

(2010) 07 SC CK 0029

In the Supreme Court Of India

Case No : Special Leave Petition (C) No. 14889 of 2009

Govt. of India through Secretary and Another

APPELLANT

Vs

Ravi Prakash Gupta and Another

RESPONDENT

Date of Decision : 07-07-2010

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Constitution of India, 1950 — Article 21

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 32, 33

Citation : (2010) AWC 5920 : (2010) 7 SCC 626 : (2011) 1 SLR 109 : (2010) 5 SLR 165

Hon'ble Judges : Cyriac Joseph, J;Altamas kabir, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Altamas Kabir, J.—The Government of India, through the Secretary, Ministry of Personnel & Public Grievances, Department of Personnel and Training and through the Secretary, Ministry of Social Justice and Empowerment, has filed this SLP against the judgment and order dated 25th February, 2009, passed by the Delhi High Court in Writ Petition (Civil) No. 5429 of 2008, allowing the Writ Petition and setting aside the order dated 7th April, 2008, passed by the Central Administrative Tribunal, Principal Bench, New Delhi, in O.A. No. 1397 of 2007, filed by the Respondent No. 1 herein, and allowing the reliefs prayed for therein.

2. The Respondent No. 1 is a visually handicapped person who suffers from 100% blindness. He appeared in the Civil Services Examination conducted by the Union Public Service Commission in the year 2006. After clearing the preliminary examination, the Respondent No. 1 appeared for the main examination in October, 2006 and was declared successful and was, thereafter, called for a personality test scheduled for 1st May, 2007. Pursuant to such interview, the names of 474 candidates who were selected were released on 14th May, 2007. In the said list, the name of one other visually impaired candidate also figured.

The Respondent No. 1 was at serial No. 5 of the merit list prepared for visually handicapped candidates, who had been declared successful in the examination. According to the Respondent No. 1, although there were more than 5 vacancies available in the visually handicapped category, only one post was offered under the said category and he was, therefore, not given appointment despite the vacancies available.

3. Being aggrieved by the manner in which selections were made for appointment in the visually handicapped category, the Respondent No. 1 filed a Writ Petition, being Writ Petition (Civil) No. 5338 of 2007, before the Delhi High Court. The same was subsequently withdrawn since it was the Central Administrative Tribunal only which had jurisdiction to entertain such matters at the first instance. The Respondent No. 1, accordingly, withdrew the Writ Petition, with liberty to approach the Central Administrative Tribunal. Thereafter, he filed an application u/s 19 of the Administrative Tribunals Act, 1985, which was registered as O.A. No. 1397 of 2007, staking his claim for appointment under the reservation of vacancies for disabled categories provided for u/s 33 of the Persons with Disabilities (Equal Opportunities, Protection, Rights and Full Participation) Act, 1995, hereinafter referred to as 'the Disabilities Act, 1995'. The basic contention of the Respondent No. 1 was that since the aforesaid Act came into force in 1996 providing a statutory mandate for reservation of 3% of the posts available for persons suffering from different kinds of disabilities enumerated in Section 33 of the Disabilities Act, 1995, such reservation ought to have been in force with effect from the date on which the Act came into force. According to the Respondent No. 1, if the vacancies were to be considered from the year 1996, then instead of one vacancy being declared for the year in question, there should have been at least 7 vacancies from the reserved categories of disabilities which were interchangeable. It was, therefore, the case of the Respondent No. 1 that having regard to the number of appointments made with regard to the disabled categories reserved u/s 33 of the Disabilities Act, 1995, since the Act came into force, there were at least posts which could be filled up in the year 2006. However, in that year only one post from this category had been filled. It was, therefore, the case of the Respondent No. 1 that being at serial No. 5 of the list of successful candidates amongst the physically impaired candidates, there were sufficient number of vacancies in which he could have been appointed and that the authorities had acted contrary to the provisions of the above Act upon the faulty reasoning that the vacancies in the reserved posts could not be declared, without first identifying the same for the purposes of Sections 32 and 33 of the Disabilities Act, 1995.

