
(2016) 03 SC CK 0079

In the Supreme Court Of India

Case No : Petition for Special Leave to Appeal (C) No. 19898 of 2014

D. Sudhakar

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 28-03-2016

Acts Referred:

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

Citation : (2016) 4 ADJ 28 : (2016) 149 FLR 746 : (2016) 2 JCR 257 : (2016) 3 JT 348 : (2016) 2 LawHeraldSC 988 : (2016) 4 RSJ 376 : (2016) 3 Scale 423 : (2016) 12 SCC 370 : (2017) 1 SCCL 406 : (2016) 2 SCT 349 : (2016) 3 SLR 738

Hon'ble Judges : Madan B. Lokur and S.A. Bobde, JJ.

Bench : Division Bench

Final Decision : Allowed

Judgement

Madan B. Lokur, J.—1. The Petitioner was directly recruited in the Group-I services as a Regional Transport Officer in 1990 and has been working as Joint Transport Commissioner since 2008. The Petitioner belongs to the Scheduled Caste community and is physically handicapped (Ortho).

2. The Petitioner says that he has been unfairly treated for selection to the Indian Administrative Service (for short "the IAS") and that he is entitled to the benefit Order the quota for physically handicapped persons under S.C. category for selection under the Indian Administrative Service (Appointment by Selection) Regulations, 1997. For this, the Petitioner places reliance Order the decision Order this Court in Union Order India v. National Federation Order the Blind , (2013) 10 SCC 772 and Section 33 Order the Persons with Disabilities (Equal Opportunities, Protection Order Rights and Full Participation) Act, 1995.

3. The background facts Order the case indicate that the State Order Andhra Pradesh had short listed the Petitioner in 2002 for consideration for appointment to the IAS against Non State Civil Services Officers quota. The Petitioner was

interviewed but not selected. Even thereafter, the Petitioner was considered for appointment but was not short listed Order selected. The Petitioner says that in spite Order the reservation for persons with disabilities as provided Under Section 33 Order the Persons with Disabilities (Equal Opportunities, Protection Order Rights and Full Participation) Act, 1995 (for short "the PWD Act") which provides for 3% reservation for persons with disabilities in every establishment Order the appropriate Government, the Petitioner was not selected in the IAS.

4. At this stage, it may be mentioned that there are three modes Order recruitment to the IAS under the Indian Administrative Service (Recruitment) Rules, 1954. These are (a) by direct recruitment; (b) by promotion Order State Civil Services Officers; (c) by selection from amongst Non State Civil Service Officers. The case Order the Petitioner falls in the third category that is selection from amongst Non State Civil Services Officers.

5. When the Petitioner was not short listed for selection for the IAS in 2010, he approached the Central Administrative Tribunal, Hyderabad Bench by filing O.A. No. 1297 Order 2010 challenging the selection Order 15 candidates by the Selection Committee constituted for this purpose that had recommended the 15 candidates to the Union Public Service Commission for consideration for appointment in the IAS. The further prayer Order the Petitioner was for a direction to include his name in the short list sent by the State Order Andhra Pradesh under the physically handicapped quota and under S.C. category.

6. The State Order Andhra Pradesh and the Union Order India both contested the claim Order the Petitioner Order merits and at law. It was submitted by the State Order Andhra Pradesh and the Union Order India that the concerned Selection Committee had fully examined the records Order the candidates and thereafter did not shortlist the Petitioner. As such it was contended that the decision taken by the Committee could not be faulted. The State Order Andhra Pradesh and the Union Order India also contended that the Indian Administrative Service (Appointment by Selection) Regulations, 1997 do not provide for Rules Order reservation for including a candidate in the zone Order consideration. Therefore, apart from the contention that the Petitioner was not meritorious enough, the submission was that even at law the Petitioner had not made out any case for interference by the Tribunal.

7. The Tribunal by its Order dated 28th February, 2011 partly allowed the original application filed by the Petitioner. The Tribunal held that the short listing process by the Selection Committee was not at all satisfactory and therefore the short listing Order the 15 candidates was set aside as the selection was not fair.

8. With regard to the prayer Order the Petitioner that his name should be included in the short list, the Tribunal held that Order an earlier occasion it had dealt with a somewhat similar issue in O.A. No. 998 Order 2009. In that case the Tribunal had held that there was no provision for reservation in recruitment by promotion from the State Police to the Indian Police Service. It was held that the

rationale for coming to that conclusion holds good for recruitment by selection Order Non State Civil Services Officers to the IAS. Accordingly, it was held that the Petitioner had not made out any case for being short listed for selection.

