
(2017) 05 RAJ CK 0019
In the Rajasthan High Court
Case No : 692 of 2017

Neetu Harsh D/o Shri Vijay Kumar Harsh	APPELLANT
Vs	
The State of Rajasthan	RESPONDENT

Date of Decision : 04-05-2017

Acts Referred:

Constitution of India, Article 15 -
Annulment or suspension of acts and resolutions of District and Regional Councils
Persons With Disabilities (Equal Opportunities, Protection of Rights and
Ful

Citation : (2017) 05 RAJ CK 0019

Hon'ble Judges : Gopal Krishan Vyas, G.R. Moolchandani

Bench : DIVISION BENCH

Advocate : MS Singhvi, B.K. Vyas, Hemant Dutt, SK Vyas, Dr. Sachin Acharya

Final Decision : Allowed

Judgement

1. The instant writ petition has been filed by the petitioner having 80% physical disability for seeking direction to modify the final result notice dated 15.11.2016 and to consider her candidature under physically handicapped category against one unfilled post reserved for physically handicapped category candidate and to decide the representation dated 28.11.2016 (Annex.11) in accordance with law and provide appointment on the post of Civil Judge-cum-Judicial Magistrate against post of Civil Judge Cadre kept reserved for the physically handicapped category.

2. As per facts of the case, the petitioner acquired qualification

of graduation from Maharaja Ganga Singh University, Bikaner in the year 2006 And further acquired qualification of L.L.B. in the year 2009 and L.L.M. in the year 2011 from the same University.

3. The petitioner faced eye sight problem, therefore, after examination of her eyes by the medical board of three doctors of PMB Hospital, Bikaner. The Board declared that she is having 80% disability and issued certificate Annex.5 of permanent disability on 5.7.2010.

4. The petitioner being eligible to appear in the competitive examination of Civil Judge Cadre applied under the category of physically handicapped category in the Rajasthan Judicial Service year 2013 and she was allowed to appear under the category of persons with disability in the preliminary examination and after getting requisite marks in preliminary examination, allowed to appear in main examination under roll no.3843. Under aforesaid roll number she appeared in the main examination held on 14-15.6.2014. In the said competitive examination, cut off marks for the category of physically disabled candidate was not declared, therefore, preferred DBCWP NO.8364/2014 against non-declaration of cut off marks of the persons with disability category, however, the said writ petition was withdrawn.

5. In the year 2016 again 72 posts were advertised for appointment on the post of Civil Judge-cum-Judicial Magistrate in Civil Judge Cadre by the respondents and out of 72 vacancies, 2 vacancies were kept reserved for persons with disabilities as per the Persons with Disabilities (Equal Opportunities, Protection and Rights and Full Participation) Act, 1995 and Rajasthan Persons with Disabilities (Equal Opportunities, Protection and Rights and Full Participation) Rules, 2011 (hereinafter referred to as the Act of 1995 and the Rules of 2011 for short). The petitioner having

requisite qualification again applied in pursuance of the said advertisement for direct recruitment to the post of Civil Judge and Judicial Magistrate in Civil Judge Cadre. In the online application form submitted by the petitioner in column no.2.4 filled up her category as "general", but inadvertently by mistake, mentioned "no" against column no.3.1 which is meant for the person with disability (differently abled). The petitioner was allowed to appear in the preliminary examination and declared successful to appear in the main examination and allowed by the respondents High Court to appear in the main examination while issuing admission card of roll no.5046.

6. The petitioner appeared in the main examination, the result of main examination was declared on 15.11.2016. In the said notice the respondents disclosed the cut off marks of each category including persons with disabilities category. The said notice of result is placed on record as Annex.10, in which cut off marks for persons with disabilities category was shown as 138 marks and petitioner obtained total 136 marks, therefore, her name was placed at S.No.137 in the final result notice dated 15.11.2016.

7. It is submitted by the petitioner that in the notice of final result dated 15.11.2016 only one candidate Renu Motwani (S.No.57) was considered for appointment under the category of disable persons in spite of the fact that two posts were kept reserved for physically handicapped category candidates. After declaration of final result on 15.11.2016 to rectify the mistake a representation was filed by the petitioner on 28.11.2016 with request to consider her candidature under the category of persons with disability and if found suitable as per merit, then to provide appointment on the post of Civil Judge-cum-Judicial Magistrate in

Civil Judge Cadre under the competitive examination, 2016.

8. In response to the representation filed by the petitioner it is informed through SMS that your representation dated 28.11.2016 to consider of your candidature under the category of persons with disability in Civil Judge Cadre Examination, 2016 has been considered and rejected. Being aggrieved by the said rejection, the petitioner has preferred this writ petition for seeking direction to the respondents to rectify the bonafide mistake and consider her candidature under the category of physically handicapped candidate on the ground that in previous examination of 2013 she was allowed to appear under the category of physically handicapped candidate but not selected in the competitive examination, 2016 two vacancies were kept reserved and only one candidate Renu Motwani has been appointed under the disabled category and one post in the said category is still lying vacant, therefore, on the basis of certificate of disability which is said to be issued on 5.7.2010 considered her case against unfilled vacancy, kept reserved for physically disabled candidates.

9. Learned counsel for the petitioner submits that the Act of 2011 was enacted by the Parliament with specific provision under Section 36 of the Act of 1995 that 3% vacancies in every employment shall be kept reserved for the physically handicapped candidates and if that vacancy not filled in, in particular year, then said vacancy should not be filled-in amongst general category candidate or other candidates and the vacancy should be carry forward to the next year. It is argued that the fact of the petitioner's disability was well within the knowledge of the respondents because earlier petitioner was allowed to appear under the category of physically handicapped candidate in the same examination. In the representation filed by the petitioner it

is prayed that she belongs to physically handicapped category and vacancy is still available, therefore, even if by mistake the petitioner mentioned "no" in the category meant for physically disabled, then it was the duty of the respondents to consider her case against unfilled vacancy of disabled candidate while taking into consideration the fact that earlier she appeared under the category of physically handicapped person and due to bonafide mistake mentioned "no" in the column prescribe for the category of physically handicapped person.

