

Case relating to Reservation:

Parties : T.M.N. Deepak Versus State of Tamil Nadu Rep. by its Chief Secretary, Chennai & Others

Court : High Court of Judicature at Madras

Case No : W.P.Nos.7237 of 2010 & W.P.No.17825 of 2008 M.P.Nos.1 of 2010 & M.P.No.1 of 2008

Judges: THE HONOURABLE CHIEF JUSTICE MR. M.Y. EQBAL & THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

Appearing Advocates : For the Petitioner: R. Prabhakaran, V. Suthakar, Advocates. For the Respondents: R1 to R4 - J. Raja Kallifullah, Spl. Govt. Pleader assisted by Mrs.M. Sneha Govt. Advocate, M/s.C.N.G. Niraimathi, Advocate.

Date of Judgment : 17-02-2011

Head Note :-

Constitution of India - Articles 14, 16, 41 & 226 – Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 - Section 32, 33 & 36 – petitioner claiming to be Vice President of Tamil Nadu Handicapped Federation Charitable Trust filed the writ petition, praying for a direction upon respondents to ensure that the 3% reservation for persons with disabilities is filled up by disabled and direct respondents to fill up vacancies, reserved for persons with disabilities and further to clear the backlog vacancies available for persons with disabilities - petitioner in other petition is a visually challenged person and prayed for a direction upon respondents to implement provisions of Act providing for employment to persons with disabilities and appoint suitable candidates by applying the provisions of Act – with observations, writ petitions disposed of.

Case Referred:

Elangovan v. Govt of Tamil Nadu, (2008) 3 MLJ 481

Comparative Citations:

2011 (2) CTC 353, 2011 (1) LW 984, 2011 (3) MLJ 225

Judgment :-

(PRAYER: This writ petition is filed under Article 226 of the Constitution of India to issue a writ of Mandamus to direct the respondents to monitor and to ensure that the 3% reservation for persons with disabilities was in fact filled in by the disabled and directing the respondent to fill in the 9000 vacancies that have been reserved for persons with disabilities and to also clear up the backlog of vacancies available for persons with disabilities as enunciated in G.O.(Ms) 117, Social Welfare and Nutritious Meal Programme Department, dated 27.08.2008.)

(PRAYER: This writ petition is filed under Article 226 of the Constitution of India to issue a writ of Mandamus to direct the respondents to implement the provisions of Section 32, 33 & 36 of the

Act 1995 providing for in the matter of employment to persons with disabilities and appoint suitable candidates by applying the provisions of the said Act.)

THE HON'BLE THE CHIEF JUSTICE & T.S.SIVAGNANAM, J.

1. As common questions arise for consideration in these two public interest litigations, they were heard together and are disposed of by a common order.

2(i) The petitioner in W.P.No.7237 of 2010, claiming to be the Vice President of Tamil Nadu Handicapped Federation Charitable Trust has filed the writ petition, praying for a direction upon the respondents to ensure that the 3% reservation for persons with disabilities is filled up by the disabled and direct the respondents to fill up 9000 vacancies, which have been reserved for persons with disabilities and further to clear the backlog vacancies available for persons with disabilities.

2(ii) The petitioner in W.P.No.17825 of 2008 is a visually challenged person and has prayed for a direction upon the respondents to implement the provisions of Section 32, 33 & 36 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (hereinafter referred to as the 'Act') providing for in the matter of employment to persons with disabilities and appoint suitable candidates by applying the provisions of the Act.

3. The case of the petitioner in W.P.No.7237 of 2010 is that the Government in G.O.Ms.No.117, Social Welfare Department, dated 27.08.2008, stated that the Tamil Nadu Government has created about 3.44 lakh job opportunities in Government sector of which 3% i.e., approximately 9000 jobs, have been earmarked for differently abled persons and the Government has constituted a "High Level Committee" under the chairmanship of the Hon'ble Minister of Social Welfare and till date no steps have been taken to implement the said Government order. Further, it has been stated that only because of the representations made by the association of differently abled persons, the Government launched a Special Recruitment drive, by issuing a Government order dated 18.03.2010, to clear the backlog vacancies for the differently abled persons. In such circumstances, the petitioner sought for a direction upon the respondents to ensure the 3% reservation for persons with disabilities and to fill up the vacancies and clear the backlog vacancies.

4. The case of the petitioner in W.P.No.17825 of 2008 is that the respondents have failed to apply the rule of reservation as per the Act and the same is violative of the principles enshrined under Article 14 & 16 of the Constitution of India and that the petitioner, who appeared for selection to the Group I service even though, scored 153 marks in the preliminary examination, in view of the non-availability of any cut off mark in the said category, he was not selected. Therefore, the petitioner has sought for a direction upon the respondents to implement the provisions of the Act, more particularly Sections 32, 33 and 36 of the Act.

