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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

ON THE 30th OF JANUARY, 2024

WRIT PETITION No. 7275 of 2019

BETWEEN:-

**NATIONAL FEDERATION OF THE BLIND M P BRANCH
THROUGH GENERAL SECRETARY AWDHESH
VISHWAKARMA S/O SUKHANAND PRASAD PLOT NO.
131 SHIV VIHAR COLONY, (MADHYA PRADESH)**

.....PETITIONER

**(BY SHRI S.K. RUNGATA - SR. ADVOCATE WITH SHRI ASHOK GUPTA
ADVOCATE)**

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH
PRINCIPAL SECRETARY DEPARTMENT OF
GENERAL ADMINISTRATION MANTRALAYA
VALLABH BHAWAN (MADHYA PRADESH)**
- 2. CHIEF SECRETARY BHOPAL MANTRALAYA
VALLABH BHAWAN (MADHYA PRADESH)**

.....RESPONDENTS

**(BY SHRI VIVEK SHARMA - DY. ADVOCATE GENERAL WITH OIC SMT.
RAJ, JOINT DIRECTOR, SOCIAL JUSTICE DEPARMENT)**

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*This petition coming on for admission this day, the court passed the
following Order dictated in the open Court:*

ORDER

The controversy in short is that visually impaired persons are not being given their due by the State Government in terms of the statutory requirement.

2. It is pointed out that in terms of the Act of 1995 namely Persons With Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995, respondents were required to give reservation @ 2% to the persons

belonging to the visually impaired categories. In fact, Section 33 of the said Act of 1995 provides for grant of minimum 3% reservation for differently-abled persons. State Government had issued a notification granting 6% reservation out of which 2% was meant for visually impaired, 2% for persons with hearing impairment and 2% for persons with locomotive disability.

3. In the year, 2016, Rights of Persons with Disabilities Act, 2016 was enacted. Section 34 of the Act, 2016 added new categories namely persons with autism, intellectual disability, specific learning disabilities and mental illness; (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each of the disabilities.

4. It is submitted that, with promulgation of this provision in the year, 2018, the position of disability wise reservation altered and persons with blindness and low vision became entitled to 1.5% reservation. Similarly 1.5% reservation became admissible for deaf and hard of hearing persons, 1.5% for persons with loco-motor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy. 1.5% reservation was to be accrued to persons falling in category (d) and (e) mentioned above.

5. Case of the petitioner is that in the earlier round of litigation W.P. No. 6761 of 2003 was filed which came to be disposed of vide order dated 26.02.2008. It is submitted that in this writ petition Hon'ble High Court had directed the State Government to implement the mandate of the Act namely the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and the Rules made thereunder, by issuing appropriate instructions in this regard to all the departments of the State Government.

6. It is submitted that thereafter, when said order was not complied with, then CONC No. 274 of 2013 was filed by the petitioner Nilesh Singhal. This

contempt petition came to be disposed of vide order dated 28.11.2012 with following directions:

"1. In a special drive which is in force and will remain up to June, 2014 the Government shall ensure that each of the candidate of special category is in the job as per his qualification. Principal Secretary, GAD shall personally be responsible to see that in the special drive, employment is provided to each of the candidate of this category.

2 . If any advertisement is being published by the Public Service Commission whereby applications are being invited, it will be the duty of the Officers of Public Service Commission to ensure that 2% posts are reserved for each of the special category respectively.

3. Upon inviting applications by any of the Department for the identified posts it will be the duty of the concerned Department to collect the name of the Handicapped persons of each of the category from the respective Employment Exchange.

4 . State Government is further directed to provide the employment to all the candidates whose names are mentioned in para 29 of the order alongwith their academic qualification within six months positively without fail and also if required by relaxing the Rules.

5 . State Government व is यत्ने again directed to ensure the compliance of condition No. (vi) of Para No.2 of the order whereby it was directed to give wider publicity by print and electronic media indicating the right o reservation relating to the disabled persons.

6 . State Government is further directed to inform the candidates of visually impaired of that District where the posts are filled in by registered post as and when the posts are being vacant, so that they should come to know that they have to apply.

7. Principal Secretary, GAD is directed to furnish an affidavit within four weeks to the effect that the State Government undertakes to provide the employment to the candidates of Handicapped Category within six months.

8. If the Government fails to provide the employment in the special drive on or before June, 2014, allowance shall be

given to each of the candidates who is registered as per Section 68 of the Act, which shall be equal to the salary of the daily rated employee.

