

In the High Court of Judicature at Madras

Reserved on : 30.4.2015 & Delivered on 05.6.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN
and
The Honourable Mr.Justice T.MATHIVANAN

Writ Petition No.10582 of 2015 and M.P.Nos.1 to 3 of 2015

V.Surendra Mohan

...Petitioner

Vs

1.State of Tamilnadu, rep.by its
Principal Secretary, Department of
Home Affairs, Secretariat,
Fort.St.George, Chennai-9.

2.The Secretary, Tamilnadu Public Service
Commission, Frazer Bridge Road,
VOC Nagar, Park Town, Chennai-3.

3.The Registrar General, High Court,
Madras.

(R3 is suo motu impleaded as per order dated 13.4.2015 by MJJ & TMJ)

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records and quash the impugned Government Letter No.49858/Cts-I/2014-4 dated 8.8.2014 issued by the first respondent and consequently direct the second respondent to consider the petitioner's selection to the post of Civil Judge as per Notification No.15/2014 dated 26.8.2014 (**prayer amended vide M.P.No.4 of 2015 dated 05-6-2015**).

For Petitioner :	Mr.S.Vijay Narayan, SC for Mr.R.Parthiban
For Respondent-1 :	Mr.R.Ravichandran, AGP
For Respondent-2 :	Mr.P.H.Arvinth Pandian, AAG assisted by Ms.C.N.G.Niraimathi
For Respondent-3 :	Mr.Haja Mohideen Gisthi

ORDERV.RAMASUBRAMANIAN,J

The petitioner, who participated in the selection for appointment of 162 Civil Judges (Junior Division), but whose case was not considered under the category of physically disabled persons, has come up with the above writ petition challenging the non inclusion of his candidature in the list of candidates short-listed for viva voce.

2. We have heard Mr.S.Vijay Narayan, learned Senior Counsel for the petitioner, Mr.R.Ravichandran, learned Additional Government Pleader appearing for the first respondent, Mr.P.H.Arvinth Pandian, learned Additional Advocate General assisted by Ms.C.N.G.Niraimathi, learned counsel appearing for the Public Service Commission and Mr.Haja Mohideen Gisthi, learned counsel appearing for the High Court.

3. By a Notification bearing No.15/2014, the Tamilnadu Public Service Commission invited applications for recruitment to 162 posts of Civil Judges (Junior Division). By G.O.Ms.No.53 Social Welfare and Nutritious Meal Programme dated 11.4.2005, the post of Civil Judge was identified as a post, in respect of which, reservation can be made in terms of the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 (hereinafter referred to as the Act). However, by a subsequent Notification in G.O.Ms.No.642 Home Department dated 31.8.2012, issued in exercise of powers conferred by the Proviso to Section 33 of the Act, this post was exempted from the provisions of the Act, in so far as persons with complete blindness and complete

hearing impairment were concerned.

4. As a result of the aforesaid two Government Orders, of the years 2005 and 2012, the Notification for recruitment issued on 26.8.2014 contained special instructions under Paragraph 4.F and G. These instructions in Paragraph 4.F and G are extracted as follows :

"4.F. In G.O.Ms.No.53 Social Welfare & Nutritious Meal Programme Department dated 11.4.2005, G.O.(Ms). No.642 Home (Courts-I) Department dated 31.8.2012 and Government Letter No.49858/Cts-I/2014-4 dated 8.8.2014, the post of Civil Judge has been identified as suitable for PD/PB/O categories of differently abled persons alone [PD - Partially Deaf (40-50% disability), PB - Partially Blind (40-50% disability), O-Ortho]. The candidates should upload the documents referred in para 14(f) of the Commission's 'Instructions to the Candidates' when called for.

4.G. The Differently Abled Persons should upload a copy of certificate of physical fitness specifying the nature of physical handicap and the degree of disability based on the norms laid down, from the Medical Board to the effect that his/her handicap will not render him/her incapable of efficiently discharging the duties attached to the post of Civil Judge (to which he/she has been selected before appointment when called for)."

5. In response to the above notification, the petitioner, who was declared to be partially blind with the percentage of disability at 70%, applied for selection. Though the petitioner secured the minimum marks prescribed for a pass in the

written examination, he was not included in the list of candidates short-listed for viva voce. Hence, the petitioner has come up with the above writ petition, challenging his non inclusion in the list of candidates invited for viva voce.

