

**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-110002

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[Vested with powers of Civil Court under the  
Rights of Persons with Disabilities Act, 2016]

**Case No.2255/1011/2021/07/5319-5321**

**Dated:18-05-22**

**In the matter of:**

**Sh. Mohak Kumar,**  
S/o Parmesh Kumar,  
173, Nehru Apartments, Kalkaji,  
New Delhi-110019.

.....**Complainant**

**Versus**

**The Director,**  
Directorate of Education  
Govt. of NCT Delhi  
Old Secretariat  
Delhi-110054

.....**Respondent No.1**

**The Secretary,**  
Delhi Subordinate Services Selection Board  
FC-18, Institutional Area, Karkardooma,  
Delhi-110092

.....**Respondent No. 2**

**Date of Hearing:** 17.05.2022

**Present:** Sh.Parmesh Kumar, F/o Sh. Mohak Kumar alongwith Sh. Rajan Mani, Advocate for Complainant.  
Sh. A.K. Bhardwaj, S.O., Sh. Dhiraj Tanwar, DA on behalf of Respondent No. 1.  
Sh. V.P. Jha, Dy. Secretary, DSSSB and Sh. K.K.Singh, SO on behalf of Respondent No. 2

## **ORDER**

The complainant, a person with 50% intellectual disability filed a complaint dated 28.06.2021 under the Rights of Persons with Disabilities Act, 2016 hereinafter referred to as the Act and alleged that Directorate of Education had forwarded a requisition for filling up of 434 vacancies of Assistant Teacher ((Primary), Post Code 42/21, which was advertised by DSSSB vide Advertisement No. 02/21 dated 12.05.2021 but no reservation was granted to persons with intellectual disability in spite of the fact that the post of Assistant Teacher (Special Education) and Teacher Primary were identified for persons with intellectual disability as per S.No. 1556-1557 respectively of the list of identified posts issued vide Ministry of Social Justice & Empowerment, Govt. of India's notification No. 38-16/2020-DD-III dated 04.01.2021.

2. Complainant vide subsequent complaint dated 08.04.2022, had further alleged that the DSSSB had already conducted recruitment exam for the above Post Code 02/21 on 07.03.22 in which the complainant was denied his right to avail the services of a scribe on production of his Medical Certificate. Thus the respondents had not only denied him benefit of reservation and scribe but also had denied the equal opportunity to participate in the selection process for the above post code.

3 The complaint dated 28.06.2021 was taken up with respondent No. 1 & 2 vide Notice dated 08.07.2021 followed by reminders dated 31.08.2021, 18.02.222 & 09.03.2022 & 25.03.2022. Subsequent complaint dated 08.04.22 was taken up with the respondent No. 2 vide letter dated 13.04.2022.

4. DOE vide letter dated 27.12.2021 informed that the post of Assistant Teacher (Primary) is not identified for Intellectual disability which is identified under Program Support Teacher at S.No. 509 under Group B. Further the particular S.No. 1556 & 1557 of notification dated 04.01.2021 is meant for the

post of Asstt. Teacher (Special Education) and Teacher Primary (all subject and Special Education) that too under the Group C but the post of Assistant Teacher (Primary) in DoE, GNCT is under Group B.

5. Complainant vide rejoinder dated 08.02.22 submitted that the reply furnished by respondent is legally incorrect and unsustainable in view of the stipulation in Note 5 of the M/o of Social Justice and Empowerment Notification dated 04.01.2021 which states as follows:

**“Note 5: If a post having identical nature and place of job with respect to any identified post, the post should be construed to be identified even if the post has a different nomenclature and / or is placed in a different group.”**

Therefore, it was submitted that the post of Asstt. Teacher (Primary) advertised by the respondent is also identified for persons with intellectual disabilities. The posts at Sr. No. 1556 & 1557 are the relevant entries in the notification dated 04.01.2021 corresponding to the post advertised by the Respondent and the fact that the posts at Sr. No. 1556 & 1557 are listed in Group C whereas the post of Assistant Teacher (Primary) advertised by the Respondents is a Group B post, is not relevant in view of the stipulation provided in Note 5 hereinabove.

