

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NO.9964 OF 2009

DATED:13-10-2015

Between:

V. Venkateshu ... Petitioner

And

The Central Power Distribution Company
of A.P. Limited, Hyderabad
represented by its Chairman and Managing Director
and others ... Respondents

... Respondents

COUNSEL FOR THE PETITIONER: Mr. D. Linga Rao

COUNSEL FOR THE RESPONDENTS: Mr. T. Vijay Hanuman Singh,
for Mrs. Jagarlamudi Koteswaridevi

THE COURT MADE THE FOLLOWING:

ORDER:

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This writ petition is filed for a mandamus to declare the action of the respondents in not considering the petitioner's claim for appointment to the post of Sub-Engineer, as illegal and arbitrary.

The petitioner claims to be a person with physical disability and that he falls under the category of locomotor disability. In pursuance of an employment notification issued by the respondents, he has applied for the post of Sub-Engineer. The

notification has reserved one post for visually impaired. It is the pleaded case of the petitioner that no candidate with visual impairment has applied for the post of Sub-Engineer and in spite of the same the respondents have not allotted the quota reserved for visually impaired person to the petitioner by inter-changing the same. The petitioner has relied upon the correspondence between respondent No.1 on one side and respondent No.4 on the other, on the interchangeability. It is unnecessary to refer to this correspondence for the reason that under the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, 'the Act') such inter-changeability in the first recruitment year is not permissible. In this context, Sections 33 and 36 of the Act need to be noticed, which read as under:

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 cannot be employed, the vacancies may be interchanged among the three categories with the prior approval of the appropriate Government."

Section 33 of the Act envisages 1% reservation for each of the three categories

mentioned therein. From a reading of Section 36 of the Act, it is clear that where in any recruitment year any vacancy under Section 33 of the Act 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 is 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.

It is therefore clear from Section 36 of the Act that during the first recruitment year, if the vacancy earmarked for a particular category, among the three categories mentioned under Section 33 of the Act cannot be filled up, the said vacancy shall have to be necessarily carried forward in the subsequent recruitment year. The employer is empowered to interchange among the said three categories only in the succeeding recruitment year. Therefore, the petitioner cannot insist that the vacancy reserved for visually impaired cannot be carried forward in the succeeding recruitment year and that the same shall be interchanged with the category of locomotor disability. Such contention runs contrary to the scheme of the Act.

For the above mentioned reasons, I do not find any merit in this writ petition and the same is accordingly dismissed.

As a sequel to dismissal of the writ petition, W.P.M.P. No.12907 of 2009 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

13-10-2015

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