4. The case of the Respondent No. 1 having been negated by the Tribunal, the Respondent No. 1 as indicated hereinbefore, moved the High Court and the High Court, upon accepting the Respondent No. 1's case, set aside the order of the Central Administrative Tribunal dated 7th April, 2008, and allowed the Respondent No. 1's O.A. No. 1397 of 2007 filed before the Tribunal. While allowing the said application, the High Court, upon observing that a clear

vacancy was available to which the Respondent No. 1 could be accommodated on the basis of his position in the merit list, issued a mandamus to the Respondent No. 1 to offer him an appointment to one of the reserved posts by issuing an appropriate appointment letter, within six weeks from the date of the order. Certain consequential orders were also passed together with cost of Rs. 25,000/- to be paid by the Petitioner herein.

5. On behalf of the Government of India, which is the Petitioner herein, learned Additional Solicitor General, Ms. Indira Jaising, submitted that the submissions advanced on behalf of the Respondent No. 1 which had been accepted by the High Court, were not tenable and that the Government of India had been actively involved in complying with the provisions of the Disabilities Act, 1995, after it came into force. The learned ASG contended that the Government of India had been making reservation for physically handicapped persons in Group 'C' and 'D' posts from 1977 and in order to consider the growing demand from the visually handicapped persons, a meeting for identification of jobs in various Ministries/Departments was scheduled in 1985 and 416 such posts were identified in Group 'A' and 'B' posts. In 1986, an Office Memorandum was issued by the Department of Personnel & Training (DoPT) providing for preference to be given to handicapped person for these posts. In 1988, another Office Memorandum was issued by the Government of India indicating that the identification done in the year 1986 would remain valid till the same was modified. After the Act came into force in 1996, a further Office Memorandum was issued, whereby reservation of physically handicapped persons in identified Group 'A' and Group 'B' posts/services was extended to posts which were to be filled up through direct recruitment. Learned ASG submitted that in 1999 the Ministry of Social Justice & Empowerment constituted an Expert Committee to identify/review posts in categories 'A', 'B', 'C' and 'D', in which recommendations were made for identification of posts for the visually handicapped persons. The report of the Expert Committee was accepted by the Ministry in 2001 and posts were duly identified for persons with disabilities. Learned ASG, however, made it clear that the 416 posts, which had been identified in 1985, did not include All India Services and that for the first time in 2005, the posts of the Indian Administrative Service were identified in compliance with the provisions of Section 33 of the Disabilities Act, 1995 and pursuant to such identification, the posts were reserved and filled up. Ms. Jaising also submitted that reservation upto 3% of vacancies in the reserved posts were, accordingly, identified with effect from 2006 and the claim of the Respondent No. 1 for appointment on the basis of the argument that the reservation should have taken effect from 1996 when the Act came into force, was liable to be rejected.

6. Appearing in-person, Mr. Ravi Prakash Gupta, the Respondent No. 1 herein, strongly defended the impugned judgment of the High Court and urged that the SLP filed by the Government of India was liable to be dismissed. Mr. Gupta submitted that the fact that he was completely blind was known to the Petitioners and their respective authorities from the very beginning, since he had

annexed his blindness certificate with his original application in the proforma provided by the Union Public Service Commission (U.P.S.C.), which showed the percentage of his blindness as 100%. However, the main thrust of Mr. Gupta's submissions was that when the Disabilities Act, 1995, came into force in 1996, it was the duty of the concerned authorities to reserve 3% of the total vacancies available immediately thereafter. The plea of non-identification of posts prior to the year 2006 was only an attempt to justify the failure of the Petitioners to act in terms of the Disabilities Act, 1995. Mr. Gupta submitted that the High Court had negated such contention made on behalf of the Petitioners and rightly directed the Petitioners to calculate the number of vacancies in terms of Section 33 of the above Act from 1996 when the said Act came into force.

7. Mr. Gupta then submitted that in terms of the Department's OM No. 3635/3/2004 dated 29th December, 2005, reservations have been earmarked and should have been made available from 1996 itself and in the event the vacancies could not be filled up owing to lack of candidates, the same could have been carried forward for two years after which the same could have been treated as lapsed. Mr. Gupta submitted that although the Petitioners were fully aware of the said Office Memorandum, they chose not to act on the basis thereof and as admitted on behalf of the Government of India, the IAS cadre was identified in 2006 for the purposes of Section 33 of the Disabilities Act, 1995. In fact, the Act remained on paper as far as visually challenged candidates were concerned and only after the judgments of the Delhi High Court in the case of Ravi Kumar Arora and in the case of T.D. Dinakar were delivered, that the identification process was started. Mr. Gupta submitted that it would be pertinent to mention that the two above-mentioned candidates were appointed in the Civil Services without waiting for identification of their respective services on the orders of the High Court.