6. While ordering notice in the writ petition on 13.4.2015, this Court issued an interim direction directing the respondents to invite the petitioner for viva voce. However, the result of the viva voce was directed to be kept in a sealed envelope. Accordingly, he was interviewed, but his performance was kept confidential.

7. Thereafter, in a batch of writ petitions in W.P.No.10069 of 2015 etc. cases challenging the process of selection, this Court passed an interim order on 24.4.2015 directing the Service Commission to host in their website, the details of marks secured by all the candidates, who took part in the written examination and also the marks secured by candidates, who participated in the viva voce. When the results were so published, it was found that the petitioner had secured 178 marks out of 400 in the written examination and 38.25 marks out of 60 in the viva voce.

8. It was admitted by Mr.P.H.Aravindh Pandian, learned Additional Advocate General appearing for the Public Service Commission that if the petitioner is entitled to the benefit of reservation in terms of the Act, he would definitely get selected. But, since there is a confusion with regard to the entitlement of the petitioner, the Service Commission has not forwarded his name.

9. The confusion about the entitlement of the petitioner has arisen due to the letter of the Government bearing No.49858/Cts-I/2014-4 dated 8.8.2014. As per this letter, the benefit of reservation for the physically challenged is available only to those blind and deaf candidates, whose percentage of disability is 40-50%. It is

not available to the blind and deaf whose percentage of disability is more than 50%. Paragraph 1 of the letter dated 8.8.2014 reads as follows :

"In continuation of the Government letter fifth cited, I am directed to state that in view of the administrative exigencies and not to delay the selection, the High Court has considered the Tamil Nadu Public Service Commission's letter dated 4.8.2014 and accepts the proposal to go ahead with the selection for the posts of Civil Judge notifying the percentage of disability as 40-50% for partially blind and partially deaf, for the present selection alone. The Registrar General, High Court of Madras has therefore requested to go ahead with the issue of Notification immediately for the 162 posts of Civil Judge announcing 40-50% of disability for partially blind and partially deaf, for the present selection alone."

10. After it became known that the letter of the Government dated 8.8.2014 stands as an impediment for the consideration of his claim for selection, the petitioner has come up with two petitions, one in M.P.No.4 of 2015 for amendment of his prayer in the main writ petition and another in M.P.No.5 of 2015 to dispense with the production of the original letter dated 8.8.2014. The amendment sought by the petitioner in M.P.No.4 of 2015 is to substitute the original prayer made in the writ petition with a new prayer namely to issue a Writ of Certiorarified Mandamus to quash the Government Letter dated 8.8.2014 and for extending the benefit of reservation under the Act. In view of the fact that without a challenge to the Government Letter dated 8.8.2014, the writ petition cannot be decided in a holistic manner, we, by separate orders, allowed the miscellaneous petitions in

M.P.Nos.4 and 5 of 2015 for amendment and for dispensing with.

11. The challenge to the Government Letter dated 8.8.2014 is made on the ground that it seeks to dilute the provisions of the Statute and that therefore, such an executive instruction is ultra vires the provisions of the Act.

12. Two decisions of the Supreme Court are relied upon by Mr.S.Vijay Narayan, learned Senior Counsel appearing for the petitioner in support of his contention that the right conferred by the Statute is absolute and that no deviation or exception can be made by the Executive in violation of the letter and spirit of the Parliamentary Enactment.

13. In the first decision in ***Government of India Vs. Ravi Prakash Gupta [2010 (7) SCC 626]*** relied upon by the learned Senior Counsel for the petitioner, a visually challenged person became successful in the Civil Services Examination 2006 and secured 5th position in the order of merit prepared for visually challenged persons. The Government appointed only one visually challenged person on the ground that there was only one vacancy. But, the candidate contended that there was a back log of reserved vacancies from 1996 onwards. The Government took a stand that the posts in All India Services were identified for the first time only in 2005, for extending the benefit of reservation to persons with disabilities and that there was no back log in the year 2006.