9. In case of non-compliance, Principal Secretary, GAD shall remain present in person to show cause why the orders passed by this Court is not complied with.

10. It will be the duty of the State Government to circulate the copy of the order to all the concern Departments to ensure the strict compliance of the orders passed by this Court from time to time.

11. Till the order passed by this Court is complied with, interim order dated 26.09.2013 relating to provide employment shall remain in force.

12. In case of default in filing affidavit, case be listed after six weeks. Upon filing the affidavit, case be listed on 1st of July, 2014."

7. It is submitted that after aforesaid order of the High Court in Contempt Case No. 274 of 2013, office memorandum dated 03.12.2013 was issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, North Block, New Delhi as contained in Annexure P-4, in regard to Reservation for persons with disabilities - Computation of reservation - implementation of judgment of Hon'ble Supreme Court in the matter of Union of India & another Vs. National Federation of Blind & Ors. This order was passed in Civil Appeal No. 9096 of 2013 (arising out of SLP (Civil) No. 7541 of 2009). In para - 4 of the office memorandum summary of the directions which have been issued by the Supreme Court is mentioned, which is as under:

"4. The Hon'ble Supreme Court has, inter alia, directed that the following action be taken in order to ensure proper implementation of the reservation policy for the disabled and to protect their rights:-

(i) to issue an appropriate order modifying the O.M. dated 29.12.2005 and the subsequent O.Ms. consistent with this

Court's order within three months from the date of passing of the judgment.

(ii) the "appropriate Government" to compute the number of vacancies available in all the "establishment" and further identify the posts for disabled persons within a period of three months from today and implement the same without default.

(iii) the DoPT shall issue instructions to all the departments/public sector undertakings/ Government companies declaring that the non observance of the scheme of reservation for persons with disabilities should be considered as an act of non-obedience and Nodal Officer in department/public sector undertakings/ Government Companies, responsible for the proper strict implementation of reservation for person with disabilities be departmentally proceeded against the default."

8. Shri Roongata, learned Sr. Advocate for the petitioner submits that thereafter Act of 2016 was promulgated. Office memorandum was issued as discussed above.

9. On 30.06.2001 State of Madhya Pradesh had issued an Office Memorandum providing 6% reservation amongst the three categories of differently abled persons.

10. Thereafter, when Act of 2016 was brought into force, Office Memorandum No. F8/4/2001/A. Pra. /one(part), Bhopal dated 03.07.2018 providing for 6% reservation to be distributed amongst four categories has been issued.

11. Thus, Shri Roongata taking this Court through Annexure AR-1 filed by the State points out that State had firstly not given any reservation as contemplated in the memorandum of 2001 from 1996 till 2012 on the pretext that there was no recruitment during that period.

12. It is submitted that, this fact is also disputed though Shri Roongata submits that he is not putting too much emphasis on this aspect. It is submitted

that reservation for differently abled persons is a horizontal reservation and if State had made any recruitment even for the reserved categories, then they were required to implement this office memorandum in regard to reserved categories.

13. Referring to Annexure AR-1, it is pointed out that the State has calculated the posts which are available in various departments for differently abled persons starting from 01st January, 2013 to 30th June, 2018. Summary of which reveals that there were 31866 posts identified to be filled from amongst differently abled persons out of which 529 posts were advertised for visually impaired, 1036 for hearing impaired and 1357 for orthopedically handicapped. Thus, total 2922 posts were advertised. Against this 332 posts were filled from amongst visually impaired, 620 from amongst hearing impaired and 1104 amongst orthopedically handicapped. Thus, total 2056 posts were filled leaving a balance of 866 posts.

14. Shri Roongata further submits that the number of posts advertised for different categories of disability were not in equal proportion. When the requirement of the law is that the post meant for differently abled persons are to be distributed equally amongst visually impaired, hearing impaired and orthopedically impaired, then there was no justification in advertising different number of posts under the three categories.

15. It is submitted by Shri Vivek Sharma, learned Dy. Advocate General that proviso below Section 34 of the Act of 2016 is important and there is an option given to the employer to exclude certain posts from the purview of reservation for differently abled person.

16. Shri Roongata in counter submits that the proviso when read in toto provides that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner for disabilities as the case may be,

may, having regard to the type of work carried out in any Government Establishment, by notification and subject to such conditions, if any, as may be notified in such notification exempt any Government Establishment from the provisions of the Section.