8. Mr. Gupta submitted that the plea of non-identification of posts in the IAS till the year 2006 could not absolve the petitioners of their statutory obligation to provide for reservation in terms of Section 33 of the aforesaid Act.

9. During the course of hearing, leave had been granted to one A.V. Prema Nath and one Mr. Rajesh Singh to intervene in the proceedings. The submissions made by the Respondent No. 1 have been repeated and reiterated on behalf of the Intervenor No. 1, Shri A.V. Prema Nath by A. Sumathi, learned Advocate. His written submissions are embellished with references to various decisions of this Court, including the decision in Francis Coralie Mullin Vs. Administrator, Union Territory of Delhi and Others, , regarding the right to life under Article 21 of the Constitution. The main thrust of the submissions is with regard to the denial of rights to persons with disabilities u/s 33 of the Disabilities Act, 1995, which prevent them from enjoying their fundamental rights to equality and the right to live, by the State.

10. More detailed submissions were made by Mr. S.K. Rungta, learned Advocate, appearing on behalf of the Intervenor No. 2, Mr. Rajesh Singh, and it was also

sought to be pointed out that the said intervenor was himself a candidate from amongst the visually impaired candidates and had, in fact, been placed at serial No. 3 in rank in the merit list for visually impaired candidates in the Central Services Examinations, 2006, whereas the Respondent No. 1 had been placed at serial No. 5. In other words, what was sought to be projected was that Shri Rajesh Singh had a better claim for appointment from amongst the visually impaired candidates over the Respondent No. 1 and that if the vacancies in the reserved category were to be calculated from 1996 and even from 2001, when identification of posts in respect of Civil Services forming part of the IAS Cadre was sought to be effected and a notification to that effect was issued, the Respondent No. 1 could not have been appointed.

11. It was further submitted that in the decision of this Court in National Federation of Blind Vs. Union Public Service Commission and Others, , the demand by blind candidates for being permitted to write the examination in Braille script, or with the help of a Scribe, for posts in the IAS was duly accepted for recruitment to the lowest posts in the service reserved for such persons. It was also held that blind and partially blind persons were eligible for appointment in Government posts. It was submitted that the submissions made on behalf of the Petitioners that the notification in respect of the services in respect of the Group 'A' and 'B' services in the IAS in 2005 was not a fresh exercise, but only an attempt to consolidate and strengthen the identification already available and that such an exercise could at best be said to be enabling and supplementary action for the smooth implementation of the statutory provisions containing the scheme of reservation for persons with disabilities, could not be taken as an excuse to postpone the benefit which had already accrued to candidates falling within 3% of the vacancies indicated in Section 33 of the Disabilities Act, 1995. It was also urged that after the issuance of OM dated 29th December, 2005 and OM dated 26th April, 2006, there was hardly any room for the Government of India to deny the benefit of reservation to persons with disabilities, including the blind, in Civil Services encompassing the IAS from the year 1996 itself. Furthermore, since the Act itself did not make any distinction between Group 'A' and Group 'B' services and Group 'C' and Group 'D' services, it was not available to the Government of India to contend that since identification had been done only for Group 'C' and Group 'D' services, prior to the year 2005, reservation in respect of Group 'A' and 'B' services, which include the IAS, for which identification was commenced in 2005, would only be available thereafter.

12. On behalf of the Intervenor No. 2, it was submitted that the SLP was liable to be dismissed with exemplary costs.

13. We have examined the matter with great care having regard to the nature of the issues involved in relation to the intention of the legislature to provide for integration of persons with disabilities into the social main stream and to lay down a strategy for comprehensive development and programmes and services and equalization of opportunities for persons with disabilities and for their

education, training, employment and rehabilitation amongst other responsibilities. We have considered the matter from the said angle to ensure that the object of the Disabilities Act, 1995, which is to give effect to the proclamation on the full participation and equality of the people with disabilities in the Asian and Pacific Region, is fulfilled.

