



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

S.B. Civil Writ Petition No. 9157/2017

Aditya Sharma S/o Sitaram Sharma, R/o VPO Tala, Via
Ghatwari, Teh. Jamwaramgarh, District Jaipur.

-----Petitioner

Versus

1. The State of Rajasthan Through Secretary,
Elementary Education, Rajasthan, Secretariat, Jaipur
2. The Director, Elementary Education, Bikaner.
3. The District Education Officer Directorate of
Elementary Education, Rajasthan, Bikaner.

-----Respondents

For Petitioner(s) : Mr. Tarun Chaudhary
For Respondent(s) : Mr. Sourabh Yadav

JUSTICE ANOOP KUMAR DHAND
Order

15/10/2024

Reportable

1. History of the petitioner indicates that he was born with
slight blindness and the same was increased to 100%
permanent disability till the month of March, 2023 when he
was examined by the Medical Board of SMS Hospital at
Jaipur.
2. By way of filing of this writ petition, the petitioner is
seeking direction against the respondents to consider his
candidature for appointment on the post of Teacher Grade-III
Level-1 under the category of Physically Handicapped (BL).
3. Counsel submits that the petitioner had low vision from
childhood and his vision was declining day by day but at the
relevant time, when the recruitment process was initiated by



the respondents in the year 2016, the petitioner did not have more than 40% permanent disability, hence, under these circumstances, the petitioner submitted his application form, under "Unreserved Category". Counsel submits that at the time of declaration of results i.e. on 27.05.2017, the petitioner had become totally blind. Counsel submits that the Medical Board of SMS Hospital had issued a certificate in this regard on 27.03.2017 i.e. prior to the declaration of result. Counsel submits that under these circumstances, the petitioner approached the concerned authorities for changing of his category from 'Unreserved' to 'Physically Handicapped' as he had become totally blind. Counsel submits that at the time of submission of the application form, no third party rights were created, as the results of the examination were not declared. The results were subsequently declared on 27.05.2017, wherein the petitioner secured 70.67% while the cut off marks for the category of Physically Handicapped (BL) was 63.33%. Hence, under these circumstances, the respondents be directed to consider the case of the petitioner under the category of Physically Handicapped (BL).

4. Per contra, learned counsel for the State-respondents opposed the arguments raised by the counsel for the petitioner and submitted that the petitioner was not totally blind at the time of submission of application form as he submitted his application under the 'General' Category. Counsel submits that under these circumstances, the petitioner cannot be allowed to change his category and the



respondents have not caused any illegality in not permitting the petitioner to change his category from 'General' to "Physically Handicapped" (BL). Counsel submits that under these circumstances, interference of this Court is not warranted.

5. Heard and considered the submissions made at Bar and perused the material available on the record.

6. A person does not acquire disability by choice. Disability or permanent disability may occur with anyone by *Vis Major* i.e. Act of God. The latin term '*Vis Major*' mean "Superior Force" or "The Act of God". It refers to an incident that may occur due to natural forces without involvement of any human intervention.

7. Instant case is a peculiar example and illustration of the term *Vis Major* i.e. Act of God, by which the petitioner became totally blind after participation in the selection process but before declaration of his result. The petitioner had a history of low vision since childhood, and with passage of time, his vision declined further and he became totally blind.

8. Pursuant to the selection process initiated by the respondents for appointment on the post of Teacher Grade III Level I, the petitioner submitted online application form under the Unreserved Category as he was not having permanent disability more than 40% at the relevant time, and 3% posts were kept reserved for the persons suffering from permanent disability.





9. After participation in the selection process, when the Medical Board of SMS Hospital, Jaipur examined the petitioner, it was found that the petitioner has 100% permanent disability of blindness and a certificate in this regard was issued on 27.03.2017. The petitioner approached the relevant authorities on 13.04.2017 to change his category from "Unreserved" to "Physically Handicapped" as the result of the recruitment process was not yet issued and third party rights were not created. But no heed was paid by the respondents hence, under these circumstances, the petitioner submitted an application in this regard before the Commissioner Specially Abled Persons Department, for change of his category from "Unreserved" to "Physically Handicapped Persons". The aforesaid application was forwarded by the Commissioner to the Director, Elementary Education, Bikaner for taking necessary and appropriate action vide its letter dated 20.04.2017 but all went in vain.

