
R.N.R.

Before M.M. Kumar & T.P.S. Mann, JJ.

STATE OF HARYANA AND OTHERS,—*Appellants*

versus

NASIB,—*Respondent*

LPA NO. 1191 OF 2010

IN CWP NO. 14795 OF 2009

8th February, 2011

Constitution of India, 1950—Art.226—Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995—S.47(2)—Applications for appointment to posts of Temporary Constable invited—Whether a candidate with colour blindness is entitled to be appointed as Constable—Held, no—General duty Constable have to perform various functions and colour blindness would affect their performance of duties—Appeal allowed, order of Single Judge set aside.

Held, that a perusal of judgment passed by a Division Bench of this Court in Neeraj and others *versus* Union of India and others would show that in the case of Union of India *versus* Satya Parkash Vashishst,

(M.M. Kumar, J.)

the selection and appointment was sought to be made to the post of Constable (Executive) in Delhi Police. It does not need much imagination to visualize that executive cadre is different than the general duty cadre or IRB cadre. The members of the executive cadre perform ministerial functions and the colour blindness of a candidate, like the petitioner, may not come in the way of performance of their duty. The general duty Constable have to perform various functions and colour blindness would certainly affect their performance of duties.

(Para 2)

Further held, that Section 47(2) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 bars disability per se being made a disqualification for promotion but the position is different if disability would affect discharge of functions or performance in a higher post or if disability would pose a threat to the safety of co-employees, members of public or employee himself, or to the assets and equipment of employer. Once the aforesaid position in facts and law is clear, then the view taken by the learned Single Judge cannot be accepted.

(Para 2)

Aman Chaudhary, Additional Advocate General, Haryana for the appellants.

Abhishek Yadav, Advocate, *for the respondent*.

M.M. KUMAR, J.

(1) The instant appeal filed under Clause X of the Letters Patent is directed against the judgment dated 4th March, 2010 passed by the learned Single Judge accepting the prayer made by the writ petitioner—respondent that despite the fact that he is colour blind, he would be entitled to be appointed as Constable in the appellant department. Learned Single Judge has proceeded on the assumption that the writ petitioner—respondent had applied for appointment to the post of Executive Constable, whereas a perusal of the advertisement dated 24th May, 2006 (Annexure P.1) would show that the applications were invited for filling up the posts of Temporary

Constable (Normal Duty). There is nothing inferable from the advertisement that 3700 posts advertised were for the post of Executive Constable. Accordingly, the reliance of the learned Single Judge on the judgment of Hon'ble the Supreme Court in the case of **Union of India versus Satya Parkash Vashishst, (1)** is wholly misplaced. In C.W.P. No. 17339 of 2010 decided on 28th October, 2010 (**Neeraj and others versus Union of India and others**), which is similar on fact to the case in hand, a Division Bench of this Court has distinguished the aforesaid judgment by observing as under :—

“The judgment of Hon'ble the Supreme Court in the case of UOI versus Satya Parkash Vashishst, 1994 Suppl. (2) SCC 52 has no application to the facts of the present case. There the selection and appointment was sought to be made to the post of Sub Inspector (Executive) Delhi Police. It is well known that executive cadre is different than the general duty cadre or IRB cadre. The members of the executive cadre perform ministerial functions and the colour blindness may not come in the way of performance of their duty. The general duty constable or IRB constable have to perform variety of functions and colour blindness would certainly affect their performance of duty. Therefore, we do not find any merit in the contention based on the judgment rendered in the case of **Satya Parkash Vashishst (supra)**.”

(2) A perusal of the aforesaid para would show that in the case of Satya Parkash Vashishst (supra), the selection and appointment was sought to be made to the post of Constable (Executive) in Delhi Police. It does not need much imagination to visualize that executive cadre is different than the general duty cadre or IRB cadre. The members of the executive cadre perform ministerial functions and the colour blindness of a candidate, like the petitioner, may not come in the way of performance of their duty. The general duty Constable have to perform various functions and colour blindness would certainly affect their performance of duties. In that regard, the Division Bench in Neeraj's case (supra) have placed reliance on the observation made by Hon'ble the Supreme Court in the case of

(1) 1994 Suppl. (2) S.C.C. 52

(Alok Singh, J.)

Union of India versus Devendra Kumar Pant and others (2). Referring to the provision of Section 47(2) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, Hon'ble the Supreme Court has observed that Section 47(2) bars disability *per se* being made a disqualification for promotion but the position is different if disability would affect discharge of functions or performance in a higher post or if disability would pose a threat to the safety of co-employees, members of public or employee himself, or to the assets and equipments of employer. Once the aforesaid position in facts and law is clear, then the view taken by the learned Single Judge cannot be accepted. Accordingly, the appeal is allowed and judgment of the learned Single Judge is set aside. No order as to costs.

R.N.R.