6. However in the absence of any satisfactory reply furnished by Respondent No. 1 i.e. the DOE and non-submission of any reply by Respondent No. 2 i.e. the DSSSB, a hearing was scheduled on 17.05.2022 and all parties submitted their respective facts as under:

(i) Advocate appeared for Complainant reiterated his written submissions and requested that a Special Recruitment Drive be conducted within next three months for the post of Assistant Teacher (Primary) to be reserved for persons with intellectual disabilities, including six current vacancies and calculated backlog vacancies and respondents be directed to design a special selection process accommodating the particular needs of persons with

intellectual disabilities and designed in consultation with experts in the field of intellectual disability which may include specially designed aptitude tests and in-person evaluations having regard to the cognitive and behavioural limitations of persons with intellectual disabilities. He further claimed that reservation for persons with disabilities in the advertisement dated 12.05.2021 must be made according to the prevailing law as on that date. He also referred Hon'ble Supreme Court judgement dated 07.07.2010 in the case of Ravi Prakash Gupta Vs. Union of India (2010) 7 SCC 626 vide which SC held that delay in identification of posts for any category of disability would not exempt that category from reservation, but rather the vacancies would need to be reserved and filled after the posts are identified for that category.

(ii) Representative of Respondent No. 1 reiterated their written submission given on dated 27.12.21 and added that the department had found the post of Assistant Teacher (Primary) more suitable and identical as per S.No. 509 and their PBR Committee also recommended the same.

(iii) Representatives of Respondent No.2 vide submission dated 12.05.22 informed that the complainant had appeared for the examination held for above Post Code 42/21 on 07.03.222 in Ist Shift at Centre IDZ1 GT Karnal Road, Delhi. As per record complainant had applied under the category of **UR (PH/VH)** and the allegation levelled by complainant is factually incorrect that he was not allowed to avail the service of scribe. Board had followed all the guidelines for conducting written examination for persons with disabilities issued by the Govt. of India from time to time and it had also been mentioned at Clause No. 15 of general instructions for candidates to be appeared in online examination for the year 2022 vide No. F.55(302)/Exam/DSSSB/2021/10 dated 04.01.2022. Further after examining the record of the said centre it was revealed that scribes were allowed to the PwD candidates in accordance with OM Dated 26.02.2013 issued by the M/o Social Justice & Empowerment as a proof details of two PwD candidates having Roll No. 111504200032 and 111504200012 were attached. It was

further informed that as per reports of the examination functionaries deployed at the centres on the date of examination, no such incident was mentioned as claimed by complainant that he had not been allowed to avail facility of scribe on 07.03.22. For the allegation of complainant that he was being forced to wait at the centre till completion of the examination it was informed that as per practice in the Board no such permission is allowed except in case of medical emergency.

7. After due deliberations and discussion on the case, the court recommended as under:

- (i) Court has observed that respondent No. 1 should have considered existing guidelines / instructions relating to reservation for persons with intellectual disabilities.
- (ii) Court also agreed with the fact that category of posts as mentioned at Sr. No. 1557 as per M/o Social Justice and Empowerment GOI's notification dated 04.01.2021 should not have been debarred by Respondent No.1 in the instant case. Though it was brought out by Respondent No. 2 i.e. DSSSB that in the instant case, the complainant had wrongly filled the disability category as VH while it was intellectual disability for him. Upon questioning it was replied that as there was no provision of intellectual disability in the "Online" form thus, VH category was written. In any case this was not justified and the complainant was advised from refraining to use wrong category of disability in future. Thus, it is recommended that Respondent No. 1 should consider and initiate the process of conducting a '**Special Recruitment Drive**' in future for the post of Assistant Teacher (Primary) in connection with persons with intellectual disabilities if such vacancies are still existing or lying vacant. It should also be ensured that the above **Special**

**Recruitment Drive** be designed and conducted with the help of some domain experts / professionals in the field of intellectual disabilities in order to provide all the reasonable accommodations to persons with intellectual disabilities.

- (iii) Respondent No. 1 & 2 are also advised to conduct training programmes for their personnel for sensitization and awareness of RPwD Act, 2016 and instructions / guidelines issued by the Ministry of Social Justice & Empowerment and Govt. from time to time so that persons with disabilities including persons with intellectual disabilities are not discriminated or deprived of their entitlements.
- (iv) Court does not find the plea of complainant justifiable as there is no evident proof that he was not allowed to avail the service of scribe by respondent No. 2 as complainant appeared for the above examination under the UR (PH/VH) category instead of the fact that his medical certificate belongs to Intellectual Disability.

8. The case is disposed of.

9. Given under my hand and the seal of the Court this 18<sup>th</sup> day of May, 2022.

**(Ranjan Mukherjee )**  
**State Commissioner for Persons with Disabilities**