10. The Director, Elementary Education, Bikaner rejected the representation of the petitioner on the technical count that as per para No. 1 of the advertisement dated 06.07.2016, after submission of the entire application form, no change in the same is allowed. Hence, the category of the petitioner could not be changed. Thereafter, result of the Recruitment-Examination was declared on 27.05.2017 and the last cut off percentage for Physically Handicapped Persons with Blindness (BL) was declared as 63.33, while the



petitioner secured 70.67 percentage under the "General" category.

11. Instant case is not a routine case that intentionally and deliberately the petitioner did not apply under Physically Handicapped Category because at the relevant time of submission of application for his disability was not more than 40%, hence he applied under 'General' Category but he became 100% disabled and lost the vision of both eyes and became blind when the Medical Board of SMS Hospital, Jaipur examined him on 27.03.2017. This cruelty has occurred with the petitioner prior to the declaration of result i.e. before 27.05.2017. It is an unfortunate aspect that the petitioner lost 100% vision of his both eyes and he became permanently disabled due to Vis Major i.e. Act of God. i.e. due to natural causes. Sudden loss of vision of both eyes was beyond the control and anticipation of the petitioner. Such an unfortunate event could nevertheless happen, as has happened in the present case. The respondent-State cannot ignore this unfortunate incident which has occurred with the petitioner that he became 100% permanently disabled after participation in the selection process and before declaration of the result of the process.

12. As per Article 41 of the Constitution of India, it is the duty of the State that it shall make effective provision for securing the right to work in case of unemployment of persons with disabilities.





13. The Rights of Persons with Disabilities Act, 2016 (for short 'RPwD Act') replaced the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation), 1995. The RPwD Act was a sequel to the United Nations Convention on the Rights of Persons with Disabilities. The Convention laid down principles to be followed by the States-Parties for empowerment of persons with disabilities. The Convention laid down the following principles for employment of persons with disabilities, which the RpwD Act seeks to implement:-

- (i) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- (ii) Non-discrimination;
- (iii) full and effective participation and inclusion in society;
- (iv) respect for difference and acceptance of Persons with disabilities as part of human diversity and humanity;
- (v) equality of opportunity;
- (vi) accessibility;
- (vii) equality between men and women;
- (viii) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

14. The RpwD Act has several salutary provisions. For the purpose of disposal of the present case, special emphasis



needs to be provided on Section(s) 2(r), 2(s), 2(y), 33 & 34.

They are extracted herein below:-

2(r) "person with benchmark disability"

means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;

2(s) "person with disability"

means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;

2(y) "reasonable accommodation"

means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others;

33. Identification of posts for reservation.—

The appropriate Government shall— (i) identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34; (ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and (iii) undertake periodic review of the identified posts at an interval not exceeding three years.

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.



15. It is in the matter like the present one wherein the Principle of reasonable accommodation come into full play. Section 2(Y) of RPwD Act defines “reasonable accommodation” to mean necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities “RpwD” the enjoyment or exercise of their rights equally with others. ‘Reasonable Accommodation’ as defined in Section 2(y) of the RPwD Act, should not be understood narrowly to mean only providing of assisting devices and other tangible substances, which will aid PwDs. If the mandate of the law is to ensure a full and effective participation of PwDs in the society and if the whole idea was to exclude conditions that prevent their full and effective participation as equal members of society, a broad interpretation of the concept of ‘Reasonable Accommodation’ which will further the objective of the RPwD Act and Article 41 of the Directive Principles of State Policy, is mandated.

16. This concept of ‘Reasonable Accommodation’ was part of judicial interpretation in **Vikash Kumar v. UPSC & Others, (2021) 5 SCC 370**, wherein the Hon’ble Apex Court held that the principle of reasonable accommodation captures the positive obligation of the State and private parties, to provide additional support to PwDs to facilitate their full and effective participation in society. In Para 44, it was held as under:



"44. The principle of reasonable accommodation captures the positive obligation of the State and private parties to provide additional support to persons with disabilities to facilitate their full and effective participation in society. The concept of reasonable accommodation is developed in section (H) below. For the present, suffice it to say that, for a person with disability, the constitutionally guaranteed fundamental rights to equality, the six freedoms and the right to life under Article 21 will ring hollow if they are not given this additional support that helps make these rights real and meaningful for them. Reasonable accommodation is the instrumentality—are an obligation as a society—to enable the disabled to enjoy the constitutional guarantee of equality and nondiscrimination. In this context, it would be apposite to remember R.M. Lodha, J's (as he then was) observation in *Sunanda Bhandare Foundation v. Union of India*, (2014) 14 SCC 383, where he stated : (SCC p. 387, para 9)

"9. ... In the matters of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief oriented and not obstructive or lethargic."