14. Though the candidate lost his case before the Tribunal, the High Court allowed his plea after recording a finding that there was actually a backlog vacancy. When the Government of India took the matter on appeal to the Supreme Court, the question that was taken up for consideration, as seen from paragraph 23 of the

report, was as to whether, on account of the failure of the Government to identify posts for persons falling within the ambit of Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995, it could be said that there was no backlog vacancy or not. Another question that was also taken up for consideration, as seen from paragraph 24 of the report, was 'as to whether the reservation provided for in Section 33 of the Act was dependent on the identification of the posts suitable for appointment in such categories or not'.

15. Rejecting the contention that the implementation of the provisions of Section 33 would arise only after the identification of posts under Section 32 on the ground that it would run counter to the legislative intent, the Supreme Court pointed out, in paragraphs 25 to 27, as follows :

"25. Although the Delhi High Court has dealt with the aforesaid questions, we wish to add a few observations of our own in regard to the objects, which the Legislature intended to achieve by enacting the aforesaid Act. The submission made on behalf of the Union of India regarding the implementation of provisions of Section 33 of the Disabilities Act, 1995 only after the 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 IAS 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 purposes of Section 33, but such identification was meant to be simultaneously undertaken with the coming into operation of the Act, to give effect to the provisions of Section 33. The Legislature never intended the provisions of Section 32 of the Act to be used as a tool to deny the benefits of Section 33 to these categories of disabled persons indicated therein. Such a submission strikes at the foundation of the provisions relating to the duty cast upon the appropriate Government to make appointments in every establishment (emphasis added)."

16. However, it was pointed out in paragraph 29 of the report that to some extent, Section 33 is dependent on Section 32. But, the extent of such dependence

was held by the Supreme Court to be very limited. Paragraph 29 of the report reads as follows :

"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 duty has been cast upon the appropriate Government to make appointments in a 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, the 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."

17. On the basis of the aforesaid decision, it is contended by Mr.S.Vijay Narayan, learned Senior Counsel appearing for the petitioner that once the post has been identified under G.O.Ms.No.53 and once an exception is made under G.O.Ms.

No.642 only to those who are fully blind, it is not open to the Government to issue a circular dwarfing the legislative intent.

18. In the next decision relied upon by him, namely the one in ***Union of India Vs National Federation of the Blind [2013 (10) SCC 772]***, the Supreme Court was concerned with a public interest litigation filed by the National Federation of the Blind alleging that despite the Statutory Provisions, blind and low vision persons were virtually excluded from the recruitment process. The High Court of Delhi issued various directions forcing the Union of India to take up the matter to the Supreme Court. After analysing the scheme of the Act and various office memoranda issued by the Department of Personnel and Training, the Supreme Court dealt with the interplay of Sections 32 and 33 from paragraph 29 onwards. In paragraph 30 of the report, the Three Member Bench of the Supreme Court took note of the decision in *Ravi Prakash Gupta* to the effect that Section 33 is dependent to some extent upon the identification of posts as stipulated in Section 32. Thereafter, the Supreme Court held in paragraph 31 that the scope of identification comes into picture only at the time of appointment of a person in the post identified for disabled persons and that it is not necessarily relevant at the time of computing 3% reservation under Section 33. The ratio laid down in *Ravi Prakash Gupta* that Section 32 is not a pre-condition for computation of reservation under Section 33, was approved by Three Member Bench.

19. Dealing with the Proviso to Section 33, the Supreme Court held that the computation of reservation has to be against the total number of vacancies in the cadre strength and not against the identified posts. It was held that the Legislature

did not intend to give an arbitrary power of exemption to the appropriate Government.

20. Therefore, the contention of the petitioner is that there is no scope for the Government to restrict the scope of reservation only to those blind and deaf candidates with 40-50% disability.

21. We have carefully considered the above submissions.

22. Before we deal with the above contentions, it is necessary to take note of the following information available in the file produced by the Registry of this court, which is impleaded as the 3rd respondent herein:

(i) It appears that under G.O.Ms.No.2093 Social Welfare Department, dated 30.10.1987, issued much before the advent of Act 1 of 1996, the State of Tamilnadu had already ordered the reservation of 3% of the vacancies, in all executive posts in Group C and D categories for the physically disabled. By the same Government Order, it was made clear that there need not be any reservation in executive posts under Group A and B categories, in case of recruitment by transfer/promotion. But, the said Government Order was issued when no statutory enactment was holding the field.

