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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-2
Phone-011-23216002-04, Telefax: 011-23216005,
Email: comdis.delhi@nic.in
[Vested with powers of Civil Court under the
Rights of Persons with Disabilities Act, 2016]

Case No.999/1014/2019/06/ 3977-3982 Dated: 02/08/2019.

In the matter of:

Ms. Munazza,
H No. 1830, Agha Jaan Street,
Darya Ganj, Delhi-110002.

Sh. Ajit Kumar and others
(Email: ajitkumar.kumar1989@gmail.com)

..... Complainants

Versus

The Secretary,
Delhi Subordinate Service Selection Board
F-18, Institutional Area
Karkardooma, Delhi-110092.
(dsssb-secy@nic.in)

..... Respondent No. 1

The Assistant Director of Education/Admn.,
South Delhi Municipal Corporation,
Education Department: HQ,
Dr. Shyama Prasad Mukerjee Civic Centre,
E Block, 23rd Floor,
JLN Marg, New Delhi 110002.

..... Respondent No. 2

ORDER

Ms. Munazza and Sh. Ajit Kumar, persons with more than 40% and 100% locomotor disability respectively filed a complaint dated 18.06.2019. The complainants submitted that SDMC vide its letter dated 02.05.2019 very clearly had mentioned that 143 vacancies of persons with visual impairment were to be inter-se-exchanged with persons with locomotor disability making the total number of vacancies

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for persons with locomotor disability as 276 (93 fresh + 40 backlog + 143 inter-se-exchange) and 238 (93 fresh + 145 back log) for persons with visual impairment. They also mentioned that SDMC had examined the matter in light of the provisions of the Rights of Persons with Disability Act, 2016, hereinafter referred to as the Act, Section 33 and 34 of the Persons with Disability Act, 1995 and as per the previous recommendation of the DSSSB that the Post of Teacher (Primary) for persons with visual impairment were not being filled up as per the demand in the previous recruitments. As a result SDMC was not able to fill up the 4% quota for persons with disabilities and they are facing acute shortage of teachers and the vacancies under disability quota are not being filled up on regular basis. Hence, the unfilled vacancies of visual impairment quota be interchanged with locomotor disability under Section 34 (2) of the Act as the posts are not identified for persons with hearing impairment.

2. The complainants also submitted that DSSSB has not taken action as per the order dated 25.06.2018 in case no. 44/1011/2017/11 and dated 28.05.2019 in case no. 717/1014/2019/02 respectively passed by this court.
3. The complainants further submitted that they and other persons with disabilities have struggled to reach this stage with tremendous difficulties and under very adverse circumstances and have qualified the competitive examination. Because of various reasons like different rules being followed in different advertisements, they are suffering and are on the verge of deprivation of their lawful right under the Act.
4. Sh. Ajit Kumar and 7 others also requested to direct respondent no. 1 to submit action taken report in case no. 717/1014/2019/02 and to inter-se-exchange 143 vacancies as per the request of SDMC. The said request was also forwarded to DSSSB for appropriate action.

5. The complaint dated 18.06.2019 was taken up with the respondents vide show-cause-cum-hearing notice dated 26.06.2019.

6. It is relevant to refer to the provision for inter-se-exchange in the Act and the instructions of DOP&T issued in this behalf. Section 34 (2) of the Act provides as under:

"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 reason, 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."

7. Para 8 of the DOP&T's OM No. 36035/02/2017-Estt.(Res) dated 15.01.2018 contains the procedure for inter-se-exchange and carry forward of reservation in case of direct recruitment which is reproduced below:

"8.1 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 reason, 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 following four categories of disabilities, at one percent each to each category:

(A) (a) blindness and low vision;

(B) (b) deaf and hard of hearing;

(C)(c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;

(D) (d) autism, intellectual disability, specific learning disability and mental illness;

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness.

8.2 Only when there is no person with benchmark 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 benchmark disability.

8.3 If the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged with the prior approval of Department of Empowerment of Persons with Disabilities, among the above mentioned four categories.

8.4 If any vacancy reserved for any category of benchmark disability cannot be filled due to non-availability of a suitable person with that benchmark disability or, for any other sufficient reason, such vacancy shall be carried forward as a 'backlog reserved vacancy' to the subsequent recruitment year.

