

In the Court of State Commissioner for Persons with Disabilities
National Capital Territory of Delhi
25- D, Mata Sundari Road, Near Guru Nanak Eye Centre, New Delhi
Phone-011-23216002-04, Telefax: 011-23216005, Email:
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[Vested with powers of Civil Court under the
Rights of Persons with Disabilities Act, 2016]

Case No. 1165/1011/2019/09 / 7797

Dated: 14/11/2019

In the matter of

Ms. Munazza
H.No. 1830, 1st Floor,
Agha Jaan Street
Kalan Mahal, Darya Ganj,
New Delhi-110002.

.....Respondent

Case.No.1115/1011/2019/09 / 7798-99

In the matter of :

SUO-MOTU

Versus

The Director
Directorate of Education,
GNCT of Delhi, Old Sectt.,
Delhi-110054.

.....Respondent no.1

The Chairman,
Delhi Subordinate Services Selection Board,
FC-18, Institutional Area, Karkardooma,
Delhi-110092.

.....Respondent no.2

Last date of Hearing: 13.11.2019

Present: Sh. Pravir Jain, Dy.Secretary and Sh. Rakesh Kr. Singh.
S.O. on behalf of respondent No.2.

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ORDER

It was noticed that in the Advertisement No. 03/19 of DSSSB dated 05.09.2019, out of 637 vacancies in the post of Assistant Teacher Primary (post code 15/19) in the Directorate of Education, 29 vacancies had been reserved for persons with visual impairment but no vacancy was reserved for persons with locomotor disability. Similarly, out of 141 posts of Assistant Teacher Nursery (post code 16/19), only 1 vacancy was reserved for persons with locomotor disability and 10 vacancies for persons with visual impairment.

2. The post of Primary School Teacher and Teacher, Infant School are identified for persons with locomotor disability OA, OL, OAL, BL and visual impairment (BLV) as per the list of identified posts notified by the Ministry of Social Justice and Empowerment vide notification No. 16-15/2010-DD-III dated 29.07.2013.

3. Section 34 of the Rights of Persons with Disabilities Act, 2016 hereinafter referred to as the Act provides as under:

"34. (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:—

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- (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"

4. Suo-motu cognizance of the above mentioned advertisement was taken and a Show Cause-Cum-Hearing Notice dated 18.09.2019 was issued to the respondent under Section 80(b) of the Act for corrective action. Respondents were directed to show cause why vacancies in the identified posts should not be reserved for persons with disabilities in the post of Assistant Teacher (Primary) and Assistant Teacher (Nursery) as per the provisions of Section 34 of the Act and instructions of DoP&T Vide OM No. 36035/02/2017-Estt. (Res.) dated 15.01.2018 and why a corrigendum to the said advertisement dated 05.09.2019 should not be issued within 15 days of receipt of the Notice. The matter was also scheduled for hearing on 22.10.2019.

5. Subsequently, Ms. Munazza Shams vide her complaint dated 16.09.2019 also pointed out that 50% of the reserved vacancies (29) posts should be reserved for persons with locomotor disabilities. The said complaint was tagged for joint proceedings.

6. Respondent No. 2 vide letter dated 17.10.2019 submitted that the DSSSB had advertised the vacancies as per requisition of indenting

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department i.e. Directorate of Education and it could not go beyond the indent. It was further submitted that the indenting department has also certified that the requirements of the Act and policy relating to reservation for persons with the benchmark disabilities has been taken care of while sending the requisition. Dy. Secretary (P&P), DSSSB therefore requested that the Board may be exempted.