(ii) After the advent of the Act, by G.O.Ms.No.46 Social Welfare and Nutritious Meal Programme Department dated 11.5.2000, the Government constituted an expert committee to identify certain posts in Groups A and B for the purpose of reservation. The expert committee examined the matter and submitted its report after which another committee was constituted under G.O.Ms.No.243 Social Welfare and Nutritious Meal Programme Department dated 26.12.2002, to

examine the report. The State Special Commissioner for Disabled was requested to identify suitable posts. He accordingly identified 117 posts as more suitable for the disabled persons in Group A and B. Thereafter, the Government issued G.O.Ms.No. 53 Social Welfare and Nutritious Meal Programme Department dated 11.4.2005, approving the list of 117 categories of posts in Group A and B as suitable for recruitment of disabled persons by direct recruitment. In the Annexure to the said Government Order, only one post viz the post of Civil Judge (Junior Division) in Tamilnadu State Judicial Service was included at S.No.102.

(iii) In other words, though the Judicial Department was covered by Section 33 of Act 1 of 1996, only one post in Group A, viz, the post of Civil Judge (Junior Division) was identified by the Government under Section 32(a) as suitable for appointment of disabled persons by direct recruitment. The post of District Judges (Entry Level) for which the rules provided for direct recruitment, was not identified in terms of Section 32(a) of the Act.

(iv) It is relevant to note that The Tamilnadu State Judicial Service consists of 9 categories of posts viz District Judge (Super time Scale), District Judge (Selection Grade), District Judge (Entry Level), Senior Civil Judge/Chief Judicial Magistrate/ Chief Metropolitan Magistrate/Metropolitan Magistrate (Assured Career Progression Scale - II stage), Senior Civil Judge/Chief Judicial Magistrate/ Chief Metropolitan Magistrate/Metropolitan Magistrate (Assured Career Progression Scale - I Stage), Senior Civil Judge/Chief Judicial Magistrate/ Chief Metropolitan Magistrate/Metropolitan Magistrate, Civil Judge (Assured Career Progression Scale - II Stage), Civil Judge (Assured Career Progression Scale - I Stage) and Civil

Judge. Out of these 9 categories of posts, only 2 posts namely the post of District Judge (Entry Level) and Civil Judge (junior division) are to be filled up by direct recruitment. Among these 2 posts, only one was identified by the Government under G.O.Ms.No. 53, in terms of section 32 (a) of the Act.

(v) The recruitment to the above posts are governed by the Tamilnadu State Judicial Service (Cadre and Recruitment) Rules, 2007, issued in exercise of powers conferred by the Proviso to Article 309 of The Constitution.

(vi) Rule 10 of these Rules reads as follows :

"10. Reservation of Appointments :

- Rules 21(b) and 22 of the General Rules for the Tamilnadu State and Subordinate Service relating to reservation of appointment shall apply to the selection for appointment to the posts of District Judge (Entry Level) and Civil Judge by direct recruitment.

(2) candidates with the following disabilities, namely blind, deaf/orthopaedically handicapped can seek for recruitment for the post of Civil Judge

(1) 3% of vacancies in the post of Civil Judge in direct recruitment has to be filled by physically handicapped, namely blind/deaf/orthopaedically handicapped. In the event of only one vacancy, the rule of reservation for physically handicapped shall not apply.

Provided that the candidate must produce a certificate from the Medical Board to the effect that the disability will not affect the performance of the job, namely Civil Judge before appointment.

(vii) The above rule was drafted in the year 2007 to be in tune with G.O.Ms.

No.53 dated 11.4.2005. This is why Rule 10 speaks only of the post of Civil Judges, in so far as the reservation of vacancies for the physically handicapped persons are concerned. While the reservation on the basis of communal status as provided by Rules 21(b) and 22 of the General Rules is made applicable to both the posts of District Judge (Entry Level) and Civil Judge, the reservation relating to the physically challenged was made applicable only to the post of Civil Judges under the aforesaid Government order.