8.5 In the subsequent recruitment year the 'backlog reserved vacancy' shall be treated as reserved for the category of disability for which it was kept reserved in the initial year of recruitment. However, if a suitable person with that benchmark disability is not available, it may be filled by interchange among the categories of benchmark disabilities identified for reservation. In case no suitable person with benchmark disability is available for filling up the vacancy in the succeeding year also, the employer may fill up the vacancy by a person other than a person with benchmark disability. If the vacancy is filled by a person with benchmark disability of the category for which it was reserved or by a person of other category of benchmark disability by inter se exchange in the subsequent recruitment year, it will be treated to have been filled by reservation. But if the vacancy is filled by a person other than a person with benchmark disability in the subsequent recruitment year, reservation shall be carried forward for a further period upto two recruitment years where after the reservation shall lapse. In these two subsequent years, if situation so arises, the procedure for filling up the reserved vacancy shall be the same as followed in the first subsequent recruitment year.

8.6 The Government establishment shall interchange vacancies only if due process of recruitment viz. proper advertisement of vacancy to fill up the vacancies reserved for persons with benchmark disabilities has been complied with.

8.7 In order to ensure that cases of lapse of reservation are kept to the minimum, any recruitment of the persons with benchmark disabilities candidates shall first be counted against the additional quota brought forward from previous years, if any, in their

chronological order. If candidates are not available for all the vacancies, the older carried forward reservation would be filled first and the current vacancies would be carried forward if not filled up provided that in every recruitment, the number of vacancies reserved for Persons with Benchmark Disabilities including carried forward vacancies will be announced beforehand, for the information of all aspirants."

8. Respondent No. 1 vide letter dated 11.07.2019 informed as under;

"In compliance of your Office letter dated 28/05/2019 for amendment in vacancies for PH (OH) of Primary Teachers in MCD under post Code 16/17 & 01/18, the Board had sought advice/opinion of Services Department, GNCTD whether the vacancy of a post code recruitment of which has already been closed can be changed in respect of any particular category after the closure of the recruitment process of that post code. The letter was sent under intimation to your office vide letter dated 21/06/2019 (Copy enclosed).

The reply from Services Department is still awaited. Therefore a reminder has been issued to Services Department, GNCTD for early reply on 11/07/2019 (Copy enclosed). It is submitted that the Board will take immediate action as per advice of Services Department, GNCTD.

Yours faithfully,

Secretary (DSSSB)"

9. On the day of hearing on 23.07.2019, Secretary, DSSSB vide letter dated 11.07.2019 informed that the matter had been referred to Services Department for the advice/opinion vide letter dated 21.06.2019 and their reply is still awaited. A reminder had also been sent on 11.07.2019 for expediting the matter and the Board will take immediate action as per the advice of the Services Department. Secretary, DSSSB also telephoned and followed by letter dated 28.07.2019 to say that due to ongoing continuous examinations, the concerned officer has also been deployed for examination duty and therefore not able to attend

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and requested for adjournment. He also informed that there is no further development in the matter.

10. The following contentions of the complainants and the observation of this court was conveyed to the respondents vide ROP dated 25.07.2019 and the matter was fixed for hearing on 29.08.2019:

"(i) That the recruitment to the post code 16/17 and 01/18 has not closed as contended by DSSSB as closure of recruitment in a prescribed format, is sent to the various authorities namely, indenting Department (SDMC in this case), Hon'ble LG, Chief Secretary etc. It is also uploaded in the official website of the Board. This has not been done in respect of the subject post code 16/7 and 01/18. The recruitment can also not be closed until the decision about the inter-se exchange of 143 vacancies is taken.

(ii) That even as on date, the result in respect of 31 Gen, 50 OBC, 12 SC, 75 ST and 5 OH candidates is pending and that as per result notice no. 499/DSSSB/CC-I/2019/4177-84 dated 12.07.2019, the wait list/ panel will be valid for a period of one year i.e. upto 27.03.2020 and fresh nomination/result against the above rejected candidates will be declared from the waitlist and panel shortly.

(iii) That the advertisements of DSSSB including the advertisement for the post code 16/17 and 01/18 also contained a clause under general instructions for candidates that, the vacancies advertised are provisional and liable to vary. After coming into effect, RPwD Act, 2016, the advertisement also mentions, vacancies in respect of persons with disabilities are liable to vary subject to provision of RPwD Act, 2016. Therefore,

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there should be no issue in inter-se-exchange of the vacancies. Moreover, interchange of vacancies does not even amount to increasing the total number of vacancies and will not adversely affect any one's interest. On the other hand, by not doing so, it may be an irreparable harm to the applicants with locomotor disability as many of them may become over age and may not be able to even apply in future.