17. Shri Roongata further submits that several frauds are being perpetuated with the help of the State machinery and disabled persons are being sidelined by those who are able to fake their disability for which some mechanism needs to be put in place.

18. It is submitted that no notification from the Chief Commissioner or the State Commissioner exempting certain post has been brought on record by the State Government.

19. At this stage, Shri Vivek Sharma, learned Dy. Advocate General submits that vide Annexure AR-4 Special Recruitment Drive which is going on since the year, 2014 has been extended up to June, 2024 therefore, Judgment of Delhi High Court be adopted only in terms of the directions contained in para-12 and the directions contained in para-13 be not extended.

20. I have my own reservations and doubts about the arguments put forth by learned Dy. Advocate General. In fact, this reflects otherwise on the intentions of the State Government. Why they are shy of there being a time bound direction is not made clear.

21. At this stage Shri Sharma submits that now he is not opposing issuance of time bound directions for recruitment and appointment of differently abled persons.

22. State will form District Medical Board, Regional Medical Board and State Level Medical Board for determining the disability and will also work out a

mechanism to fix the responsibilities of the team of specialist that in case any variation of more than 5% is found in their certificate by the higher authority then they shall be responsible for issuing such incorrect certificate and will have to be dealt with in accordance with disciplinary rules in the routine course or by prescribing other methods to discourage issuance of such fraudulent certificates whereby taking a vested right of the deserving candidates in the hands of undeserving ones.

23. Thus, in view of the aforesaid facts and taking into consideration the judgment of Supreme Court in the case of *Ravi Prakash Gupta* where Hon'ble Supreme Court had directed identification of posts under Section 32 of the Act of 1996 and then giving reservation under Section 33 when taken into consideration, then State appears to be duty bound to work out the backlog from 1996 and fill the posts from amongst the differently abled persons strictly in accordance with the percentage provided for each of the categories. It is also expected from the State that they will not permit any fraudster to take advantage of the provisions for reservation of differently abled persons by misrepresenting themselves to be either visually impaired, hearing impaired or orthopedically handicapped or with other disabilities and they will ensure a three tier system for scrutiny of such differently abled persons so that one Doctor may not be sufficient to issue a certificate.

24. It is directed that there will be a district level committee in the District Hospital to issue disability certificate which will be examined at the level of the Divisional Level whereby Doctors who are part of the District Level Committee will not be included and a separate team will be constituted at the Divisional Level by the Divisional Commissioner for physical examination and verification of the disability certified at the district level and then these two certificates will

be verified at the level of the Government Medical College catering to concerned Districts and the Divisions. These exercises will be carried out after selection and before appointment.

25. Hon'ble Supreme Court in the case of *Ajay Kumar Pandey & Ors. Vs. State of U.P. & Ors. in Civil Appeal No. 4811 of 2022 (arising out of SLP (Civil) No. 18854 of 2019) decided on 01.08.2022* after referring to the judgment of Supreme Court in the case of *Union of India & another Vs. National Federation of the Blind & Ors. (2013)10 SCC 772* has held 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, since language of the statutory provision is unambiguous, there is no iota of doubt that it is to be implemented in letter and spirit.

26. Supreme has further observed that 3% reservation is to be in an establishment and not in all cadres of an establishment irrespective of the nature of job. It has further held that the list of posts identified to be filled up from Physically Handicapped category in group 'C' and 'D' post is in terms of Section 32(a) of the Act. However, this list is to be reviewed every three years taking into consideration development in technology. Therefore, it is evident that Supreme Court has fasten a responsibility on the executive to review the list every three years taking into consideration the development in technology and the identification of posts which can be filled up by candidates suffering from disabilities is the responsibility of the appropriate Government under Section 32 of the Act, which is the State Government and therefore, the State Government is duty bound to carry out the identification of the posts, its three yearly review based on the changes in the technology and the reservation is to be achieved on

judicially recognized principles.

27. In the case of *Union of India & another Vs. National Federation of the Blind & Ors. (2013)10 SCC 772*, Hon'ble Supreme Court has drawn the distinction between 'Vertical' reservations for backward classes of citizen as delineated in *Indra Sawhney Vs. Union of India (1992) Supp. (3) SCC 217* and 'Horizontal' reservations for persons with disabilities under Section 33 of the erstwhile Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 holding that ceiling of 50% reservation applies only to reservation in favour of other Backward classes under Article 16(4) of the Constitution of India whereas the reservation in favour of persons with disabilities is horizontal, which is under Article 16(1) of the Constitution.

