

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah and Ayesha A. Malik, JJ

Peerzada WAQAR ALAM---Petitioner

Versus

NATIONAL ACCOUNTABILITY BUREAU (NAB) through Chairman, Islamabad and others---

Respondents

C.P. No. 4729 of 2019, decided on 5th December, 2022.

(Against the judgment of Islamabad High Court, Islamabad dated 17.10.2019, passed in Writ Petition No.218 of 2016)

(a) Disabled Persons (Employment and Rehabilitation) Ordinance (XL of 1981)---

---S. 10--- United Nations Convention on Rights of Persons with Disabilities (CRPD), Art. 27---Persons With Disabilities (PWDs)---National Accountability Bureau (NAB)---Quota for Persons with Disability---Under section 10 of the Disabled Persons' (Employment and Rehabilitation) Ordinance, 1981 establishments (including NAB) are to employ persons with disabilities "not less than 3% of the total number" of persons employed at any time by the said establishment, and there is no limitation or distinction of grade in allocating 3% quota for persons with disabilities in any organization---Quota of 3% for persons with disability applies across the board in an organization, covering all tiers of posts in an organization and goes upto to the highest post including that of the Chairman, NAB---Said quota for PWDs must co-exist alongside the general category of posts---Given the variety of posts with different qualifications, skill sets, and descriptions it is only appropriate that the disability quota be apportioned and allocated against the sanctioned strength of various categories which have a separate selection criterion---Supreme Court directed NAB to immediately comply with the provisions of the Disabled Persons (Employment and Rehabilitation) Ordinance, 1981 and earmark posts representing 3% quota for PWDs across the institution at all tiers.

Malik Ubaidullah v. Government of Punjab and others PLD 2020 SC 599 = PLC 2021 (C.S.) 65 ref.

(b) Disabled Persons (Employment and Rehabilitation) Ordinance (XL of 1981)---

---S. 10---Constitution of Pakistan, Arts. 9, 18 & 25---United Nations Convention on Rights of Persons with Disabilities (CRPD), Art. 27---Persons With Disabilities (PWDs)---Employment quota---Employment of PWDs is not a charity but a right---Constitutional values of equality and social justice, the fundamental rights to life, to carrying out a profession and to non-discrimination also extend to PWDs and make no distinction between PWDs and others--- Any law or policy relating to PWDs is rights-based and is not to be viewed as charity or pity or mercy---Universality, indivisibility, interdependence and interrelatedness of constitutional values and fundamental rights fully encompass the persons with disabilities and discrimination guarantees them full protection without discrimination.

Dr. G.M. Chaudhary, Advocate Supreme Court and Syed Rifaqat Hussain Shah, Advocate-on-Record for Petitioner.

Sattar Awan, DPG, NAB, Hafiza Mehnaz Nadeem Abbasi, S.P., NAB, Imran Sohail, Director (HRM) NAB Hqrs. and Adnan Nadeem, Dy. Director, NAB for Respondents.

Respondent No. 2 in person.

Date of hearing: 5th December, 2022.

JUDGMENT

SYED MANSOOR ALI SHAH, J.---Brief facts of the case are that petitioner, pursuant to the public advertisement dated 10th February 2015, applied for the post of Assistant Director (BPS-17) at the National Accountability Bureau (NAB). The petitioner (a wheelchair user) participated in the selection process and was successfully appointed to the post vide offer letter dated 16.07.2015 and assumed the charge on 10.08.2015. The appointment of the petitioner was subject to the condition that he be declared medically fit by the Civil Surgeon of the Federal Government¹. After joining the petitioner submitted his Medical Fitness Certificate issued by the Civil Surgeon, Federal Government Poly Clinic, Postgraduate Medical Institute, Islamabad. The Certificate stated that the petitioner was found "fit for office job". The Certificate, additionally recorded that