(viii) After the aforesaid Rules were issued, a writ petition came to be filed by a candidate by name A. Tamilvanan in W.P.No.27089 of 2008, seeking a direction to the Public Service Commission, the High Court and the Government to reserve 3% of the vacancies in the post of Civil Judges, under the Scheduled Caste category for the benefit of physically challenged persons. In the course of hearing of the said writ petition, a Division Bench of this Court passed an interim order on 12.12.2008, directing the Government to examine the question whether a Judge, who is supposed to hear a case and write a judgment, would be able to discharge his function properly if he is totally blind or deaf and to issue appropriate notification under the proviso to Section 33. Paragraph 5 of the order dated 12.12.2008 passed by the Division Bench in W.P.No.27089 of 2008 reads as follows:-

" 5. A Judge may be physically handicapped, but he is supposed to hear the case and write the judgment. If a person has total hearing impairment, such as deaf or he is blind, it is not clear, how such person can function as a Judge of a Court to hear cases and then deliver judgment and why not the State

Government under proviso to Section 33 of the Act has issued notification exempting judicial service from the purview of part of Section 33 relating to complete blindness and complete hearing impairment. Notification if any issued by the State Government in this regard has to be perused. For that reason, we direct both the respondent State and Tamil Nadu Public Service Commission to file their affidavit/additional affidavit enclosing copy of such notification and reply to the queries raised by this Court."

(ix) Thereafter, when the writ petition came up for final disposal on 15.4.2009, it was informed that the writ petitioner did not come within the zone of consideration for selection, held in 2007-2008. But on the larger question raised by the Division Bench in its order dated 12.12.2008, it was informed by the State Government that the State Government had taken up the matter with the High Court on its administrative side. Therefore, by an order dated 15.4.2009, this Court disposed of the writ petition with liberty to the State Government to take a decision on the question one way or the other in consultation with the High Court. Paragraphs 3 and 4 of the order of the Division Bench dated 15.4.2009 reads as follows:-

"3. The learned counsel appearing on behalf of the respondents/State and Registrar General of the High Court, informed that the petitioner has not come within the zone of selection and as the post is reserved for blind or low vision candidates, the petitioner had not competed and was not selected. They further informed that with regard to question raised by this Court in the matter of appointment of deaf or blind person in the judicial service, the matter has been

taken up by the State Government with the Madras High Court in its administrative side and it is pending consideration. On the basis of proposal that may be submitted by the Madras High Court, the State Government will consider the matter and decide whether the rule for appointment to the post of Civil Judge (Junior Division/ Senior Division) to be amended or not.

4. In the facts and circumstances, while we are not inclined to grant any relief to the petitioner, we give liberty to the State Government to take a decision in one or other way, in consultation with the Madras High Court, with regard to the appointment of disabled persons in judicial service of the State."

(x) For nearly 3 years after the issue of the directions by the Division Bench, the Government did not take any action leading to the filing of a contempt petition. Thereafter, the Government issued G.O.Ms.No.642, Home (Courts-I) Department dated 31.8.2012 granting exemption to the post of District Judges (Entry Level) and Civil Judges in the Tamilnadu State Judicial Service from the provisions of Section 33 in respect of persons with complete blindness and complete hearing impairment. This order was purportedly issued in exercise of the powers conferred by the proviso to Section 33 of the Act, in accordance with the directions issued by the Division Bench in the aforementioned case.

(xi) Thereafter, the Government issued yet another general order in G.O.Ms. No.25, Welfare of Differently Abled Persons Department, dated 14.3.2013. By this Government Order, the Government has identified 170 posts in various services and various departments under Section 32(a). Though this order does not

specifically say that it is in super session of G.O.Ms.No.53 dated 11.4.2005, it does not identify any post, including the post of Civil Judge (Junior Division) as one of the 170 posts.

(xii) But even before the issue of the above Government order G.O.Ms.No.25, dated 14.3.2013, the Government sent a letter bearing No.66485/Courts-I/2010-30, dated 6.2.2013, to the High court seeking approval for an amendment to the Recruitment Rules, especially rule 10. A draft of the amendment proposed to the Rules 5 and 10 was also enclosed to the said letter.