17. Thereafter, in the said judgment, this Court held in para 62, 63 and 65 as under:

"62. The principle of reasonable accommodation acknowledges that if disability as a social construct has to be remedied, conditions have to be affirmatively created for facilitating the development of the disabled. Reasonable accommodation is founded in the norm of inclusion. Exclusion results in the negation of individual dignity and worth or they can choose the route of reasonable accommodation, where each individuals' dignity and worth is respected. Under this route, the "powerful and the majority adapt their own rules and practices, within the limits of reason and short of undue hardship, to permit realisation of these ends".



63. In the specific context of disability, the principle of reasonable accommodation postulates that the conditions which exclude the disabled from full and effective participation as equal members of society have to give way to an accommodative society which accepts difference, respects their needs and facilitates the creation of an environment in which the societal barriers to disability are progressively answered. Accommodation implies a positive obligation to create conditions conducive to the growth and fulfilment of the disabled in every aspect of their existence — whether as students, members of the workplace, participants in governance or, on a personal plane, in realising the fulfilling privacies of family life. The accommodation which the law mandates is “reasonable” because it has to be tailored to the requirements of each condition of disability. The expectations which every disabled person has are unique to the nature of the disability and the character of the impediments which are encountered as its consequence.

65. Failure to meet the individual needs of every disabled person will breach the norm of reasonable accommodation. Flexibility in answering individual needs and requirements is essential to reasonable accommodation. The principle contains an aspiration to meet the needs of the class of persons facing a particular disability. Going beyond the needs of the class, the specific requirement of individuals who belong to the class must also be accommodated. The principle of reasonable accommodation must also account for the fact that disability based discrimination is intersectional in nature....”

18. It should be borne in mind that the RPwD Act, which was enacted to give effect to the United Nations Convention on Rights of Persons with Disabilities, was with the objective of ensuring full and effective participation of PwDs in society, guaranteeing them equal opportunity and showing respect for





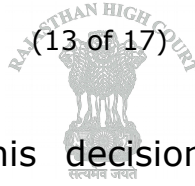
their inherent dignity and individual autonomy, including the freedom to make their own choices.

19. The Hon'ble Supreme Court in **Jeeja Ghosh & Anr. v. Union of India & Ors., (2016) 7 SCC 761**, observed as under:

"40. In international human rights law, equality is founded upon two complementary principles: non-discrimination and reasonable differentiation. The principle of non-discrimination seeks to ensure that all persons can equally enjoy and exercise all their rights and freedoms. Discrimination occurs due to arbitrary denial of opportunities for equal participation. For example, when public facilities and services are set on standards out of the reach of persons with disabilities, it leads to exclusion and denial of rights. Equality not only implies preventing discrimination (example, the protection of individuals against unfavourable treatment by introducing antidiscrimination laws), but goes beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action and reasonable accommodation..."

20. In view of this mandate, while interpreting the RPwD Act and its regulations, one must keep in mind the background and purpose for which the law was enacted. In the case of **U.P. Bhoodan Yagna Samiti, U.P. v. Braj Kishore and others, (1988) 4 SCC 274**, quoting from Lord Denning in "The Discipline of Law", Hon'ble Apex Court held as under:

"15. When we are dealing with the phrase "landless persons" these words are from English language and therefore I am reminded of what Lord Denning said about it. Lord Denning in "The Discipline of Law" at p. 12 observed as under:



[Quoting from his decision in Seaford Court Estates Ltd. v. Asher, (1949) 2 KB 481] “Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this, or that, or have been guilty of some or other ambiguity. It would certainly save the Judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament ...”

16. And it is clear that when one has to look to the intention of the legislature, one has to look to the circumstances under which the law was enacted. The preamble of the law, the mischief which was intended to be remedied by the enactment of the statute and in this context, Lord Denning, in the same book at p. 10, observed as under:

“At one time the Judges used to limit themselves to the bare reading of the statute itself — to go simply by the words, giving them their grammatical meaning, and that was all. That view was prevalent in the 19th century and still has some supporters today. But it is wrong in principle. The meaning for which we should seek is the meaning of the statute as it appears to those who have to obey it — and to those who have to advise them what to do about it; in short, to lawyers like yourselves. Now the statute does not come to such folk as if they were eccentrics



cut off from all that is happening around them. The statute comes to them as men of affairs — who have their own feeling for the meaning of the words and know the reason why the Act was passed — just as if it had been fully set out in a preamble. So it has been held very rightly that you can inquire into the mischief which gave rise to the statute — to see what was the evil which it was sought to remedy.

