decision of the Supreme Court in Indra Sawhney (Supra).

13. Pending application, if any, stands disposed of.

_____ VIPIN SANGHI, C.J.

_____ RAMESH CHANDRA KHULBE, J.

Dated: 27th July, 2022 R.Bisht