5. It is seen that the Commissioner for Disabilities (presently State Commissioner for Differently abled) was not impleaded as a respondent in W.P.No.17825 of 2008 and a Division Bench of this Court by order dated 23.07.2009 suo-moto impleaded the Commissioner and directed to file a report setting out to what extent the provisions of the Act has been implemented in the State of Tamil Nadu. Thereafter, the writ petitions have been periodically heard and various interim directions were issued. On 06.07.2010, a Division Bench of this Court, after going through the various Government orders and considering the claim of the petitioner, thought it appropriate to direct the State Government to file a report regarding the implementation of the Government orders issued, regarding the 3% reservation. Pursuant thereto a report has been filed which we shall refer to in the later part of this order.

6. The Tamil Nadu Public Service Commission have filed a counter affidavit in W.P.No.17825 of 2008, which has been adopted by the State Government, inter alia stating that among the 8 category of posts in Group I service, physically handicapped candidates are eligible to apply only for the posts of District Employment Officer and District Registrar. As per Section 32 of the Act, the appropriate Government shall identify posts in the establishments, which can be reserved for persons with disability and at periodical intervals not exceeding three years, review the list of posts identified and update the list. As per Section 33 every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three percent, persons with disability of which one percent each shall be reserved for persons suffering from blindness or low vision, hearing impairment and locomotor disability or cerebral palsy, in the posts identified for each disability. The proviso to Section 33 states that the appropriate Government having regard to the type of work by notification exempt any establishment from the provisions of the Section. It has been further stated that based on the Act, the Government in G.O.Ms.No.105, dated 20.06.2000, ordered reservation of 3% of vacancies for physically handicapped persons and by another Government order in G.O.Ms.No.53, dated 11.04.2005, government approved a list of 117 posts identified under Group A & B category under the purview of TRB & TNPSC as suitable for persons with disabilities and directed 3% vacancies in direct recruitment for such posts.

7. Further, it has been stated that pursuant to the orders passed by the Division Bench in Prof. I Elangovan v. Govt of Tamil Nadu, (2008) 3 MLJ 481, Government have issued orders in G.O.Ms.No.87, dated 17.07.2008, to select one physically handicapped person for every 33 vacancies. If, there is no vacancy earmarked for physically handicapped candidates, the cut off mark will not be published and only when vacancies for these categories arise, the cut off mark will be published. Further, it has been stated that the petitioner in W.P.No.17825 of 2008, obtained 153 marks and he belongs to BC community and the cut off mark for the BC community is 201 and therefore, the petitioner was not admitted to the main written exam.

8. Pursuant to the interim direction issued by a Division Bench of this Court on 06.07.2010 in W.P.No.7237 of 2010, a report has been filed by the State Commissioner for Differently abled. The learned Special Government Pleader by placing reliance on the report submits that the State of Tamil Nadu is a forerunner in the matter of implementation of policies and welfare schemes for differently abled persons and the schemes formulated and implemented by the State of Tamil Nadu has been followed by other States and the direction issued in the various Government orders are being fully implemented.

9. We have heard the learned counsel appearing for the petitioners, learned Special Government Pleader appearing for the respondents 1 to 4 and learned Standing counsel appearing for the TNPSC.

10. The 1995 Act came into force with the avowed object for providing differently abled persons with equal opportunities, protection of rights and full participation. This Act was a step for achieving the objectives under Article 41 of the Constitution of India, which provided for making effective provision for securing the right to work, to education and to public assistants in cases of differently abled persons among other things. In the earlier portion of this order, we have dealt with the scope of Section 33, which deals with 'reservation of posts'.

11. The contention of the learned counsel appearing for the petitioners is that Section 33 provides for 'reservation of posts' and not reservation in the vacancies and that the respondents have wrongly understood the scope of the reservation contemplated under Section 33 of the Act and the proper and purposive interpretation of the Section 33 is that 33% reservation has to be computed on the basis of the total strength in an establishment. In support of his contention, the learned counsel placed reliance on the decision of the Division Bench of the Delhi High Court in National Federation of the Blind vs. Union of India.