9. The Tribunal, in a somewhat oblique manner, upheld the contention Order the State Order Andhra Pradesh and the Union Order India that there is no provision for reservation in the Indian Administrative Service (Appointment by Selection) Regulations, 1997 Order the Indian Administrative Service (Recruitment) Rules, 1954.

10. Feeling aggrieved, the Petitioner preferred Writ Petition No. 18563 Order 2011 in the High Court Order Andhra Pradesh. By its judgment and order dated 20th February, 2014 the High Court dismissed the writ petition (impugned).

11. The High Court did not even advert to the Indian Administrative Service (Recruitment) Rules, 1954 Order the Indian Administrative Service (Appointment by Selection) Regulations, 1997 but in a rather cryptic manner rejected the case set up by the Petitioner. The High Court held as follows:

7. The facts are not in dispute. As Order the date Order committee constituted for selecting Non-Indian Administrative Service Cadre from various departments, the Petitioner was eligible to be considered. The main contention Order the learned Counsel for the Petitioner is that the case Order the Petitioner has to be considered under office memo, dated 3.12.13, wherein the persons with disabilities have to be given preference in 3% reservation Order the total number Order vacancies in the cadre strength. But, in view Order the fact that the decision Order the Hon''ble Supreme Court and the amendment Order Office Memo dated 29.12.2005, is prospective, that amendment cannot be retrospective to the Petitioner to consider his case under 3% reservation Order persons with Disabilities Act. Therefore, we do not find any merit in this writ petition and it is liable to be dismissed.

12. The decision Order this Court referred to above is in the case Order National Federation Order the Blind which dealt with the Office Memorandum dated 29th December, 2005 and struck down paragraph 12 thereof.

13. Subsequent to the decision Order this Court, the Union Order India issued another Office Memorandum dated 3rd December, 2013 and inserted the following paragraph:

Reservation for persons with disabilities in Group A Order Group B post shall be computed Order the basis Order total number Order vacancies occurring in direct recruitment quota in all the Group A post and Group B post respectively, in the cadre.

14. A perusal Order the impugned judgment and order indicates quite clearly that the decision Order the High Court was based Order completely different grounds than the decision Order the Tribunal. In fact the reasons given by the Tribunal were not even remotely adverted to by the High Court.

15. Be that as it may, feeling aggrieved by the decision rendered by the High Court the Petitioner is now before us. The primary contention urged before us is that in view Order the decision Order this Court in National Federation Order the Blind read with Section 33 Order the PWD Act, the Petitioner is entitled to the benefit Order reservation for persons with disabilities in the matter Order short listing for selection to the IAS.

16. We may note at this stage that the Office Memorandum dated 3rd December, 2013 and more particularly the inserted paragraph mentioned above came up for consideration before the Delhi High Court in H.C. Sharma v. N.D.M.C. , 211 (2014) DLT 462. The Delhi High Court took the view that the inserted paragraph was contrary to the conclusions and directions in National Federation Order the Blind. Accordingly, the said paragraph was struck down. In coming to this conclusion, the High Court made a reference to Municipal Corporation Order Delhi v. Manoj Gupta , 171 (2010) DLT 600 and the dismissal Order 10th December, 2013 Order the petition for special leave to appeal against the decision Order the High Court in Manoj Gupta.

17. Be that as it may, the decision Order the High Court in H.C. Sharma came up for consideration before this Court and Order 18th December, 2014 leave was granted to challenge the decision. The Civil Appeal arising therefrom being C.A. No. 11895 Order 2014 is pending and has been tagged with C.A. No. 7295 Order 2012 (State Order Haryana v. Viklang Sangh).

18. Under these circumstances, we are Order the opinion that apart from the fact that this petition raises questions regarding the interpretation Order Section 33 Order the PWD Act read with the Indian Administrative Service (Appointment by Selection) Regulations, 1997 and the Indian Administrative Service (Recruitment) Rules, 1954 this petition also relates to the interpretation Order the Office Memorandum dated 29th December, 2005 and the Office Memorandum dated 3rd December, 2013. Since all these issues are inter-linked with the pending Civil Appeals, we are Order the view that for a comprehensive decision in the matter and to settle the controversy, it will be more appropriate if leave is granted to the Petitioner and this matter is tagged along with C.A. No. 7295 Order 2012 and C.A. No. 11895 Order 2014.

19. Accordingly, we grant leave and tag this appeal with C.A. No. 7295 Order 2012 and C.A. No. 11895 Order 2014.