(xiii) The amendments proposed were as follows :

"Amendments :

In the said rules, -

(1) Rule 5 shall be renumbered as Sub-Rule (1) of the said Rule

(2) After Sub-Rule (1) as so renumbered, the following Sub-Rule shall be added namely

'(2) The minimum standards of vision and hearing for appointment to the post of District Judge (Entry Level) and Civil Judge by direct recruitment shall be as follows :

Vision - 50% and above

Hearing - 50% and above

Provided that every candidate shall produce a physical fitness certificate issued by the Medical Board'.

(3) For Rule 10, the following Rule shall be substituted namely

'10. Reservation of Appointments :

(1) The provisions of Sub-Rule (b) of Rule 21 and

Rule 22 of the General Rules in Part II of the Tamilnadu State and Subordinate Service Rules relating to reservation of appointment shall apply to the posts of District Judge (Entry Level) and Civil Judge by direct recruitment.

(2) 3% of the vacancies in the post of Civil Judge and District Judge (Entry Level) in direct recruitment shall be reserved for partially blind, partially deaf and orthopaedically handicapped candidates having the following range or degree of disability namely

Partially blind - 40% to 50%

Partially hearing impairment - 40% to 50%

Orthopaedically handicapped - 40% and above

Provided that no person shall be eligible for the above reservation unless he satisfies the Appointing Authority that his disability will not affect the discharge of his duties in the aforesaid posts.

Provided further that a candidate claiming the above reservation shall produce a disability certificate issued by the Medical Board."

(xiv) After examining the proposed amendments, the High Court sent a reply dated 21.5.2013, requesting the Government to include one more amendment that concerned fresh law graduates. But without reference to the said letter dated 21.5.2013, the Government sent a reminder on 8.7.2013.

(xv) In the meantime, the Administrative Committee of the High Court took note of the fact that though the post of Civil Judge (Junior Division) was identified as one of the 117 posts under Section 32(a) under G.O.Ms.No.53 dated 11.4.2005, the post was left out in the new Government Order G.O.Ms.No.25 dated 14.3.2013,

where under 170 posts were identified afresh. Therefore, the Registrar General sent D.O.Letter No.80/2006/Con.B1, dated 1.8.2013 to the Government pointing out the position with regard to the new Government Order and also indicating that it may not be possible to provide for any reservation for blind and deaf candidates, in view of the nature of the duties involved. The High Court actually took exception to the nature of the exemption ordered under G.O.Ms.No.642 and forwarded a draft of the amendment to the statutory Rule that the High Court desired to have.

(xvi) In response, the Government sent a reply dated 18.10.2013 asking the High Court to confirm whether it was proposed to make the blind and deaf candidates ineligible for direct recruitment. The Government pointed out that if the intention of the High Court was to make them completely ineligible, then minimum standards of vision, hearing and orthopaedic fitness had to be prescribed in the recruitment Rules. Therefore, the Government requested the High Court to consider fixing suitable minimum standards of vision, hearing and orthopaedic fitness, with or without correctional equipments, required for effective discharge of duties attached to the posts.

(xvii) When the matter was under consideration, the decision of the Supreme Court in *National Federation of the Blind* came. Hence, the Full Court took a call on 5.7.2014 and a decision was taken to refer the matter to the Rule Committee. Before the Rule Committee could take a decision, the process of recruitment of 162 Civil Judges (the present recruitment, to which this writ petition relates) began.

(xviii) Therefore, the Public Service Commission sent a letter dated 4.8.2014 to the Government seeking the consent of the Government to issue a Notification

for recruitment, fixing 40-50% disability for partially blind and partially deaf candidates. The Government sought the opinion of the High Court and the High Court gave no objections. Thereafter, the Government issued the impugned communication dated 8.8.2014 directing the Service Commission to initiate the process of selection of 162 Civil Judges, by notifying the percentage of disability as 40-50% for partially blind and partially deaf, for the present selection alone. This is why paragraph 4.F was incorporated in the Notification bearing No.15/2014 dated 26.8.2014 issued by the Public Service Commission.

