रिट ए सं0–3795 / 2004

उ0प्र0 उच्चतर शिक्षा सेवा आयोग बनाम मुख्य आयुक्त विकलांगजन व अन्य

आदेश दिनांक–30.03.2016

मुख्य बिन्दु– मुख्य आयुक्त विकलांगजन द्वारा अर्हता के सम्बन्ध में निर्देश देने के सन्दर्भ में।

AFR

Court No. - 34

Case :- WRIT - A No. - 3795 of 2004

Petitioner :- U.P. Higher Education Service Commission through its Secretary

Respondent :- Chief Commissioner For Persons With Disabilities and others

Counsel for Petitioner :- Pradeep Kumar, Archana Singh, H.N.Singh, V.K.Chandel

Counsel for Respondent :- C.S.C., Ayub Khan, Madan Mohan, SSC 2004/204

Hon'ble Sudhir Agarwal, J.

Hon'ble Shamsher Bahadur Singh, J.

1. As requested and agreed by learned counsel for the parties, we proceed to hear and decide this matter finally at this stage under the Rules of the Court.

2. Heard Smt. Archana Singh, Advocate, for petitioners, Sri M.F. Ansari, Advocate, holding brief of Sri Ayub Khan, Advocate, for respondent 2 and learned Standing Counsel for respondent 3. None appeared on behalf of respondent 1 despite the case having been called in revised and despite service of notice as per office report dated 06.10.2015 which shows that notice was sent but has not been received unserved and acknowledgment has also not been received. Hence, service is deemed sufficient.

3. Respondent 1 in purported compliance of Section 50 read with 59 of Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act, 1995 (hereinafter referred to as "Act, 1995") has passed an order dated 22.10.2003 on a complaint received from respondent 2 observing that declaring a candidate with Ph.D. and less than 55 per cent marks in post-graduation ineligible for post of Lecturer is contrary to practice being followed by University Grants Commission (hereinafter referred to as "UGC"), though Rules framed by University and State so provide, hence State is advised to re-consider framing of rules in consultation with UGC. Further, in the

meantime a direction has been issued to petitioner to consider candidature of complainant provisionally for the post of Lecturer pursuant to Advertisement No. 37 published in Employment News of 26th July-1st August' 2003 and keep a post of Lecturer unfilled until the case is decided. It has further directed State Government as well as petitioner to ensure that minimum 3 per cent vacancies are reserved for persons with disabilities in accordance with Section 33 of Act, 1995.

4. Learned counsel for petitioner submitted that once advertisement has been published by petitioners strictly in accordance with Statute framed under State Universities Act, 1973 (hereinafter referred to as "Act, 1973") complying with requirements therein, respondent 1, i.e., Chief Commissioner for Persons with Disabilities has no jurisdiction or authority either to require petitioners or State Government to modify or frame or amend rules nor has any power to issue positive direction to petitioners not to proceed to make recruitment on the post of Lecturer in accordance with statute and to consider complainant, who is admittedly ineligible for the post of Lecturer according to qualification published in the aforesaid advertisement which is consistent with relevant Statute. It is submitted that Chief Commissioner has no such power to pass impugned order and therefore the impugned order is patently without jurisdiction.

5. We have examined the aforesaid submissions. The Chief Commissioner is appointed by Central Government under Section 57 of Act, 1995 and its duties and powers which can be exercised by Chief Commissioner are enumerated under Section 58 and 59 of Act, 1995. Learned counsel appearing for respondent 2 attempted to take support from Section 59(b) of Act, 1995 to support the impugned order. However, a bare reading of Section 59(b) clearly shows, if the Chief Commissioner finds that there is a non implementation of laws, rules, byelaws, regulatins, Executive orders, guidelines or instructions

made or issued by appropriate Governments and the local authorities for the welfare and protection of rights of persons with disabilities, he may take up the matter with appropriate authorities but it does not confer upon him a power to hold that existing statutes relating to qualification etc. which are not inconsistent to any parent or substantive provision can be directed to be revised, amended or made inactive in a particular manner and authorities can be directed to proceed in the matter of recruitment in violation of existing statutory provisions.

6. When confronted, learned counsel appearing for respondent 2 could not dispute that extent to which respondent 1 has issued instructions by means of impugned order are not protected even by Section 39(b) of Act, 1995. In the circumstances, apparently the impugned order passed by respondent 1 is illegal and without jurisdiction, hence cannot be sustained.

7. In the result, writ petition is allowed. Impugned order dated 22.10.2003 is hereby set aside.

8. There shall be no order as to costs.

Dt. 30.03.2016

PS