10. The learned Senior Advocate Sh. MS Singhvi assisted by BK Vyas and Hemant Dutt vehemently argued that the purpose of enactment of the Act of 1995 is to provide certain benefits to the disabled candidates so as to improve their status in the society. The State Government and all the departments of Central Government are under obligation to comply the provisions of the Act of 1995 so as to grant opportunity to the reserved category of physically handicapped but in this case, of course, a mistake was committed by the petitioner in the subsequent examination for not mentioning her category of physically handicapped, but soon after the declaration of the result, a representation was filed to consider her case under the category but it has been rejected only on the ground that in the application form, petitioner did not claim reservation for appointment under physically handicapped category candidate.

11. The learned senior advocate Sh. MS Singhvi vehemently argued that once two vacancies were kept reserved for the disabled candidates then obviously efforts were to be made by the respondents so as to fill up both the vacancies but here in this case, as per reply filed by the respondents the said vacancy has been filled in by providing appointment to the general candidate

which is in contravention of the spirit of 1995. It is also argued that under Article 15 of the Constitution of India it is the duty of the respondents as well as of this court to see the welfare of the candidates belonging to reserved category of physically handicapped because mistake can be committed by any person, therefore, even if in the application form the petitioner did not disclose her category as physically handicapped category and appeared as general candidate then also in the event of getting information in the representation filed by the petitioner, it was the duty of the respondents to consider her prayer to consider her candidature against the reserved category because she was allowed to appear under the category of physically handicapped candidate in previous examination of 2013 to achieve the intention of the enactment of the Act of 1995 because the Parliament has enacted the Act of 1995 so as to provide some relief to the disabled candidates. It is also argued that very harsh decision to reject the representation has been taken by the respondents knowing well that petitioner secured 136 marks and candidate secured 138 marks has already been provided appointment against two posts kept reserved for physically handicapped category and no other physically disabled candidate is available, therefore, direction may be issued to the respondents to consider the case of the petitioner under the category of physically handicapped persons and provide appointment in the Civil Judge Cadre.

12. Learned counsel for the petitioner invited our attention towards the following judgments:

1. State of Rajasthan & Ors. Vs. Ms. Jamna Rajpurohit reported in 2014(1) WLN 348 (Raj.)
2. Seema Kumari Sharma (Mrs.) Vs. State of H.P. & Ors. reported (1998) 9 SCC

3. The State of Rajasthan & Anr. Vs. Smt. Madhubala (DBSAW No.271/2000), decided on 20.10.2000

4. Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board & Anr. Reported in (2016) 4 SCC 754

5. Union of India Vs. National Federation of Blind and Ors reported in 2013 (10) SCC 772

6. Rajiv Kumar Gupta Vs. Union of India reported in 2016(13) SCC 153

7. Ashok Kumar Giri Vs. Union of India & Ors reported in (2016) 6 SCC 511

13. While inviting attention towards the aforesaid judgments and the provisions of the Act, it is submitted that denial of appointment to the petitioner under the category of physical handicapped against the quota kept reserved is unconstitutional, therefore, respondents may be directed to consider the case of the petitioner for appointment under the physically handicapped category.

14. Per contra, learned counsel Dr. Sachin Acharay appearing for the respondents nos.2 and 3 argued that petitioner with open eyes filled up the online application form and appeared in the competitive examination as General candidate conducted by the respondents for recruitment on the post of Civil Judge-cum-Judicial Magistrate in Civil Judge Cadre. The petitioner applied as a general (non-Ph. Category) and participated in the selection process without any protest then how she can claim any right to consider her candidature under the category of persons with disability and to get appointment against two posts notified for Civil Judge-cum-Judicial Magistrate Examination, 2016 under the category of physically handicapped. Learned counsel for the respondents further submitted that online application form was filled in by the petitioner on 4.4.2016. Her candidature was accordingly processed and admission card was issued on 9.9.2016

for appearing in the examination as General category candidate. Right from 3.4.2016 to 15.11.2016 though she was having ample opportunity for making application for rectification of her mistake in her online application form but no steps were taken nor any application for correction was filed, therefore now she cannot claim consideration against the vacancy kept reserved for physically handicapped candidates. The learned counsel for the respondents submitted that the representation of the petitioner has rightly been considered and rejected in the light of the decision of Division Bench of this Court passed in DBCWP No.3331/2014 : Sunil Bhanwariya Vs. Registrar, Examination Cell, Rajasthan High Court, Jodhpur & Ors decided on 12.5.2014 in which it is held that it is incumbent on the candidate to read the instruction of the advertisement carefully and once the form is duly filled in and submitted the respective candidate will not be given any opportunity to rectify or make any changes if the details so submitted are wrongly supplied. The crux of argument of learned counsel for the respondents is that once the petitioner appeared as general candidate and did not raise her grievance uptill the declaration of result then how she can be permitted to make a prayer to consider her candidature against the unfilled vacancy kept reserved under the category of physically handicapped. It is also argued that appearing in the same examination earlier under the physically handicapped category does not create any right in favour of the petitioner because she herself filled in the online application form and failed to mention that she belongs to the person with disability category, therefore at this stage, when process of appointment has come to an end, the petitioner cannot claim appointment as a matter of right on the ground that she secured 136 marks in the said examination

and entitled for appointment against the unfilled vacancy kept reserved for physically handicapped and because the unfilled post has already been filled in by the respondents.