23. Keeping the above developments in mind, if we have a look at the case of the petitioner, it could be seen that the petitioner admittedly suffers from 70% blindness. Therefore, his candidature was not considered in view of para 4.F of the Notification, which we have extracted earlier. Para 4.F of the Notification was a sequel to the Government letter dated 8.8.2014, which in turn, was intended to fill up the gap till the amendment to the Statutory Rules took a final shape and issued in exercise of the power conferred by the Proviso to Article 309.

24. The proposed amendment, was actually a product of the past experience that the High Court had. In a recruitment of the year 2010, a candidate was selected and appointed. After the administration experienced difficulties, the selected candidate had to be posted as the Assistant Editor of the Tamil Law Journal. Therefore, the proposed amendment seeks to fix minimum standards of vision and hearing for appointment to the posts of District Judge (Entry Level) and Civil Judge by direct recruitment at 50% and above. To achieve this, the existing Rule 10(2) was sought to be substituted with a new rule defining partial blindness

as something between 40-50%.

25. It must be remembered that the amendment was proposed by the Government vide their letter dated 6.2.2013. Since the amendment is still under consideration, the Public Service Commission thought fit to incorporate the percentage of disability at 40-50% as the defining parameter for partial blindness. The petitioner participated in the selection, only as per the prescription contained in the Notification for recruitment. Useful reference can be made in this connection to the judgments in (i) *Madan Lal v. State of Jammu and Kashmir* [(1995) 3 SCC 486], (ii) *Marripati Nagaraja v. Government of Andhra Pradesh* [(2007) 11 SCC 522], (iii) *Dhananjay Malik v. State of Uttaranchal* [(2008) 4 SCC 171], (iv) *Amlan Jyoti Borooach v. State of Assam* [(2009) 3 SCC 227] and (v) *K.A.Nagamani v. Indian Airlines* [(2009) 5 SCC 515]. It is too late in the day to cite any case law for the proposition that a person, who participates in a process of selection, cannot later turn around and question the prescription contained in the very Notification for recruitment. A person, who participates in a selection pursuant to a Notification, is bound by the stipulations contained in the Notification. Therefore, the petitioner is bound by Paragraph 4.F of the Notification for recruitment.

26. Thinking that the original source for the prescription contained in Paragraph 4.F of the Notification is the Government Letter dated 8.8.2014, the petitioner has come up with a prayer challenging the letter dated 8.8.2014. But, what the petitioner does not know is the fact that the Government Letter dated 8.8.2014 is not the original source. The experience that the High Court gained after selecting for appointment a completely blind person in the year 2010 led to a series

of correspondence between the High Court and the Government. Therefore, the Government came up with a proposal to amend the Recruitment Rules vide their letter dated 6.2.2013. The proposed amendments are under consideration by the High Court. It is only on the basis of the proposed amendment that the Government issued the letter dated 8.8.2014 leading to the insertion of Paragraph 4.F in the Notification for recruitment. Hence, the petitioner cannot achieve the desired result by merely challenging the Government Letter dated 8.8.2014. The petitioner has not challenged Paragraph 4.F of the Notification for recruitment even now. This Paragraph 4.F is in tune with the proposed amendment to the Rules. Therefore, apart from the fact that a person, who participates in a process of selection, is bound by the prescriptions contained in the Notification for selection, the fact remains that the petitioner has not even challenged Paragraph 4.F of the Notification.

27. However, it is contended by Mr.S.Vijay Narayan, learned Senior Counsel for the petitioner that neither the Statutory Rules nor the Notification issued by the Public Service Commission can take away the benefit conferred by a Parliamentary Enactment. Since this contention deserves elaborate consideration, we would deal with it right now.

28. A look at the Act would show that the Act was enacted with a view to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region. The Act is divided into 14 Chapters. Chapter I deals with preliminaries. Chapters II and III deal with the constitution of Central and State Coordination Committees. Chapter IV deals with prevention and

early detection of disabilities. Chapter V deals with education. Chapter VI deals with employment. Chapter VII deals with affirmative action. Chapter VIII deals with non discrimination and so on and so forth. For the purpose of the present case, we are concerned only about Chapter VI, which deals with employment.