(iv) That it is not their fault, if the concerned agencies did not either compute the reserved vacancies for persons with disabilities correctly or there was lack of coordination. The complainants, who are fighting for their rights, cannot be made to suffer on account of that.

(v) That SDMC has very clearly mentioned in its letter dated 02.05.2019 to the Board delivered on 06.05.2019 that 276 vacancies are for OH including 143 vacancies on account of inter-se-exchange. This is in terms of para 8 of DoP&T's OM dated 15.01.2018.

(vi) That DSSSB on the request of the indenting Department, i.e. SDMC has already earlier modified the number of vacancies for persons with blindness/low vision and locomotor disability on the intervention of the State Commissioner for Persons with Disabilities.

(vii) That as per the circular dated 13.06.2019 of Services Department (Branch III), the Board will make a waiting list/reserve panel and all the candidates above minimum qualifying marks in their respective category will be kept in reserved panel subject to call of e-dossier/verification of documents. All the complainants are above the minimum qualifying marks and their e-dossiers

have been uploaded. So, even if there was no inter-se-exchange of the vacancies, they should be kept in the wait list/reserved panel.

3. As the complainants were under tremendous pressure and were making rounds of various authorities to get their entitlement, Secretary, Services Department was advised to consider the above mentioned submissions put forth by the complainants and give an early opinion/advice to DSSSB."

11. The complainants and 3 other persons with benchmark disabilities vide their letter dated 30.07.2019 have requested that order on their complaint should be passed immediately as they have been waiting and struggling for a very long time to get their legitimate rights. Some of the complainants and other persons with benchmark disabilities who have qualified for the said posts may become overage for the next examination and may lose the opportunity forever which would be an irreparable loss to them.

12. From the submissions of the parties, it is observed that the requisitioning authority namely, SDMC has computed the reserved vacancies for Persons with Benchmark Disabilities after examining the provision of the Act and the instructions of DOP&T as seen from their letter No. D/ADE/Admn./Edu./HQ/SDMC/2019/588 dated 02.05.2019. Due to unavailability of the relevant record for preparation of reservation rosters for persons with disabilities/ benchmark disabilities before trifurcation of the unified MCD, the corporations are not able to know the exact number of carry forward vacancies of the previous recruitment years. However, it is certain that many reserved vacancies are being carried forward for long and there has not been any inter-se-exchange or lapsing of the vacancies reserved vacancies for persons with benchmark disabilities. If such an exercise is not done as per the

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provisions of the Act at some stage, the purpose of the Act will not be served. In light of the clear provision in Section 34 (2) of the Act for inter-se-exchange of vacancies in the event of non-availability of the suitable persons with benchmark disability of a particular category, the complainants and other similarly placed persons having benchmark locomotor disability should not be made to suffer and be deprived of their right made available to them under the Act. Merely on a technical ground that recruitment has been closed, which contention is also under dispute, the persons with benchmark disability cannot be made to sacrifice their life time opportunity and be deprived of their appointment to the posts if they are eligible and have been found suitable. It will also not be in the interest of the complainants and other similarly placed persons with benchmark disabilities to delay my recommendations based on available inputs and wait till 29.08.2019, even while the reply of Services Department is stated to be still awaited.

13. In the facts and circumstances of this case and the request of the complainants for early decision, it is recommended as under:

(i) DSSSB should recommend the candidates with benchmark disabilities without any further delay in accordance with SDMC's letter dated 02.05.2019 vide which 276 vacancies of Teacher (Primary) posts code 16/17, 01/18 have been reserved for persons with benchmark locomotor disability and 238 vacancies have been reserved for persons with visual impairment which include current, backlog and inter-se-exchange vacancies.

(ii) Appropriate further action be taken so that the complainants and other similarly placed persons with benchmark disabilities are not put to any disadvantage like pay, seniority etc. on account of delay in processing their cases for allocation or appointment.

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14. This court be informed of the action taken on the above recommendations as required under Section 81 of the Act.

15. Given under my hand and the seal of the Court this 02nd day of August, 2019



(Signature)
(T.D. Dhariyal) 02.8.19

State Commissioner for Persons with Disabilities

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Copy to:-

1. The Secretary, Services Department, Govt. of NCT of Delhi, 7th Level, B-Wing, Delhi Secretariat, I. P. Estate, New Delhi-02.
2. The Commissioner, South Delhi Municipal Corporation, Dr. S.P.M., Civic Centre, J.L.N. Marg, New Delhi.

(Signature)
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