15. Learned counsel for the respondents further our invited attention towards two more judgments in the case of Akram Khan

Vs. Rajasthan High Court, Jodhpur & Anr. (DBCWP

No.7410/2016), decided on 21.7.2016 and in the case of

Managing Director, Ajmer Vidhyut Vitran Nigam Ltd, Ajmer Vs.

Hitesh Kukmar & Anr (DBSAW No.85/2015), decided on 1.8.2016

and submits that no case is made out in favour of the petitioner so

as to consider her case against the vacancy kept reserved for

disabled candidates because petitioner herself guilty not to claim reservation under the category of physically handicapped person.

After hearing learned counsel for the parties, first of all it is

required to be observed that respondents are not disputing the

fact that in the competitive examination for the same post held in

the year 2013, the petitioner was allowed to appear under the

physically handicapped category because she is having 80%

disability which is evident from the certificate (Annex.5), placed

on record issued on 5.7.2010 by the medical board of PBM

Hospital, Bikaner. There is no argument of the petitioner that

mistake has been committed by the respondents or any candidate

having less percentage of marks has been provided appointment

under the category of physically handicapped. The petitioner has

come out with the case that earlier she was allowed to appear

under the category of physically handicapped candidate and as per

provisions of the Act of 1995, specifically enacted by the

Parliament for upliftment of disabled persons, a reasonable

decision was to be taken by the respondents so as to rectify the

bonafide mistake committed by the petitioner, in not mentioning

the category of physically handicapped in the online application form.

16. Upon consideration of entire material available on record and pleadings it is nowhere said by respondents that certificate issued by the competent authority declaring the petitioner as disabled candidate, having 80% disability is not genuine or forged document. More so, the respondents are not disputing the fact that petitioner was allowed to appear in the same competitive examination for the same post in the year 2013 under the category of physically handicapped. The only ground in the reply is that recital of any earlier recruitment process, the same not being subject matter of this writ petition doing no aid to the petitioner. It is true that earlier writ petition was filed by the petitioner for not declaring cut off marks because she appeared under the category of physically handicapped was withdrawn, but it is also admitted fact that petitioner again appeared in the same examination subsequently conducted by the respondents for recruitment on the post of Civil Judge-cum-Judicial Magistrate in pursuance of advertisement dated 12.3.2016. It is also not in dispute that two vacancies were kept reserved for physically handicapped candidate and out of two vacancies, only one vacancy is filled in by way of providing appointment to the candidate Renu Motwani whose name is appearing at S.no.57 in the final result. The main question which arose for consideration in this writ petition is that "whether a candidate in spite of the fact that she belongs to the physically handicapped category did not mention the category of disable person in the online application form, can be considered against the unfilled vacancy, which is kept reserved for physically handicapped candidate even after inviting attention by her subsequently that she belongs to the

physically handicapped candidate and post is still in existence.

17. In view of the reply, it is required to be observed that the respondents cannot be held liable for the mistake committed by the petitioner for not mentioning her category of physically handicapped in the online application form, but at the same time, when it has come to the knowledge of the respondents when representation was filed by the petitioner much before the appointment orders were issued that due to bonafide mistake petitioner has failed to mention her category of physically handicapped, the appointment cannot be denied. The Parliament has enacted the Act purposefully with a view to provide some relief and uplift the conditions of physically handicapped candidates. There is no dispute candidates are required to furnish correct information in the application form, but here in this case, it is beyond imagination that if a candidate belong to physically handicapped category, appeared in the previous examination under the said category will not claim any reservation in the subsequent examination being physically handicapped candidate. It is expected from the candidate that mistake should not be committed by them, but how a disabled person can be equated with the general category candidate so as to not commit any mistake. If a person declared disabled by the competent authority having 80% disability can commit a mistake, therefore, the Parliament purposefully enacted the Act for such type of disabled persons, therefore, obviously at the time of inviting attention by the disabled candidate to the competent authority that by bonafide mistake he was failed to mention the category, then the decision was required to be taken sympathetically by the authorities and the said decision should not be in bracketed form of the rules because there is provision in the Act not to fill the

vacancy kept reserved for physically handicapped persons from the general category or other reserved category. We have failed to understand the stand taken by the respondents that the reserved vacancy has already filled in from other category, therefore, no direction can be issued to consider her candidature in the Ph.category.

18. We are living in democracy where elected persons are representing citizens including weaker section of the society. The Parliament has enacted the Act of 1995 so as to provide opportunity to the disabled candidates for there upliftment, therefore, it is the duty of all the authorities including respondents to take decision with the spirit of the Act of 1995. The representation of the general category candidate can be rejected if mistake is committed by him but at the time of considering the representation of disabled candidate, it is the duty of the respondents to consider not only the disability of the candidate but also the fact that Parliament has enacted the Act of welfare and to provide relief to the candidate having physically deficiency.

19. We have considered the case of the petitioner from another angle that the petitioner being woman disabled candidate appeared in the competitive examination of the same post under the category of disabled candidate and even preferred the writ petition before this Court because cut off marks of physically handicapped category was not declared for the reasons that horizontal reservation is provided for the physically handicapped candidate. As per facts stated in the reply it was well within the knowledge of the respondents that earlier being disabled category candidate the petitioner preferred writ petition before this Court seeking direction to declare cut off marks of physically

handicapped candidate and if it was well within the knowledge of the respondents, then obviously, at the time of decision the representation of the petitioner the bonafide mistake committed by her was to be ignored but while giving information on SMS, it is informed to the petitioner that your representation has been considered and rejected. The purpose of enacting the Act of 1995 is to give some relief to the disabled candidates. The petitioner not only the woman candidate, but also, she was allowed to appear in the examination earlier under the category of physically handicapped candidate and preferred writ petition before this court so as to declare cut off marks of the physically handicapped candidate, therefore, obviously, it was well within the knowledge of the respondents that petitioner belongs to the physically handicapped candidate, therefore, when this fact was mentioned by the petitioner in her representation, then it was the duty of the respondents to consider the said fact so as to provide appointment to the petitioner against the vacancy, which is kept reserved for physically handicapped candidate.

