

THE HIGH COURT OF SIKKIM: GANGTOK
(Civil Extra Ordinary Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W. P (C) No. 52 of 2018

Md. Nasiruddin Ansari,
S/o Late Hussaini Mian,
National Hydro-Electric Power Corporation,
Rangit Nagar,
P.O. Rangit Nagar, South Sikkim.
Pin No. 737111.

.... Petitioner

versus

- 1.** State of Sikkim,
Through the Chief Secretary,
Government of Sikkim,
Gangtok, East Sikkim.

- 2.** National Hydro-Electric Power Corporation,
(NHPC), through,
Chairman & Managing Director,
NHPC Office Complex,
Sector-33, Faridabad-121003,
Haryana.

- 3.** The Chief Engineer (General Manager),
NHPC, Rangit Nagar,
P.O. Rangit Nagar,
South Sikkim,
Pin No. 737111.

- 4.** The Commissioner, Disabilities,
Government of Sikkim,
Through the Joint Secretary,
(Social Welfare Department),
Social Justice, Empowerment and
Welfare Department,
5th Mile Tadong, VIP Colony,
East Sikkim at Gangtok
Pin No. 737 102.

.... Respondents

Application under Article 226 of the Constitution of India.

Appearance:

Mr. N. B. Khatiwada, Senior Advocate with Ms. Gita Bista,
Advocate for the Petitioner.

Mr. S. K. Chettri, Assistant Govt. Advocate for the
Respondent Nos.1 & 4.

Mr. A. K. Upadhyaya, Senior Advocate with Mr. Sonam
Rinchen Lepcha, Advocate for Respondent Nos. 2 and 3.

Mr. Praveen C. Subarna, (Senior Manager HR),
NHPC Ltd. Mr. Rahul Raman Manager (Law) NHPC Ltd.

Heard and Judgment pronounced on: 04.12.2019.

J U D G M E N T (O R A L)

Bhaskar Raj Pradhan, J

1. The question that falls for consideration before this Court in the present Writ Petition is short. However, the process of dispensation of justice to the satisfaction of the petitioner has taken a remarkably long time. The petitioner suffered an accident in the year 1993 while working in the premises of respondent nos. 2 and 3. His left arm had to be amputated and he was permanently disabled. On 26.03.2008 the Court of the Chief Commissioner for Persons with Disabilities rejected the complaint filed by the petitioner as he was found not to have been in the direct employment of respondent nos. 2 and 3. However, keeping in view the fact that the petitioner had acquired disability while in employment of the contractor, who was working for the respondent nos. 2 and 3, the respondent nos.2 and 3 were advised to consider the petitioner and give

him preference while making recruitment against “*reserved vacancies*” in future. In the second round of litigation, which was before this Court, in Writ Petition (C) No.15 of 2008, the petitioner lost and his writ petition was dismissed. However, in view of the permanent disability of the petitioner and considering his poor economic condition, the respondent nos. 2 and 3 were asked to consider the petitioner for appointment against any “*reserved vacancies.*” When the petitioner was not so considered by the respondent nos. 2 and 3, the third round of litigation started. In Writ Petition (C) No. 09 of 2014 preferred by the petitioner a judgment dated 02.03.2015 (for short ‘the judgment’) was passed by this Court. The following directions in paragraph 6 of the judgment are relevant:

“6. *For the reasons stated above, it is deemed appropriate in the interest of justice to direct the Respondents No.2 and 3 as follows:-*

- (i) *To comply with the directions contained in paragraph 13 of **Justice Sunanda Bhandare Foundation vs. Union of India and Others** : AIR 2014 SC 2869 and implement the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The Respondents-NHPC shall ensure that reservation under Section 33 of the Act of 1995 is made in terms of the identification of the posts indicated in Annexure ‘G’ filed with the application dated 26-02-2015, is made within a period of 60 (sixty) days from the date of this judgment;*
- (ii) *After such reservation, within 30 (thirty) days and not later than that, the case of the Petitioner shall be considered in light of the observation made by the*

Division Bench of this Court in its judgment dated 27-08-2009 in WP(C) No.15 of 2008 reproduced in subparagraph (iv) of Paragraph 5 above and also the written assurance given to the Petitioner by the Respondent No.2 way back in the year 1999 and 2010, Annexure P-2 (collectively).