29. Section 32 obliges the appropriate Governments to identify posts in all the establishments that can be reserved for persons with disabilities. The question as to how and when the identification has to take place, has now been settled by the Supreme Court in *Ravi Prakash Gupta* and *National Federation of the Blind*. Section 33 obliges every appropriate Government to appoint, in every establishment, such number of persons with disabilities, not exceeding 3% of the vacancies. This 3% is divided in equal proportions between persons with (i) blindness or low vision (ii) hearing impairment and (iii) locomotor disability or cerebral palsy. The Proviso to Section 33 enables the appropriate Government to exempt any establishment from the provisions of this Section. Therefore, the other provisions in Chapter VI may not have any relevance for the case on hand and hence, we do not deal with the same.

30. As can be seen from a combined reading of Sections 32 and 33, the identification of posts in establishments as well as reservation of posts, is for persons with disabilities. Therefore, we have to look into the definition of the expression 'person with disability'.

31. The expression 'person with disability' is defined in Section 2(t) to mean a person suffering from not less than 40% of any disability as certified by a Medical Authority. Therefore, the very benefit of reservation under Sections 32 and 33 is

available only to persons, who suffer from not less than 40% of any disability.

32. The expression 'disability' is defined in Section 2(i) to mean (i) blindness (ii) low vision (iii) leprosy cured (iv) hearing impairment (v) locomotor disability (vi) mental retardation and (vii) mental illness. The expression 'blindness' itself is defined in Section 2(b) to mean any one of the three conditions namely (a) total absence of sight or (ii) visual acuity not exceeding 6/60 or 20/200 (snellen) in the better eye with correcting lenses or (iii) limitation of the field of vision subtending an angle of 20 degree or worse.

33. Therefore, it is the contention of the learned Senior Counsel for the petitioner that once the petitioner is found to suffer from a disability namely blindness, of an extent not less than 40%, he acquires a right, under Sections 32 and 33, to be extended the benefit of reservation and that the said benefit conferred by Statute cannot be taken away even if the Recruitment Rules had been amended. Today, the Recruitment Rules have not actually been amended. Hence, it is contended that what could not be done even by an amendment to the Statutory Rules cannot be done by a proposed amendment or by a Government Letter.

34. But, in so far as blindness is concerned, there appears to be a lacuna in the Act. The expression 'disability' is defined under Section 2(i) to mean blindness. The expression 'blindness' is defined under Section 2(b) to mean any one of the three conditions stipulated therein including total absence of sight. Therefore, the prescription contained in Section 2(t) that a person is qualified as a person with disability only if the percentage of disability is not less than 40%, goes contrary to the definition contained in Section 2(b) and 2(i). If a person has less than 40%

disability in respect of sight or vision, he does not qualify as a person with disability. We do not know whether any percentage of disability ranging from 41% to 99% would be taken as partial blindness.

35. However, taking into account the nature of duties to be performed by the Civil Judge, the Government, in consultation with the High Court, had proposed to restrict the applicability of the benefit of reservation only to those, whose disability ranges from 40-50%. If a person has not less than 40% blindness, he becomes eligible for the benefit of reservation. This fundamental and essential feature of the reservation under Sections 32 and 33 is not taken away by the proposed amendment. The proposed amendment, while not depriving the benefit of reservation to those, who come within the definition of the expression 'person with disability', restricts it to those, whose percentage of disability, is 50% less. This cannot be termed as nullifying the effect of the Statute. Therefore, the contention of the learned Senior Counsel for the petitioner cannot be accepted. Hence, we are of the considered view that the petitioner cannot succeed.

36. Therefore, the writ petition is dismissed. No costs. Consequently, the above MPs are also dismissed.

(V.R.S.J.) (T.M.J.)
05-6-2015
2/2

Office to Note : Carry out necessary amendment before issuing order copies

Index : Yes or No

Internet : Yes or No

RS/gr

V.RAMASUBRAMANIAN,J
AND
T.MATHIVANAN,J

RS/gr

To

- 1.The Principal Secretary to Government of Tamilnadu, Department of Home Affairs, Secretariat, Fort.St.George, Chennai-9.
- 2.The Secretary, Tamilnadu Public Service Commission, Frazer Bridge Road, VOC Nagar, Park Town, Chennai-3.
- 3.The Registrar General, High Court, Madras.

W.P.No.10582 of 2015&
M.P.Nos.1 to 3 of 2015

05-6-2015