20. We have perused the judgment rendered by the Division Bench of this court in the case of State of Rajasthan Vs. Ms.

Jamna Rajpurohit (supra). In that case, the petitioner Ms. Jamna Rajpurohit submitted in her writ petition that pursuant to an advertisement dated 27.2.2012 (Annex.12), the applications were invited by the Rajasthan Public Service Commission, Ajmer in the year 2012 for direct recruitment on the post of Teacher Grade-III. She applied for the post by filling up online application form on 24.3.2012 and at the relevant time, she was falling in general category and filled up form accordingly. She was allowed to appear in the examination on 2.6.2012 but unfortunately, after appearing in the examination, her husband expired on 18.6.2012,

thereafter, result of the examination was declared on 24.8.2012.

In the meantime, a representation was submitted by her on 2.7.2012 to consider her candidature under widow category because her husband expired during process of selection. The respondents rejected the prayer of Ms. Jamna Rajpurohit, therefore, the writ petition preferred by her being SBCWP No.8899/2012 in which the learned Single Judge after considering all the facts issued directions to consider her candidature for appointment on the post of Teacher Grade-III, II Level in Social Study subject as per merit under the widow category. The State of Rajasthan preferred special appeal against the said judgment of learned Single Judge dated 29.8.2012 in which the Division Bench of this Court in the judgment reported in 2014(1) WLN 348 (Raj.) dismissed the special appeal and uphold the judgment of learned Single Judge. The paras nos.12 to 14 of the said judgment reads as follow:

"12. It remains a matter of hard reality and of fact that each of the writ-petitioners was a married woman with her husband very much alive at the time of her filling up the application form. They had submitted the form and filled in the category as applicable. It had been an unfortunate aspect that after filling up of the forms, they lost their respective husbands. The cases of the writ-petitioners could not have been considered as that of seeking any "permission" to change the category. In fact, their category got changed for vis major over which, they had no control; rather they would have never wished it to happen. 13. Vis major i.e., act of God, refers to an occurrence taking place exclusively due to natural causes, and being of external nature, and further being the one which cannot be anticipated or provided against. Sudden demise of a person remains essentially a matter beyond the control and anticipation of human beings. Such an unfortunate event could nevertheless happen, as has happened in the present cases. The appellants cannot be considered justified in suggesting that such an unfortunate event can also be ignored by them with a perfunctory reference to the stipulation like the one referred above. It remains trite that the law does not envisage nor countenance an absurdity or impossibility. The propositions of the appellants, running against the very fundamentals of law, are required to be rejected. 14. We are further of the view that when the appellants have provided for a special reservation to a category of

persons requiring help and support of the State i.e., the women suffering widowhood, any provision in that relation ought to be applied with a practical approach and with due respect to the ground realities. The very object behind reservation for widow category would be defeated, if not rendered illusory, if the peculiar facts and circumstances of the case of a woman suffering widowhood after filling up of the application form but before completion of recruitment process, are ignored and she is not considered for appointment in widow category. We are at one that the observations in the orders impugned that in these cases, the concerned authorities were rather under an obligation to consider the candidature of the writ-petitioners in widow category. In view of the above, these appeals stand dismissed summarily, subject, of course, to the observations foregoing."

21. In the case of Seema Kumari Sharma Vs. State of HP & Anr.

Reported in (1998) 2 SCC 128 the Hon"ble Supreme Court while quashing the judgment of tribunal held that failure to furnish the certificate alongwith the application form does not disentitle her to claim the status for consideration of award of 10 marks and issued direction to declare the result of the petitioner and further ordered that her case for appointment shall be considered in accordance with rules. The following adjudication is made by the Hon"ble Supreme Court, which reads as under:

"1. Leave granted. 2. We have heard learned Counsel on both sides. 3. These appeals by special leave arise from the order of the Central Administrative Tribunal, Shimla Bench made in O.A. No. 619/95 and the review order. The admitted position is that the Director of Education issued a notice for Junior Basic Teacher's Training. The criteria for selection was 100 marks based on the percentage of marks obtained in matric or equivalent examination. 20 marks for candidates belonging rural areas and 10 marks for candidates belonging to backward panchayat were allotted. Similarly, 10 marks were allotted for candidates belonging to IRDP families. Though the appellant claimed to belong to IRDP family, the authorities have not considered her claim and consequently did not award 10 marks as required under the criteria. When the appellant filed the writ petition, the High Court dismissed the same holding that the appellant had not produced the certificate along with the application and, therefore, she is not entitled to the above status. When we directed the appellant to produce the record, she made the certificate a part of the record. Unfortunately, it does not bear the date of issue; but we find that she has been given serial number of the IRDP family. In view of the fact that serial numbers are ascribed to all the candidates in the order, we are of the view that her failure to furnish the certificate along with the application does not disentitle her to claim the status

for consideration of award of 10 marks. Pursuant to the interim direction granted by this Court, the appellant has already appeared for the examinations conducted but her result has not been announced. 4. Therefore, the appeals are allowed; the order of the Tribunal stands set aside. There shall be a direction to declare the result and her case for appointment will be considered in accordance with the rules, if she is selected. No costs."