the petitioner is "fit against disable quota, if any, otherwise as department likes". In the wake of the Certificate, NAB vide letter dated 12.08.2015 informed the petitioner that he has "not so far provided an unequivocal medical fitness certificate (conditional medical certificate is not acceptable)" therefore the petitioner was asked to report back to the parent department. The petitioner preferred a departmental appeal which was also turned down on 28.10.2015, however, on a new ground that as the Medical Certificate described the petitioner to be "fit against disable quota," and as there is no "disabled quota" in NAB against the post of Assistant Director, therefore the appeal of the petitioner could not succeed. The petitioner challenged the same through constitutional petition before the Islamabad High Court but was not successful and has challenged the judgment of the High Court through this petition.

2. We have heard the learned Counsel for the parties and have gone through the record of the case. The appointment of the petitioner was subject to being declared medically fit by the Civil Surgeon. The Medical Certificate issued by the Civil Surgeon found the petitioner FIT FOR OFFICE JOB. The jurisdiction of the Civil Surgeon is to declare a person fit or otherwise for a job in the Government Service. Having declared the petitioner to be "fit for office job", the additional observation that the petitioner is "fit against disable quota" is totally inconsistent to the earlier evaluation. "Fit for office job" does not fall under the disability quota and the petitioner could have been easily considered against any office job. The additional comment made by the Civil Surgeon being unnecessary has no legal value. The petitioner having been found medically fit by the Civil Surgeon for an office job had to be considered as a regular candidate for appointment and his appointment could not have been withdrawn on the ground that the petitioner has "not provided an unequivocal medical fitness certificate (conditional medical certificate is not acceptable)." Even otherwise there is no requirement of an "unequivocal medical fitness certificate". A person being medically fit for an office job fully qualifies to be considered against an office job as a fit and a regular candidate. National Accountability Bureau enjoys no authority to second guess the validity of the medical declaration and unilaterally label it to be short of an unequivocal medical fitness certificate. Without prejudice to the above, even if the additional comments made in the Certificate to the effect that the petitioner was "fit against disable quota" are considered to be valid, still the respondents were under an obligation to consider him against the quota earmarked for persons with disabilities (PWDs).

3. The contention of the respondent NAB that a person has to be fully fit to be appointed to NAB and a person who is a user of wheel chair does not fit the job description of an Assistant Director is belied by the record. We called upon the Director, Human Resource, NAB to explain the job description of an Assistant Director. He elaborated that NAB has several departments where a newly appointed Assistant Director can be assigned. These departments include Investigation, Human Resource Management, Budget and Finance, Awareness and Prevention, Training and Research, and Prosecution. He also placed before us the job descriptions of Assistant Directors in these departments which include scrutiny and submission of documents, examination of budgets, proposals, and coordination of office work which are purely desk/office assignments and could be easily performed by a person using a wheelchair, therefore, the petitioner could have been easily allocated to one of these departments as an Assistant Director as per the medical fitness certificate.

4. Letter dated 12.08.2015 issued by NAB relieving the petitioner from his job on the ground that the petitioner does not have an unequivocal medical fitness certificate is not only insensitive and harsh but also deprives the petitioner to earn a livelihood and carry out a lawful profession, offending the fundamental rights guaranteed to the petitioner under Articles 9 and 18 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution"). By denying petitioner, a user of wheelchair and a person fit for an office job, the right to such a job on the pretext that he uses a wheelchair also offends the right to dignity of the petitioner. It is underlined that right to dignity is a non-negotiable constitutional right guaranteed under Article 14 of the Constitution.