7. On 22.10.2019 Sh. Hukam Chand, Asstt. Director (Establishment-IV) and Sh. Mahendra Kumar, S.O. appeared on behalf of respondent No. 1 and submitted the reply dated 21.10.2019 as per which, requisition for filling up of 637 posts of Asstt. Teacher(Primary) had been sent, 61 posts were earmarked for persons with visual impairment and 62 for persons with locomotor disability. 11 persons with visual impairment and 54 persons with locomotor disability were already working and requisition for 21 posts each had been given to DSSSB in 2017. With the recruitment of 21 persons with visual impairment and 21 persons with locomotor disability based on requisition of 2017, the Department will have 32 Asstt. Teachers (Primary) with visual impairment and 75 with locomotor disability. Since the number of persons with locomotor disability in the post of Asstt. Teacher (Primary) will exceed by 13 than the required 3%/4%. There was no need to reserve any post for persons with locomotor disability in the current recruitment. Based on the same principle / procedure, 10 posts had been reserved for persons with visual impairment and 01 post for persons with locomotor disability against 15 posts earmarked for each disability in the post of Asstt. Teacher (Nursery) as there was no Asstt. Teacher (Nursery) with visual impairment. Requisition for 05 visually impaired persons had already been given in 2017. Nine (09) persons with locomotor disability were already working as Asstt. Teacher

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(Nursery) and requisition for 5 had already been sent in 2017. There was backlog of only one post for persons with locomotor disability against the total sanctioned strength of 935 and therefore one post had been reserved for locomotor disability in the current recruitment.

8. It was further submitted that the reservation for persons with disabilities had been calculated against the total 4061 sanctioned posts of Asstt. Teacher (Primary) and 925 sanctioned posts of Asstt. Teacher (Nursery) and that the same is in compliance with the DoP&T's OM No. 36035/02/2017-Estt(Res.) Dated 15.01.2018.

9. It was observed from the submissions of respondent No.1 that the reservation had been computed against the posts (post-based) and not against the vacancies, which is not in accordance with the provisions of the Act and the DoP&T's instructions. Therefore the respondent was directed to issue a corrigendum without any further delay so that persons with locomotor disability are not deprived of their entitlement.

10. Sh. Pravir Jain, Dy. Secretary, DSSSB submitted that the written examination for the said post had been scheduled in November, 2019. DSSSB has certain dress code like wearing half sleeve shirt, light dress, without shoes. It would not be possible to conduct the examination after the winter sets in. Therefore, enough time should be given to DSSSB for issuing any corrigendum, give enough time to candidates with locomotor disability to apply and the DSSSB to conduct the examination.

11. It was apparent that the entitled quota of vacancies had not been reserved for persons with locomotor disability, which is to be

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calculated based on 100 point vacancy based reservation roster. If corrective action was not taken, eligible persons with locomotor disability would be deprived of their entitlements. Therefore, respondent No. 1 was directed to intimate the number of reserved vacancies for the two categories of persons with disabilities on top priority addressing the constraints of DSSSB mentioned above by **01.11.2019**.

12. It was also made clear that without ensuring reservation for persons with disabilities as per the provisions of the Act and the instructions of DoP&T, recruitment process should not proceed to the disadvantage of any class of persons with disabilities.

13. In view of the dress code requirements mentioned by the representative of DSSSB, the number of days for applying by eligible candidates with locomotor disability would however be less than desired, but it should be reasonable.

14. Respondent No. 1 vide letter dated 29.10.2019 informed respondent No. 2 to issue corrigendum to the advertisement in question. Accordingly, 14 vacancies of Assistant Teacher (Primary) for persons with visual impairment and 13 for persons with locomotor disability (benchmark disability) and 5 vacancies for the post of Asstt. Teacher (Nursery) for persons with visual impairment and 5 for locomotor disability (benchmark disability) were reserved.

15. Respondent No. 2 very promptly issued a corrigendum to the advertisement No. 03/2019 on 05.11.2019 and informed all concerned.

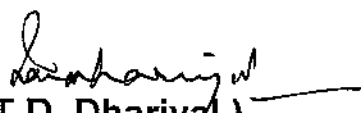
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16. Respondent No. 1 is advised to intimate the names and addresses of the persons with benchmark disabilities appointed on the basis of the above advertisement / corrigendum within 10 days of their joining as required under Section 81 of the Act.

17. In view of the positive action taken by the respondents, the cases are disposed of.

18. Given under my hand and the seal of the Court this 14th day of November, 2019.




(T.D. Dhariyal)

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