22. In DBSAW No.271/2000 (State of Rajasthan Vs. Madhubala), decide on 20.10.2000 the Division Bench of this court, dismissed the special appeal against the judgment dated 6.1.2000 passed by the learned Single Judge in SBCWP No.2962/1999 in which while following the judgment of the Hon"ble Supreme Court in the case of Seema Kumari Vs. State reported in (1998) 7 JT SC 465, the learned Single Judge held that certificate produced later stage should be considered for providing appointment. The Division Bench of this Court in the case of State of Rajasthan Vs. Madhubala gave following verdict, which reads as under:

"We are of the opinion that the order under challenge merely places the respondent at par with the persons similarly situated in all other respects. The respondent was selected along with the candidate whose appointment has been saved by the decision of this Court in Deepak Kumar Suthar by allowing them to retain the weightage/advantage on the ground of place of birth of residence and the petitioner-respondent also falls in the same category. Therefore, in our opinion, the prospective operation given to the Full Bench decision would not come in the way of the respondent being placed at par with the persons similarly situated and offered appointment with the result of the very same decision.

23. We do not find any merit in this appeal, it is hereby dismissed. The appointment in pursuance of the decision of the learned Single Judge may be given to the respondent on verifying the genuineness of the Certificates. The direction be carried out within a period of two months from the date of receipt of the copy of this order."

24. Recently, in the judgment reported in (2016) 4 SCC 754 : Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection

Board & Anr. the Hon"ble Supreme Court held that non-submission of the caste/tribe certificate by reserved (OBC) category candidate within cut off date mentioned in the advertisement rendering ineligible otherwise selected candidate only on the ground would amount to denial of equality of opportunity contemplated under Articles 14, 15, 16 and 39A of the Constitution of India. The following adjudication is made by the Hon"ble Supreme Court which reads as under:

"13. After hearing both the parties at length and perusing the impugned judgment and order passed by the Division Bench of the High Court, we are of the view that the Division Bench erred in setting aside the judgment and order passed by the learned single Judge. We record our reasons hereunder. 14. The Division Bench of the High Court erred in not considering the decision rendered in the case of Pushpa (supra). In that case, the learned single Judge of the High Court had rightly held that the Petitioners therein were entitled to submit the O.B.C. certificate before the provisional selection list was published to claim the benefit of the reservation of O.B.C. category. The learned single judge correctly examined the entire situation not in a pedantic manner but in the backdrop of the object of reservations made to the reserved categories, and keeping in view the law laid down by a Constitution Bench of this Court in the case of Indra Sawhney v. Union of India : 1992 (Supp) 3 SCC 217 as well as Valsamma Paulv. Cochin University and Ors. : (1996) 3 SCC 545 The learned single Judge in the case of Pushpa(supra) also considered another judgment of Delhi High Court, in the case of Tej Pal Singh (supra), wherein the Delhi High Court had already taken the view that the candidature of those candidates who belonged to the S.C. and S.T. categories could not be rejected simply on account of the late submission of caste certificate. 15. The relevant paragraph from the judgment of this Court in the case of Indra Sawhney (supra) has been extracted in the case of Pushpa (supra) along with the speech delivered by Dr. Ambedkar in the constituent assembly and reads thus: "9.... 251. Referring to the concept of equality of opportunity in public employment, as embodied in Article 10 of the draft Constitution, which finally emerged as Article 16 of the Constitution, and the conflicting claims of various communities for representation in public administration, Dr Ambedkar emphatically declared that reservation should be confined to "a minority of seats", lest the very concept of equality should be destroyed. In view of its great importance, the full text of his speech delivered in the Constituent Assembly on the point is appended to this judgment. But I shall now read a few passages from it. Dr Ambedkar stated:

...firstly, that there shall be equality of opportunity, secondly, that there shall be reservations in favour of certain communities which have not so far had a

"proper look-in" so to say into the administration Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest extent, what would really happen is, we shall be completely destroying the first proposition upon which we are all agreed, namely, that there shall be an equality of opportunity Therefore the seats to be reserved, if the reservation is to be consistent with Sub-clause (1) of Article 10, must be confined to a minority of seats. It is then only that the first principle could find its place in the Constitution and effective in operation ... we have to safeguard two things, namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State, ... Constituent Assembly Debates, Vol. 7, pp. 701-702 (1948-49). These words embody the *raison d'être* of reservation and its limitations. Reservation is one of the measures adopted by the Constitution to remedy the continuing evil effects of prior inequities stemming from discriminatory practices against various classes of people which have resulted in their social, educational and economic backwardness. Reservation is meant to be addressed to the present social, educational and economic backwardness caused by purposeful societal discrimination. To attack the continuing ill effects and perpetuation of such injustice, the Constitution permits and empowers the State to adopt corrective devices even when they have discriminatory and exclusionary effects. Any such measure, in so far as one group is preferred to the exclusion of another, must necessarily be narrowly tailored to the achievement of the fundamental constitutional goal.

16. In the case of Pushpa (*supra*), relevant paragraphs from the case of Tej Pal Singh (*supra*) have also been extracted, which read thus:

"11....17. The matter can be looked into from another angle also. As per the advertisement dated 11th June, 1999 issued by the Board, vacancies are reserved for various categories including "SC" category. Thus in order to be considered for the post reserved for "SC" category, the requirement is that a person should belong to "SC" category. If a person is SC his is so by birth and not by acquisition of this category because of any other event happening at a later stage. A certificate issued by competent authority to this effect is only an affirmation of fact which is already in existence. The purpose of such certificate is to enable the authorities to believe in the assertion of the

candidate that he belongs to "SC" category and act thereon by giving the benefit to such candidate for his belonging to "SC" category. It is not that Petitioners did not belong to "SC" category prior to 30th June, 1998 or that acquired the status of being "SC" only on the date of issuance of the certificate. In view of this position, necessitating upon a certificate dated prior to 30th June, 1998 would be clearly arbitrary and it has no rationale objective sought to be achieved. 16. While taking a particular view in such matters one has to keep in mind the objectives behind the post of SC and ST categories as per constitutional

mandate prescribed in Articles 15(4) and 16(4) which are enabling provisions authorising the Government to make special provisions for the persons of SC and ST categories. Articles 14(4) and 16(4), therefore, intend to remove social and economic inequality to make equal opportunities available in reality. Social and economic justice is a right enshrined for protection of society. The right in social and economic justice envisaged in the Preamble and elongated in the Fundamental Rights and Directive Principles of the Constitution, in particular Articles 14, 15, 16, 21, 38, 39 and 46 are to make the quality of the life of the poor, disadvantaged and disabled citizens of the society meaningful.