It is now well settled that in order to interpret a law one must understand the background and the purpose for which the law was enacted..."

21. The RPwD Act 2016 recognizes the need for reasonable accommodation and the rights of PwDs to participate equally in society. The fundamental postulate upon which RPwD Act is based is the principle of equality and non-discrimination. Section 3 of the Act of 2016 casts an affirmative obligation on the Government to ensure that PwDs enjoy: (i) the right to equality; (ii) a life with dignity; and (iii) respect for their integrity equally with others. Section 3 of Act of 2016 is an affirmative declaration of the intent of the legislature that the fundamental postulate of equality and non-discrimination is made available to persons with disabilities. Section 3 of the Act of 2016 is a statutory recognition of the constitutional rights embodied in Articles 14, 19 and 21 among other provisions of Part III of the Constitution. By recognising a statutory right and entitlement on the part of persons who are disabled, Section 3 of the Act of 2016 implements and facilitates the fulfilment of the Constitutional rights of PwDs.

22. The principle implies that the State and the relevant authorities must take necessary actions to ensure that



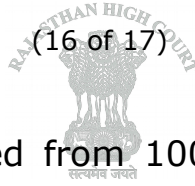


candidates with disabilities can fully participate in examinations and other processes, including allowing the change of category if needed.

23. The Constitution of India provides special provisions for certain groups, including PwDs. Parliament is granted the authority to establish special provisions, such as affirmative action in public employment, for these individuals. This concept of special provision is rooted in the fundamental principles of equality and equal legal protection. Indian constitutional law recognizes that equality is not a rigid principle; it allows for special provisions for certain identified groups. These provisions address discrimination and discriminatory practices and align with the broader idea of equality. The Constitution acknowledges that not everyone in the society is in the same position, and equal standards should not be applied to those who are differently situated. Creating a level playing field is essential for achieving true, equal treatment. By enabling the establishment of special provisions, the Constitution acts as an equalizer, fostering fair opportunities for all.

24. Perusal of the record indicates that the petitioner had low vision and slight blindness since birth as this fact has been certified by the Medical Board of SMS Hospital, Jaipur. This fact is not in dispute that at the time of submission of the application form, the petitioner was not having permanent disability of more than 40% and his vision was declining day by day and that is why he lost his vision





permanently and suffered from 100% disability. Because of the act of God, the petitioner became 100% permanently disabled. Hence, under these compelling circumstances, he has approached the authorities for permitting him to change his category from "Unreserved" to "Physically Handicapped" suffering from disability. It is worthy to note here that the certificate in this regard was issued by the Medical Board of SMS Hospital on 27.03.2017 i.e. prior to declaration of the result, as the result of the recruitment in question was declared by the respondents on 27.05.2017. Hence, under these circumstances, no third party rights were created in favour of anyone.

25. On many occasions, Hon'ble Apex Court has held that the approach of the instrumentalities of the State, Regulatory Bodies and for that matter even Private Sectors, should be inclusionary, accommodating the opportunities to the candidates with disabilities. The approach should not be exclusionary, as to how to disqualify the candidates with disabilities and make it difficult for them to pursue and realize their goals.

26. Looking to the fact that the last cut off marks of the candidates of Physically Handicapped is 63.33% marks while the petitioner has secured 70.67% marks, and considering the peculiar facts and circumstances of the case, the respondents were supposed to take an equitable and accommodative view in favour of the petitioner, therefore,





under these circumstances, the instant writ petition is hereby allowed.

27. The respondents are directed to consider the case of the petitioner under the category of Physically Handicapped Persons, (BL) suffering from 100% disability and to further consider his case for appointment on the post of Teacher Grade-III Level-1, in case the advertised post is identified for physically handicapped persons with blindness and in case the petitioner is otherwise found suitable in merit and eligible, then to give him appointment with all consequential benefits.

28. Stay application as well as all pending application(s), if any, also stand disposed of.

29. Before parting with the order, liberty is granted to the respondent/State authorities to conduct fresh medical examination by the Medical Board to ascertain the current disability of the petitioner and proceed thereafter, in accordance with law.

30. Needless to observe, that the respondents would comply with the directions issued by this Court within a period of three months from the date of receipt of certified copy of this order.

(ANOOP KUMAR DHAND),J

GARIMA /176