14. That the Respondent No. 1 is eligible for appointment in the Civil Services after having been declared successful and having been placed at serial No. 5 in the disabled category of visually impaired candidates, cannot be denied. The only question which is relevant for our purpose is whether on account of the failure of the Petitioners to identify posts for persons falling within the ambit of Section 33 of the Disabilities Act, 1995, the Respondent No. 1 should be deprived of the benefit of his selection purportedly on the ground that there were no available vacancies in the said category. The other question which is connected with the first question and which also requires our consideration is whether the reservation provided for in Section 33 of the Disabilities Act, 1995, was dependent on identification of posts suitable for appointment in such categories, as has been sought to be contended on behalf of the Government of India in the instant case.

15. Although, the Delhi High Court has dealt with the aforesaid questions, we wish to add a few observations of our own in regard to the objects which the legislature intended to achieve by enacting the aforesaid Act. The submission made on behalf of the Union of India regarding the implementation of the provisions of Section 33 of the Disabilities Act, 1995, only after identification of posts suitable for such appointment, u/s 32 thereof, runs counter to the legislative intent with which the Act was enacted. To accept such a submission would amount to accepting a situation where the provisions of Section 33 of the aforesaid Act could be kept deferred indefinitely by bureaucratic inaction. Such a stand taken by the petitioners before the High Court was rightly rejected. Accordingly, the submission made on behalf of the Union of India that identification of Grade 'A' and 'B' posts in the I.A.S. was undertaken after the year 2005 is not of much substance. As has been pointed out by the High Court, neither Section 32 nor Section 33 of the aforesaid Act makes any distinction with regard to Grade 'A', 'B', 'C' and 'D' posts. They only speak of identification and reservation of posts for people with disabilities, though the proviso to Section 33 does empower the appropriate Government to exempt any establishment from the provisions of the said Section, having regard to the type of work carried on in any department or establishment. No such exemption has been pleaded or brought to our notice on behalf of the petitioners.

16. It is only logical that, as provided in Section 32 of the aforesaid Act, posts have to be identified for reservation for the purposes of Section 33, but such identification was meant to be simultaneously undertaken with the coming into operation of the Act, to give effect to the provisions of Section 33. The legislature never intended the provisions of Section 32 of the Act to be used as a tool to

deny the benefits of Section 33 to these categories of disabled persons indicated therein. Such a submission strikes at the foundation of the provisions relating to the duty cast upon the appropriate Government to make appointments in every establishment (emphasis added). For the sake of reference, Sections 32 and 33 of the Disabilities Act, 1995, are reproduced hereinbelow:

32. Identification of posts which can be reserved for persons with disabilities.- Appropriate Governments shall -

(a) Identify posts, in the establishments, which can be reserved for the persons with disability;

(b) At periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the developments in technology.

33. Reservation of posts.- 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, in 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.

17. While it cannot be denied that unless posts are identified for the purposes of Section 33 of the aforesaid Act, no appointments from the reserved categories contained therein can be made, and that to such extent the provisions of Section 33 are dependent on Section 32 of the Act, as submitted by the learned ASG, but the extent of such dependence would be for the purpose of making appointments and not for the purpose of making reservation. In other words, reservation u/s 33 of the Act is not dependent on identification, as urged on behalf of the Union of India, though a duty has been cast upon the appropriate Government to make appointments in the number of posts reserved for the three categories mentioned in Section 33 of the Act in respect of persons suffering from the disabilities spelt out therein. In fact, a situation has also been noticed where on account of non-availability of candidates some of the reserved posts could remain vacant in a given year. For meeting such eventualities, provision was made to carry forward such vacancies for two years after which they would lapse. Since in the instant case such a situation did not arise and posts were not reserved u/s 33 of the Disabilities Act, 1995, the question of carrying forward of

vacancies or lapse thereof, does not arise.

18. The various decisions cited by A. Sumathi, learned Advocate for the first intervenor, Shri A.V. Prema Nath, are not of assistance in the facts of this case, which depends on its own facts and interpretation of Sections 32 and 33 of the Disabilities Act, 1995.

19. We, therefore, see no reason to interfere with the judgment of the High Court impugned in the SLP which is, accordingly, dismissed with costs. All interim orders are vacated. The petitioners are given eight weeks' time from today to give effect to the directions of the High Court.

20. The petitioners shall pay the cost of these proceedings to the respondent No. 1 assessed at Rs. 20,000/-, within four weeks from date.