17. Further, in the case of Pushpa (supra), relevant portion from the judgment of Valsamma Paul's case (supra) has also been extracted, which reads as under:

"11... "17.... "21. The Constitution through its Preamble, Fundamental Rights and Directive Principles created a secular State based on the principle of equality and non-discrimination, striking a balance between the rights of the individuals and the duty and commitment of the State to establish an egalitarian social order." 18. In our considered view, the decision rendered in the case of Pushpa (supra) is in conformity with the position of law laid down by this Court, which have been referred to supra. The Division Bench of the High Court erred in reversing the judgment and order passed by the learned single Judge, without noticing the binding precedent on the question laid down by the Constitution Benches of this Court in the cases of Indra Sawhney and Valsamma Paul (supra) wherein this Court after interpretation of Articles 14, 15, 16 and 39A of the Directive Principles of State Policy held that the object of providing reservation to the SC/ST and educationally and socially backward classes of the society is to remove inequality in public employment, as candidates belonging to these categories are unable to compete with the candidates belonging to the general category as a result of facing centuries of oppression and deprivation of opportunity. The constitutional concept of

reservation envisaged in the Preamble of the Constitution as well as Articles 14, 15, 16 and 39A of the Directive Principles of State Policy is to achieve the concept of giving equal opportunity to all sections of the society. The Division Bench, thus, erred in reversing the judgment and order passed by the learned single Judge. Hence, the impugned judgment and order passed by the Division Bench in the Letters Patent Appeal No. 562 of 2011 is not only erroneous but also suffers from error in law as it has failed to follow the binding precedent of the judgments of this Court in the cases of Indra Sawhney and Valsamma Paul (supra). Therefore, the impugned judgment and order passed by the Division Bench of the High Court is liable to be set aside and accordingly set aside. The judgment and order dated 24.11.2010 passed by the learned single Judge in W.P. (C) No. 382 of 2009 is hereby restored"

25. Upon perusal of all above cases, we are of the opinion that the Hon'ble Supreme Court time and again held that merely

technicality should not come in the way for considering the candidature under the reserved category, therefore, obviously, the denial of petitioner's prayer to consider her candidature under the physically handicapped category by the respondents is not sustainable in law because as per Section 36 of the Act of 1995 it was not open for the respondents to fill in the said vacancy which is kept reserved for the physically handicapped candidate.

26. To consider the plea of respondents that there is no post kept reserved for physically handicapped candidate is available for the reason that unfilled vacancy has been filled in by other category, we have perused the relevant provisions of the Act of 1995.

27. In Chapter VI of the Act of 1995, there is provision for "Employment" to the class of persons with disability. The Section 32 provides for identification of posts which can be reserved for persons with disability. Section 33 provides for reservation of posts and Section 36 provides for vacancies not filled up to be carried forward. Sections 32, 33 and 36 of the Act of 1995 are as follows:

"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.

36. Vacancies not filled up to be carried forward.- Where in any recruitment year

any vacancy under Section 33, cannot be filled up due to non-availability of a suitable person with disability or, for any other sufficient reason, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with disability is not available, it may first be filled by interchange among the three categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person can not be employed, the vacancies may be interchanged among the three categories with the prior approval of the appropriate Government."

28. Upon cumulative reading of Sections 32, 33 and 36 of the Act would reveal that after identification of the posts which can be

reserved for the persons with disability, there is duty of the employer to provide reservation and Section 36 provides that where in any recruitment year any vacancy under Section 33, cannot be filled up due to non-availability of a suitable person with disability or, for any other sufficient reason, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with disability is not available, it may first be filled by interchange among the three categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability.

29. The plain reading of aforesaid Section is that vacancies if not filled in, in particular year can be carry forward, but there is restriction that in the event of non-availability of suitable person with disability, the vacancy is first to be filled up by interchange among three categories and only when there is no person with disability available for the post in that year, the employer shall filled up the vacancy by appointment of a person other than a

person with disability.

30. In the judgment of Hon"ble Supreme Court in the case of Union of India & Anr. Vs. National Federation of the Blind & Ors. reported in (2013) 10 SCC 772, the following observations were made in paras nos. 24, 25,26,27,29 and 37, which reads as under:

