

SC ASKS FOR JOB POLICY FOR TRANSGENDERS

Relevant for: Developmental Issues | Topic: Rights & Welfare of Minorities Incl. Linguistic Minorities - Schemes & their performance; Mechanisms, Laws, Institutions & Bodies

The Supreme Court on Thursday gave the government three months to take the lead and devise a policy framework to open up avenues of employment for transgender persons, particularly in the civil aviation industry.

The order was a fallout of a petition filed by Shanavi Ponnusamy, a transgender person from Thoothukudi in Tamil Nadu, whose dream of flying high as an airline cabin crew member never took off.

The court said the petitioner's case raised wider issues about the formulation of government policy to ensure the guarantee of non-discrimination against transgender people.

A Bench of Justices D.Y. Chandrachud and Hima Kohli observed that the government has to comply with the enabling provisions of the Transgender Persons (Protection of Rights) Act of 2019 in "letter and spirit".

The court detailed specific provisions of the Act which mandated that no person or establishment, whether government or private, should discriminate against a transgender person in matters of employment, including recruitment or promotion or in any other related areas.

'Inclusion in society'

The court reminded the Centre that it was obliged by the Act to "secure full and effective participation of transgender persons and their inclusion in society". "The enactment by the Parliament marks a watershed in the evolution of the rights of the transgender persons," the Supreme Court emphasised.

The court ordered the Department of Personnel and Training and the Social Justice Ministry to collaborate with the National Council for Transgender Persons, a body constituted under the Act, to consult stakeholders and prepare a "considered" policy for the community's welfare and rights in the next three months. The Centre has to guide States and establishments governed by the Act. The petitioner in the case had responded to an advertisement by Air India in 2017 for a female cabin crew. She did not qualify.

Senior advocate K.V. Vishwanathan, for Air India, clarified that the petitioner was rejected for not scoring the minimum qualifying marks.

"My client enjoys a lot of goodwill and so I have to clarify in this court that the application of the petitioner was accepted with open arms and further sent for independent evaluation. After a fair and objective evaluation, the application was rejected as the petitioner was unable to score the minimum qualifying marks... I want to make it very clear that the rejection was not because the petitioner was a transgender person," Mr. Vishwanathan submitted.

'Wider issue'

The court noted the senior counsel's submission and replied that "we are not hauling you over coals at all. We are treating this petition as a wider issue".

The petitioner, who had undergone gender surgery in 2014, said she had trained hard to “fulfill her dream of working as a cabin crew of some airlines in India”. She had even successfully completed a stint with the Air India’s customer support (domestic and International) section in Chennai.

Ms. Ponnusamy said she had no choice but to apply as a female because the application form did not have a separate column for transgender persons.

This was despite a 2014 judgment of the Supreme Court which declared transgenders as the ‘third community’. It had ordered job applications to have a separate column for the third gender. “Recognition of transgenders as a third gender is not a social or medical issue but a human rights issue... the gender to which a person belongs is to be determined by the person concerned,” the court had ruled in the 2014 verdict.

The petitioner contended that the right to one’s gender identity was a human right. “Human rights are basic rights and freedoms which are guaranteed to a human by virtue of him being a human which can neither be created nor can be abrogated by any government”.

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