12. It appears that the federation of differently abled persons had represented to the Hon'ble Chief Minister during 2008 and it was announced that the representation would be considered and appropriate action would be initiated. It appears that during the previous two years, i.e., prior to 2008 about 3 lakh Government appointments were given and out of which 3%, which is approximately 9000 posts have been earmarked for differently abled persons and with a view to ensure employment opportunities to such persons, the Government by G.O.Ms.No.117, dated 27.08.2008, constituted a High Level Committee under the chairmanship of the Chief Secretary and a Supervisory body in the nature of Vigilance committee was also constituted under the Chairmanship of the Hon'ble Minister for Social Welfare to supervise the implementation of the said reservation. According to the petitioner in W.P.No.7237 of 2010 in terms of G.O.Ms.No.117, the Government has to fill up 9000 vacancies. In our view, the interpretation given by the petitioner appears to be incorrect for the following reasons.

13. It is seen from the report filed by the Commissioner for differently abled that after the Government order in G.O.Ms.No.117 was issued, which estimated the vacancies, as reported by the Federation of Physically Challenged persons, steps were taken to sensitize all departments of the Government and a High Level Monitoring Committee was also formed. It appears that the High Level Monitoring Committee conducted three meetings and it was brought to the notice of the committee that from 2006, about 2,91,892 appointments were made. Out of the said appointments, 1,84,089 persons were regularised from consolidated pay to regular time scale of pay and 7226 persons were appointed on compassionate grounds. Therefore, obviously, 3% reservation could not be applied to these categories. Therefore, in respect of the remaining posts i.e., 1,00,577, the 3% reservation is stated to have been operated. Copy of the minutes of the meeting held on 05.01.2010, has been annexed to the report submitted by the Commissioner for Differently Abled. From the report, it is seen that the 3% reservation has been made, post based and not vacancy based. Further, a Special Recruitment Drive has been ordered in G.O.Ms.No.63, dated 18.03.2010, to clear the backlog vacancy. In the report, the details regarding the backlog vacancies have been tabulated and for better appreciation, the same is reproduced hereunder: -

Sl.No.

Recruiting Agency/Department Backlog vacancies Group "A" "B""C" "D"

- 1 TNPSC --25 129 –
- 2 Teachers Recruitment Board --23 (PG) 3 BT)--
- 3 Public Works Department—18 --
- 4 Public Health & Preventive Medicine -- -- -- 6
- 5 Registration -- -- 8 --
- 6 Tourism -- -- 1 --
- 7 Highways -- -- 2 --

TOTAL 49 151 6

14. Further, the details of the post exclusively earmarked for appointment of visually impaired and orthopaedically affected persons has also been furnished in the report, in a tabulated form, which is reproduced hereunder: -

Sl.No Year Category of disability No of Posts

- 1 2007-2008 Visually Impaired 200 B.T. assistants
- 2 2008-2009 Visually Impaired 90 Secondary Grade Teachers
- 3 2009-2010 Visually Impaired 100 B.T. Assistants
- 4 2010-2011 Orthopaedic impairment 70 Secondary Grade Teachers
- 5 2010-2011 Visually Impaired 38 Book Binders

15. Thus, steps appears to have been taken by the Government to identify the various posts in which the differently abled persons, are to be accommodated. It is stated that the District Collectors held job melas in Districts regularly and also secured placements in private sector and the budgetary allocation has been increased from Rs.49 crores in 2005-06 to Rs.176 crores in 2010-11. The report further states that the Government is continuously taking earnest steps to ensure 3% reservation in employment and to identify more number of posts as suitable for

differently abled persons and that the Government is committed to the upliftment of vulnerable sections of the Society especially differently abled persons.

16. While appreciating the steps taken by the Government of Tamil Nadu, thus far, it appears from the details furnished by the petitioners that a more sustained and speedy effort is required on the side of the Government to fully achieve the objectives of Article 41 of the Constitution of India and fulfill the objects of Act 1 of 1996. Though steps have been taken to identify the backlog vacancies, it appears that no Special Recruitment Drive has been conducted.

17. Further, the Government should also explore the possibility and arranging recruitment of the differently abled persons in Government companies and public sector undertakings and regular recruitment drives could be conducted, where the Government companies and public sector undertakings should be directed to participate. Likewise the Government shall also explore for organizing special recruitment drive for the differently abled in association with Corporate sector on a regular basis at frequent intervals, so that there is a wider spectrum of the job opportunities available to such persons. Immediate steps shall be taken to clear the backlog vacancies and the Government should ensure that the rule of reservation of 3% shall be adhere to strictly in accordance with Section 33 of the Act and as stated in the report submitted by the State Commissioner for disabled to give full and effective implementation to the provisions of the Act.

18. Accordingly, we dispose of the writ petitions with the above observations. Consequently, connected miscellaneous petitions are closed.