"24. Although, the Disability Rights Movement

in India commenced way back in 1977, of which Respondent No. 1 herein was an active participant, it acquired the requisite sanction only at the launch of the Asian and Pacific Decade of Disabled Persons in 1993-2002, which gave a definite boost to the movement. The main need that emerged from the meet was for a comprehensive legislation to protect the rights of persons with disabilities. In this light, the crucial legislation was enacted in 1995 viz., the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which empowers persons with disabilities and ensures protection of their rights. The Act, in addition to its other prospects, also seeks for better employment opportunities to persons with disabilities by way of reservation of posts and establishment of a Special Employment Exchange for them. For the same, Section 32 of the Act stipulates for identification of posts which can be reserved for persons with disabilities. Section 33 provides for reservation of posts and Section 36 thereof provides that in case a vacancy is not filled up due to non-availability of a suitable person with disability, in any recruitment year such vacancy is to be carried forward in the succeeding recruitment year. The difference of opinion between the Appellants and the Respondents arises on the point of interpretation of these sections. 25. ...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, Under Section 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 Groups A and B posts in the I.A.S. was undertaken after the year 2005 is not of much substance. 26. 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 Groups 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. 27. It is only logical that, as provided in Section 32 of the aforesaid Act, posts have to be identified for reservation for the purpose 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. 29. 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 Under Section 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 Under Section 33 of the Disabilities Act, 1995, the question of carrying forward of vacancies or lapse thereof, does not arise. 37. Admittedly, the Act is a social legislation enacted for the benefit of persons with disabilities and its provisions must be interpreted in order to fulfill its objective. Besides, it is a settled rule of interpretation that if the language of a statutory provision is unambiguous, it has to be interpreted according to the plain meaning of the said statutory provision. In the present case, the plain and unambiguous meaning of Section 33 is that every appropriate Government has to appoint a minimum of 3% vacancies in an establishment out of which 1% each shall be reserved for persons suffering from blindness and low vision, persons suffering from hearing impairment and persons suffering from locomotor or cerebral palsy.

31. Recently, in the judgment reported in 2016 (13) SCC 153 in the case of *Rajeev Kumar Gupta & Ors. Vs. Union of India & Ors.*, the Hon''ble Supreme Court while considering Sections 32 and 33 of the Act of 1995 gave the following directions to comply the provisions of the Act of 1995 in its true spirit. Paras nos.22 to 25

are as follows:

22. The 1995 Act was enacted to fulfill India's obligations under the "Proclamation on the Full Participation and Equality of the People with Disabilities in the Asia and Pacific Region". The objective behind the 1995 Act is to integrate PWD into the society and to ensure their economic progress.¹² The intent is to turn PWD into "agents of their own destiny".¹³ PWD are not and cannot be equated with backward classes contemplated Under Article 16(4). May be, certain factors are common to both backward classes and PWD such as social attitudes and historical neglect etc. 23. It is disheartening to note that (admittedly) low numbers of PWD (much below three per cent) are in government employment long years after the 1995 Act. Barriers to their entry must, therefore, be scrutinized by rigorous standards within the legal framework of the 1995 Act. 24. A combined reading of Sections 32 and 33 of the 1995 Act explicates a fine and designed balance between requirements of administration and the imperative to provide greater opportunities to PWD. Therefore, as detailed in the first part of our analysis, the identification exercise Under Section 32 is crucial. Once a post is identified, it means that a PWD is fully capable of discharging the functions associated with the identified post. Once found to be so capable, reservation Under Section 33 to an extent of not less than three per cent must follow. Once the post is identified, it must be reserved for PWD irrespective of the mode of recruitment adopted by the State for filling up of the said post. 25. In light of the preceding analysis, we declare the impugned memoranda as illegal and inconsistent with the 1995 Act. We further direct the Government to extend three percent reservation to PWD in all identified posts in Group A and Group B, irrespective of the mode of filling up of such posts. This writ petition is accordingly allowed."

32. After considering the aforesaid judgments and provisions of the Act of 1995 it emerges from the facts that there is no reply of the respondents that vacancy which is kept reserved for the category of the persons with disability was earlier carried forward or due to non-availability of the candidates it has been filled in from the other category. Therefore, it was not open for the respondents to fill the unfilled vacancy which is kept reserved for the person with disability because in the judgment of the National Federation (supra) the Hon''ble Supreme Court categorically held that this Act of 1995 is social legislation enacted for the benefit of the persons with disability and this provision is incorporated in order to fulfill its object. Further, it is held that if any of the

statutory provision is unambiguous it has to be interpreted according to the plain meaning of such statutory provision. The above proposition is further reiterated in the judgment of the Hon"ble Supreme Court in case of Ashok Kumar Giri Vs. Union of India reported in 2016(6) SCC 511.

33. As per the facts of the present case, much prior to the appointment orders were issued by the respondents, a representation was filed by the petitioner for her claim to consider her candidature under the category of persons with disability, but it has been rejected by the respondents on the ground that category cannot be changed for the reason that in the online application you did not claim reservation under the said category of the persons with disability, so also, in the reply it is stated that the said vacancy which remained unfilled has already been filled. In view of the above clear cut verdict of Hon"ble Supreme Court in various judgments, it was not open for the respondents to fill up the vacancy kept reserved for the person with disability from other category.

34. It is universal truth that mistake can be committed by the candidate suffering disability none else, therefore, at the time of considering the representation of the petitioner, the respondents were under obligation to consider the fact that in previous Rajasthan Judicial Services Examination, 2013 the petitioner was allowed to appear under the reserve category of physically handicapped and if she was allowed to appear in the said category in the previous examination then obviously when this fact was disclosed in the representation, it was obligatory duty of the respondents to consider the case of the petitioner under the category of disabled candidate because mistake can be committed by the disabled person due to physical deficiency. In the present

case it is beyond imagination that a candidate like petitioner who appeared in the very examination in the previous year will not claim the benefit of reservation provided under the Act of 1995, therefore, the decision of the respondents for rejecting the petitioner's representation or the plea taken in the reply that vacancy kept reserved of physically handicapped person on the horizontal basis has already been filled in, therefore, the case of the petitioner cannot be considered is hereby rejected.