(iii) In the meanwhile, the Respondents No.2 and 3 shall consider as to whether the Petitioner can be appointed in any one of the vacancies arising up to the month of February, 2015, in keeping with the commitment expressed by the Respondents No.2 and 3 in paragraph 21 of the counter-affidavit by considering the circumstance as very rare and unavoidable having regard to the observations made by the Division Bench of this Court in WP(C) No.15 of 2008 and the assurances of the Respondents-NHPC referred to above.”

2. It is an admitted fact that the judgment of this Court was not assailed by the respondent nos.2 and 3. The judgment therefore has attained finality. This was in the year 2015.

3. In the year 2018 the petitioner is back before this Court. The petitioner complains about non-adherence of the judgment of this Court by the respondent nos. 2 and 3.

4. The pleadings in the writ petition and the counter-affidavit shows that pursuant to the judgment the petitioner was issued a letter by the respondent nos. 2 and 3 dated 01.06.2015 stating that they were offering him appointment as a “*Junior Attendant*” in the scale of pay of Rs.8700-3%-20000 (IDA), (WO) in the company. The terms and conditions of the appointment were also spelled out. It transpires that on 28.07.2015 the

petitioner issued a legal notice to the respondent nos. 2 and 3. The petitioner was aggrieved by the fact that although respondent nos.2 and 3 had made an offer to him for the post of “*Junior Attendant*” which was accepted by him and that he had also submitted the required documents he had not yet been allowed to join. However, he was made to continue doing work and no appointment order had been issued to him. The legal notice was replied to by the respondent nos. 2 and 3 on 27.08.2015 in which the respondent nos. 2 and 3 disputed the allegation made by the petitioner. On 04.09.2017 the petitioner wrote to the respondent nos. 2 and 3 in which he asserted that this Court had directed them to consider his case for appointment to the post of electrician (Workman-4) as he was working as an electrician before the accident. The respondent nos. 2 and 3 responded to this letter dated 04.09.2017 on 21.02.2017 alleging misconduct against the petitioner. The petitioner replied reiterating his assertions but offering his apology for not processing the letter through proper channel. Another reminder dated 12.12.2017 was sent thereafter by the petitioner. It is the case of the petitioner that he was considered for training as an electrician vide Circular dated 23.01.2018 which was subsequently modified and his name deleted by the respondent nos. 2 and 3 from the training programme. Ultimately, on 14.03.2018 the petitioner issued a legal notice seeking consideration of his case from W0 to W4. The

respondent nos. 2 and 3 responded to the legal notice and asserted that the petitioner was appointed as “*Junior Attendant*” pursuant to the judgment passed by this Court. The respondent nos. 2 and 3 further asserted that the petitioner could not be considered for training as an electrician due to his 85% disability. As the petitioner was not satisfied the present writ petition was filed.

5. The petitioner has prayed that a direction be issued to the respondent nos. 2 and 3 to comply with the judgment and for his appointment to the post of electrician at W-4 grade with all monetary benefits.

6. Pursuant to the order dated 04.11.2019 passed by this Court the respondent nos. 2 and 3 have filed compliance affidavit dated 21.11.2019 with various documents. Annexure R/8 (Colly) has a document titled “*post identified to be reserved for the persons with disabilities in Group D*”. Serial No. 104 reflects the post of “*Attendant*”. As per the learned Senior Counsel for the respondent nos.2 and 3 it is a reserved post for which the petitioner was considered. The respondent nos. 2 and 3 has also filed another document titled “*identification of post in Group A, B, C & D for reservations of posts for physically handicapped persons*” as Annexure R/8 (collectively). The present case relates to Group D. Under the category “*Group C & D*” at serial No. 20 is the post of “*Attendant*”. Both the said documents have abbreviations under the head categories of

disabled. The learned Senior Counsel for the respondent nos. 2 and 3 clarify that the abbreviation “OA” is short for “*one arm affected*”. Admittedly, due to the accident the petitioner has lost one of his arms and therefore it is quite evident that he could be considered for this post of “*Attendant*”. Sanction order No. PIE/40/2011 dated 31.03.2011 also shows that under the unskilled category “*Attendant*” is a sanctioned post.