28. In fact Hon'ble Supreme Court in the case of *National Federation of the Blind (supra)* noted as under:

"812.all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes under Article 16(4) may be called vertical reservations whereas reservations in favour of physically handicapped [under Clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations - what is called inter-locking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to Clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to S.C. category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (O.C.) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains - and should remain - the same....."

29. In the case of **Rajeev Kumar Gupta Vs. Union of India (2016)13 SCC 153**, question of reservations in promotions for persons with disabilities has been discussed and in para 21 it is held as under:

"21. The principle laid down in Indra Sawhney is applicable only when the State seeks to give preferential treatment in the matter of employment under State to certain classes of citizens identified to be a backward class. Article 16(4) does not disable the State from providing differential treatment (reservations) to other classes of citizens under Article 16(1)[11] if they otherwise deserve such treatment. However, for creating such preferential treatment under law, consistent with the mandate of Article 16(1), the State cannot choose any one of the factors such as caste, religion etc. mentioned in Article 16(1) as the basis. The basis for providing reservation for PWD is physical disability and not any of the criteria forbidden under Article 16(1). Therefore, the rule of no reservation in promotions as laid down in Indra Sawhney has clearly and normatively no application to the PWD."

30. This aspect came to be discussed in the case of **Siddaraju Vs.State of Karnataka (2020)19 SCC 572** by a three Judges Bench decision is in the following terms:

*"After hearing learned counsel appearing on behalf of all the parties including the learned Additional Solicitor General, we are of the view that the judgment of this Court cannot be faulted when it stated that **Indra Sawhney Vs. Union of India (1992) Supp (3) SCC 215** dealt with a different problem and, therefore, cannot be followed."*

31. In the case of **State of Kerala & Ors. Vs. Leesama Joseph (2021)9 SCC 208**, Hon'ble Supreme Court held in unequivocal terms that reservations in promotions could not be denied to persons with disabilities. This view has been reiterated in the case of **Reserve Bank of India & Ors. Vs. A.K. Niar & Ors. (2023) Live Law (SC) 521**.

32. In the case of **Reserve Bank of India & Ors. (Supra)**, Hon'ble

Supreme Court has held that "*There can be little doubt that it was never the intention of the legislature that the provisions of Section 32 of the Act of 1995 would be used as a tool to frustrate the benefits of reservation under Section 33. In fact, the identification of posts for purposes of reservation had to take place immediately after the 1995 Act. A resistance to such reservation is obvious from the delaying tactics adopted by most of the Government authorities in truly implementing the intent. It thus shows that sometimes it is easier to bring a legislation into force but far more difficult to change the social mindset which would endeavour to find ways and means to defeat the intent of the Act enacted and Section 32 was a classic example of the same. In **Union of India vs. Ravi Prakash Gupta (2010) 7 SCC 626** also, this Court mandated the identification of posts for purposes of reservation. Thus, what is required is identification of posts in every establishment until exempted under proviso to Section 33. No doubt the identification of the posts was a prerequisite to appointment, but then the appointment cannot be frustrated by refusing to comply with the prerequisite. This view was affirmed by a larger Bench of three Judges in **Union of India vs. National Federation of the Blind (2013) 10 SCC 772**".*

33. Under such facts and circumstances when the legal position is examined coupled with the intent of legislature then executive cannot be allowed to superimpose its lethargy or in difference over the legislative intent and thus, this Court is of the opinion that State is bound to take into consideration the spirit of the legislation and implement it in letter and spirit.

34. Thus, it is directed that the assessment of the vacancies for differently abled persons will be identified on or before 05.03.2024 keeping in mind advancement of technology and availability of advance systems to aid and

assist differently abled persons in consultation with the Disability Commissioner. Necessary notification or advertisement by the concerned selection authority for filling up backlog of vacancies for persons with benchmark disabilities be issued within further period of 30 days i.e. on or before 05.04.2024. Selection process may be completed within a period of 45 days i.e. on or before 20.05.2024 and thereafter, result be declared on or before 20.06.2024 so that the recruitment be completed which includes issuance of appointment orders on or before 15.07.2024.

35. It is further directed that if recruitment is not completed in above terms or on before, 15.07.2024 then State authorities will be liable to face the consequences as it may be treated as disobedience of the orders of the High Court as this order is being passed with the consent of learned Dy. Advocate General in whose presence aforesaid time table has been prescribed.

36. In above terms petition is disposed of.

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(VIVEK AGARWAL)
JUDGE