35. We have considered the judgment cited by the learned counsel for the respondents in the case of Akram Khan Vs. Rajasthan High Court, Jodhpur & Anr. : DBCWP No.7410/2016, decided on 21.7.2016, Sunil Bhanwariya Vs. Registrar Examination Cell, Rajasthan High Court, Jodhpur & Ors : DBCWP No.3331/2014, decided on 12.5.2014 and Managing Director, Ajmer Vidhyut Vitran Nigam Ltd, Ajmer Vs. Hitesh Kumhar & Anr.: DBSAW No.85/2015, decided on 1.8.2016. in all these cases cited by the respondents, the question of providing appointment to physically handicapped candidate was not under consideration. In all these cases, the Division Bench denied to rectify the mistake for the reason that right accrued to 3rd person because candidate did not claim or submit the caste certificates to claim right to consideration. In the case of physically handicapped person, the Parliament has specifically provided that if any vacancy reserved for physically handicapped persons unfilled then it should be carry forward. In none of the cases cited by the learned counsel for the respondents the said provision of the Act of 1995 was in existence to fill in the vacancies from other reserved categories and to carry forward the same. Therefore, all these judgments are not even applicable in this case in view of the judgment of the Hon''ble Supreme Court in the case of Ram

Kumar (supra), in said case the Hon''ble Supreme Court held that the Division Bench of the High Court erred in reversing the judgment and order passed by the learned single Judge, without noticing the binding precedent on the question laid down by the Constitution Benches of this Court in the cases of Indra Sawhney and Valsamma Paul wherein this Court after interpretation of Articles 14, 15, 16 and 39A of the Directive Principles of State Policy held that the object of providing reservation to the SC/ST and educationally and socially backward classes of the society is to remove inequality in public employment, as candidates belonging to these categories are unable to compete with the candidates belonging to the general category as a result of facing centuries of oppression and deprivation of opportunity. The constitutional concept of reservation envisaged in the Preamble of the Constitution as well as Articles 14, 15, 16 and 39A of the Directive Principles of State Policy is to achieve the concept of giving equal opportunity to all sections of the society. The Division Bench, thus, erred in reversing the judgment and order passed by the learned single Judge. Hence, the impugned judgment and order passed by the Division Bench in the Letters Patent Appeal No. 562 of 2011 is not only erroneous but also suffers from error in law as it has failed to follow the binding precedent of the judgments of this Court in the cases of Indra Sawhney and Valsamma Paul.

36. In view of the facts emerges from the pleadings there is no disputed that petitioner is possessing physical disability of 80% for which a certificate was issued by the medical board of PBM Hospital, Bikaner on 5.7.2010 which is available on record as Annex.5. It is also not in dispute that in the Rajasthan Judicial Services Competitive Examination, 2013, the petitioner appeared

under the physically handicapped category but was not selected for not declaring the cut off marks for physically handicapped the petitioner preferred DBCWP No.8364/2014 before this Court for seeking directions to declare cut off marks for the category of persons with physical disability, however, the said writ petition was withdrawn. It is also admitted fact that in online application for appearing in Rajasthan Judicial Service Examination, 2016 by mistake against column no.3(i) meant for the person with disability (differently abled), the petitioner mentioned "No" but soon after the declaration of final result of main examination on 15.11.2016 a representation was submitted by the petitioner on 28.11.2016 with the prayer to consider her candidature under the category of person with disability in the Rajasthan Judicial Service Competitive Examination, 2016 and all above facts were narrated before the respondents nos.1 and 2 and to consider her candidature under the category of persons with disabilities as she is having 80% disability. Admittedly, after declaration of result, the representation was filed on 28.11.2016 much before issuance of appointment orders and submitted that out of two posts kept reserved for disabled category, one unfilled post is available upon which her candidature may be considered while treating her candidature under the category of physically handicapped candidate. It is true that there is no fault of the respondents because the petitioner allowed to appear in the competitive examination as general category candidate as per information furnished in her online application form. In our opinion, the physically handicapped candidate is a class apart, therefore, at the time of making prayer to rectify the mistake by him/her even after appearing in the examination, to achieve the purpose of enactment of the Act of 1995, the respondents were under

obligation to accept the prayer of the petitioner to treat her candidature under the category of person with disability because on the date of deciding her representation one unfilled post of said category was available with them. Under Section 36 of the Act of 1995 it is the duty of the employer that first efforts should be made to fill in the vacancy kept reserved for physically disabled candidates from the candidates having disability and in the event of non-availability of candidate of such category to carry forward the post in succeeding recruitment year. In this case, it is nowhere pleaded by the respondents that post which remained unfilled was earlier carry forward, therefore, they were free to fill up the said vacancy from the candidate other than the person with disability. At the time of consideration for appointment, it was within their knowledge that the petitioner with disability is available who can be considered for appointment but without considering the spirit of Section 36 of the Act, the representation of the petitioner was rejected by saying "considered and rejected". On the basis of above discussion, to consider the intention of legislature for enactment of the Act of 1995, we are of the view that the theory of forgiveness was required to be applied by the respondents to rectify the mistake committed by the petitioner because father of the nation Mahatma Gandhi said that "Weak never forgive. Forgiveness is attributed to the strong", therefore, it was expected from the strong respondents that in the event of availability of vacancy kept reserved for disabled candidate, a pious decision should have been taken for the welfare of disabled candidate to whom we are treating weaker section of the society as per Constitution of India.

37. In view of the above discussion, we hold that rejection of the petitioner's prayer to consider her candidature under the category

of physically disabled candidate is not in accordance with the spirit of the Act of 1995.

38. Consequently, the instant writ petition is hereby allowed.

The respondents are directed to consider the candidature of the petitioner for appointment on the post of Civil Judge-cum-Judicial Magistrate in Civil Judge Cadre against two vacancies kept reserved for disabled candidate in the Rajasthan Judicial Service Examination, 2016 and provide appointment as per her merit of said category, if she is otherwise eligible.