7. This Court had by the judgment directed that the petitioner should be considered against any of the “*reserved vacancies*” after reservation in terms of Section 33 of the Persons with Disabilities (Equal Opportunities/Protection of Rights and Full Participation) Act, 1995. The post of “*Attendant*” is definitely a reserved post. Although the petitioner has prayed for his appointment as an electrician the learned Senior Counsel for the petitioner concedes that because of his disability he would not be able to perform a job of an electrician. The issue therefore, is limited. This Court had directed the respondent nos. 2 and 3 to consider the petitioner for a “*reserved vacancies*”. The respondent nos. 2 and 3 had offered him a job of “*Junior Attendant*” vide letter dated 01.06.2015. It is the persistent stand of the respondent nos. 2 and 3 that the judgment has been complied with and therefore the petitioner was offered the post of “*Junior Attendant*” which he accepted without any demur. In the affidavit dated 21.11.2019 filed by the respondent nos. 2 and 3 it is stated

“Hence, in compliance of the direction of this Hon’ble Court in Writ Petition (Civil) No. 09/2014, after considering the total strength of Group-D-Unskilled Posts, one post has been earmarked in “Attendant” category as per Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, being an office based job, in the reservation roster, as there was no representation of PWD personnel in Roster Point. Accordingly, one post (Sl. No.6) was earmarked for reservation for persons with Disabilities (PWD) under the Act of 1995 *ibid.*” Copy of the reservation roster was annexed and marked at Annexure-R/10. This is an important document. This document reflects that pursuant to the judgment passed by this Court on 02.03.2015 the respondent considered the petitioner’s case for appointment in the reserved category for the reserved post. The details are as under:

“RESERVATION ROSTER FOR PERSON WITH DISABILITIES.
Name of the Organisation: RANGIT POWER STATION, NHPC LTD.
Name of the Post : GROUP D
Method of Recruitment : DIRECT
Number of Posts in Cadre : 20
Percentage of Reservation prescribed: VH-1%, HH-1%, OH-1%

Year of Recruitment	Cycle No and Point No.	Name of post	Whether identified for person with Disabilities suffering from			Unreserved or Reserved	Name of the person appointed and date of appointment	Whether the person appointment is VH/HH/OH or None	Remarks, if any.
			VH	HH	OH				
1	2	3	4	5	6	7	8	9	10
---	---	---				---	---	---	---
2015	6	ATTENDENT				UR	MD NASIRUDDIN ANSARI (10.08.2015)	OH	

8. Annexure-R/10 therefore, makes it clear that the petitioner was considered for the post of “*Attendant*” which is a reserved post on or before 09.11.2015 and he was appointed as “*Attendant*” w.e.f. 10.08.2015. Annexure-R/10 dated 09.11.2015 is subsequent to the offer letter dated 01.06.2015. Neither in the counter-affidavit nor at the hearing before this Court has the respondent nos. 2 and 3 been able to explain to this Court as to whether the post of “*Junior Attendant*” is a reserved post. The learned Senior Counsel for the respondent nos. 2 and 3 submits that the entry level post of an unskilled worker appointed with the respondent is the “W0” level and the rest are promotional posts. As he climbs, the ladder by way of promotion his grade would increase from “W0” to “W5”. The learned Counsel also referred to the recruitment rules of the respondent nos. 2 and 3 filed along with the affidavit of compliance dated 21.11.2019. Rule 5 deals with method and principles of recruitment. Rule 5.1 deals with level of recruitment. It states that “*recruitment shall generally be made to the lowest of the Grades in each cadre/Group, as indicated below, but can also be made in the higher grades, wherever considered necessary by the company.*” The said rule also clarifies that in the non-supervisory category the unskilled grade is “W-0” and skilled/ministerial is “W-4”.

9. However, the appointment letter states that the petitioner has been appointed as “*Junior Attendant (W0)*”. There is no

document filed either by the petitioner or by the respondent nos.2 and 3 to show whether the post of “*Junior Attendant*” is a reserved post and whether the salary structure for “*Junior Attendant*” and “*Attendant*” are the same. Nevertheless, in view of Annexure-R10 it is clear that the intention of the respondent nos. 2 and 3 was to appoint him as an “*Attendant*”.

10. In the facts and circumstances of this case, this Court is of the view that justice would be served if the respondent nos. 2 and 3 are directed to issue an appointment letter to the petitioner appointing him in the post of “*Attendant*” in terms of their decision as reflected in Annexure-R/10 dated 09.11.2015 w.e.f. 10.08.2015. It is accordingly so directed. Needless to say, the petitioner shall be entitled to all benefits, financial and otherwise, that may accrue to him considering his appointment from 10.08.2015 to the post of “*Attendant*”.

11. Nothing further survives in the writ petition and the same is disposed of in terms of the directions above. In the circumstances parties to bear their own cost.

(Bhaskar Raj Pradhan)
Judge
04.12.2019

to/

Approved for reporting: yes.
Internet: yes.