

(2006) 10 PAT CK 0022
In the Patna High Court
Case No : CWJC No. 13534 of 2005

Bindhyachal Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-10-2006

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 33

Citation : (2007) 1 PLJR 16

Hon'ble Judges : Sheema Ali Khan, J; Narayan Roy, J

Bench : Division Bench

Judgement

1. Pursuant to order dated 11.10.2006, the Commissioner-cum-Secretary, Department of Personnel and Administrative Reforms, Government of Bihar, and the Commissioner-cum-Secretary, Department of Welfare, Government of Bihar, have appeared in person and have tried to explain before this Court about implementation of the provisions of the persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter to be referred to as "Act"). We are informed by the Secretaries of the Departments that the provisions of the Act are being implemented for selection in almost all the establishments of the State of Bihar and in some of the cases necessary requisitions have been sent to the Bihar Public Service Commission (hereinafter to be referred to as "Commission") to provide sufficient numbers of reservation, so far the disables are concerned in view of section 33 of the Act. We are further informed that reservations for the disables have also been provided in relation to appointment of the teachers in Secondary and Primary Schools and the necessary requisitions have been produced before us for our perusal.

2. Mr. Bindhyachal Singh, learned counsel, however, submitted that the provisions of the Act are not being implemented faithfully and opportunity is being denied to disabled persons.

3. Section 33 of the Act provides "every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons, or class of persons with disability of which one per cent, each shall be reserved for persons suffering from

(i) blindness or low vision;

(ii) hearing impairment;

(iii) locomotor disability or cerebral palsy

for the posts identified for each disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

4. On reading of section 33 of the Act, we find that every appropriate Government shall have to resort to the provisions of law pertaining to making available such number of vacancies for the disables and in case, it is not so done, there would be negation of the provisions of law and it would amount to denial of the right of equal opportunity to such persons.

5. The mandate of law, in that view of the matter, has to be followed strictly and faithfully by the appropriate Government in every establishment. The action of the State Government must be reflected at the initial stage while sending requisition to the Commission or any other agency conducting examinations for such selection.

6. As a corollary, therefore, it applies with equal force to the Commission or to the other agencies conducting such examinations/tests.

7. From the materials on record, we are not fully satisfied that the mandate of law, as indicated above, is being followed strictly and sincerely.

8. The Act is of the year 1995 and even after efflux of ten years, the mandate of law is not being applied strictly though certain cases are shown to us, where the mandate of law appears to have been followed. The anxiety of the Court therefore, is that the mandate of law, as envisaged, must be applied strictly.

9. Both the Secretaries of the Departments, who have appeared in person, however pray for some time to explain the circumstances, under which the exercises were undertaken to implement the provisions of law, as referred to above, and also to detail the number of vacancies, where they have resorted to the provisions of section 33 of the Act providing such percentage of vacancies to the disables.

10. Regard being had to the facts and circumstances of the case, list this matter on 4th December, 2006 at the top of the list enabling the State authorities to file appropriate affidavits detailing the queries made aforesaid.

11. Let copies of this order be served upon learned counsel for the petitioner, learned counsel for the Commission and learned Additional Advocate General No.
2. Personal appearance of both the Commissioners-cum-Secretaries is dispensed with for the time being.