5. While initially NAB withdrew the offer of appointment of the petitioner on the ground that the petitioner was not medically fit but while dismissing the departmental appeal of the petitioner, the ground urged by NAB was that there was no disability quota against the post of Assistant Director in NAB. Under section 10 of the Disabled Persons' (Employment and Rehabilitation) Ordinance, 1981² establishments (including NAB) are to employ persons with disabilities "not less than 3% of the total number" of persons employed at any time by the

said establishment. Learned Counsel for NAB referred to an opinion sought from the Establishment Division of the Federal Government which states that the disability quota shall be for posts BS-15 and below. The said letter clearly offends the provisions of the Ordinance. There is no limitation or distinction of grade in allocating 3% quota for persons with disabilities in any organization. The 3% quota for persons with disability applies across the board in an organization, covering all tiers of posts in an organization and goes upto to the highest post including that of the Chairman, NAB. The letter issued by the Establishment Division besides being without jurisdiction is blatantly against the law and therefore has no legal sanctity. Persons with disabilities (PWDs) are an integral part of society and their importance in the workforce must be understood and never understated.

7. At present, we are informed that NAB has 741 sanctioned posts for Assistant Director. Under the Ordinance, 3% of these posts are to be earmarked for PWDs which comes out to 22 posts. The 3% quota for PWDs must co-exist alongside the general category of posts. Given the variety of posts with different qualifications, skillsets, and descriptions it is only appropriate that the disability quota be apportioned and allocated against the sanctioned strength of various categories which have a separate selection criterion.³ National Accountability Bureau is directed to immediately comply with the provisions of the Ordinance and earmark posts representing 3% quota for PWDs across the institution at all tiers and submit a compliance report with the Additional Registrar (Judicial) of the this Court within a month. In case the said report is not filed, the officer shall fix this case before the Court for appropriate orders against the Chairman NAB.

8. It is important for the public and private sector institutions (including NAB) to understand that within Pakistan, the population of persons with disabilities (PWDs) varies between 3.3 million to 27 million.⁴ The World Health Organization (WHO) has stated that an estimated 16% of the global population experiences significant disabilities today,⁵ most of whom are of working age.⁶ As such, it remains pivotal to consider the importance of PWDs towards human capital development, particularly towards employment. Should inclusion and accessibility be made towards employment there would be improvements at the societal level and for the families of PWDs.⁷ Employment is important to all persons, without which inclusion in society and economic freedom would not be possible. Without employment, there is a greater risk of detrimental effects to the physical and mental health of the individual.⁸ Work and contribution to society has been central to human society and holds great power over the self-esteem of those participating in society. For PWDs this would be greater given the stigmatization typically associated with them. The social model views disability in the context of systematic barriers, social exclusions, and negative societal attitudes leading to the loss or limitation of opportunities to participate in political, economic, and social activities on equal footing with those who do not have disability.⁹

9. Employment of PWDs is not a charity but a right. Our constitutional values of equality and social justice, the fundamental rights to life, to carrying out a profession and to non-discrimination also extend to PWDs and make no distinction between PWDs and others. Therefore, any law or policy relating to PWDs is rights-based and is not to be viewed as charity or pity or mercy. The universality, indivisibility, interdependence and interrelatedness of constitutional values and fundamental rights fully encompass the persons with disabilities and guarantees them full protection without discrimination.

10. Further, the United Nations Convention on Rights of Persons with Disabilities (CRPD), to which Pakistan is a party, protects the right of PWDs, in particular, their right to employment. It states that employment and career advancement of PWD's is to be promoted, and discrimination based on disability in all forms of employment is prohibited.¹⁰ It is high time that public and private sector institutions in Pakistan wake up to this realization and protect the constitutional and legal rights of the persons with the disabilities in the country and extend them the care, sensitivity and priority they deserve in their policies and executive decisions.

11. For the above reasons, the impugned judgment as well as the departmental orders are set aside with the direction to NAB to appoint the petitioner as per the offer letter w.e.f. 16.07.2015 as an Assistant Director in an appropriate wing of NAB that is fit for an office job. For the above reasons this petition is converted into an appeal and allowed.

12. Office shall dispatch a copy of this judgment to Chairman NAB and heads of all the public sector institutions to ensure that the disability quota is maintained in their institution as per law and that the internal polices of the institution are sensitized to fully recognize the presence and the rights of persons with disabilities (PWDs).

MWA/W-2/SC Appeal allowed.