

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Delivered On: 24.06.2016

Reserved On: 22.04.2016

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

And

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.17998 of 2013

Thanggakolanchinathan. T ... Petitioner

Vs.

1.The Registrar General,  
High Court of Madras.

2.The Principal Secretary,  
Government of Tamil Nadu,  
Public (Special.A) Department,  
Secretariat, Chennai - 600 009.

3.The State Commission for the  
differently abled,  
Department of Welfare of  
differently abled, Government  
of Tamil Nadu, State Resource  
cum Training Centre Campus,  
Jawaharlal Nehru Inner Ring Road,  
KK Nagar, Chennai - 600 078. ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the entire records relating to the Notification for the post of District Judge (Entry Level) issued by the second respondent, dated May, 2013 and quash the same as illegal, arbitrary and discriminatory in so far as concerned with the petitioner case and consequently direct the respondent 1 and 2 to consider the petitioner representation dated 3.6.2013 in the light of the section 33 of "The persons with disabilities (Equal opportunities of right and full participation) Act, 1995."

For Petitioner : Mr.R.Venkatesan

For Respondents: Mr.V.Ayyadurai for R1  
Mr.T.N.Rajagopalan for R2 and R3  
Special Government Pleader

O R D E R

M.SATHYANARAYANAN, J.

In this writ petition, the applicability of Section 33 of The Persons With Disabilities (Equal Opportunities, Protection Of Rights And Full Participation) Act, 1995 (in short "the Disabilities Act"), for selection to the post of District Judges (Entry Level), is the primordial question for consideration.

2.The petitioner is an Advocate and he would state that the second respondent namely, Government of Tamil Nadu represented by the Principal Secretary, Public (Special A Department), Secretariat, Chennai 600 009 had invited applications for direct recruitment to 23 posts of District Judges (Entry Level) in the Tamil Nadu State Judicial Services under the amended provisions of the Tamil Nadu State Judicial Services (Cadre and Recruitment) Rules, 2007 (in short "Tamil Nadu Judicial Service Rules").

3.The petitioner would claim that he possesses B.A. and B.L. Degree and he is a practicing Advocate and the former President of the Thittakkudi Bar Association, Cuddalore District. The petitioner would further claim that he is otherwise abled (Physically Challenged) and to substantiate the same, in the application submitted for selection and appointment to the said post, also enclosed a disability certificate.

4.The petitioner would state that the second respondent has announced date of examination on 06.07.2013 at Chennai and his grievance is that in the notification issued by the second respondent, neither the reservation to the disabled category nor the reasons have been specified in the said notification as to the exemption granted to the said post in the light of proviso to Section 33 of the Disabilities Act.

5.It is further stated by the petitioner that as per the notification issued by the second respondent, the distribution of the 23 vacancies for the post of District Judges (Entry Level) is as follows:

|                                                         |             |
|---------------------------------------------------------|-------------|
| Backward Classes (Other than Backward Class Muslims)    | 6 (Women-2) |
| General Turn                                            | 8 (Women-4) |
| Scheduled Castes                                        | 3 (Women-1) |
| Most Backward Classes and Denotified Communities        | 4 (Women-1) |
| Scheduled Castes (Arunthathiyars on preferential basis) |             |
| Backward Class Muslims                                  | 1 (Women-1) |

6.The notification provides, from among other things, that the said posts shall be filled up by direct recruitment from among the eligible Advocates on the basis of the written and viva voce test prescribed and to be conducted by the first respondent namely, Registrar General of this Court in accordance with the Rules.

7.The grievance expressed by the petitioner is that the State is under statutory duty to identify the candidates suitable for the said jobs and the percentage of disability besides providing guidelines for admissions to various jobs. While so unfortunately, neither the first nor the second respondent had taken steps to implement the Rule of reservation to the disabled persons in true spirit and fairness and the notification is also silent with regard to the adoption of Horizontal 3% reservation for the disabled persons, but on the other hand, has provided only vertical communal reservation. Therefore, the petitioner in this regard, had also submitted a representation dated 03.06.2013 to the respondents pointing out the said infirmity and prayed for appropriate steps to reserve 3% for the disabled in the selection process and also prayed for appropriate orders, however, since no proper response was forthcoming, he has filed this writ petition with the prayers mentioned supra.

8.Mr.Mohamed Nazurallah has also filed a Public Interest Litigation in W.P.No.29673 of 2013 as to the non reservation of 3% for disabled in selection to the post of District Judges (Entry Level).

9.The Registrar General has filed the common counter affidavit stating among other things that in terms of the notification issued by the second respondent, a total of 3273 applications were received and after process, hall tickets were issued to 3239 candidates and in the written examinations conducted, a total of 2688 candidates had participated and written both papers.

10.As per the notification, marks obtained by all candidates in both papers were totalled together and it was found that only 165 candidates had secured 35% and above in the aggregate and therefore, a decision has been taken to call 165 candidates for interview and thus interview was conducted from 29.07.2013 to August, 2013 and after completion of selection process, 22 candidates were provisionally selected for appointment as District Judges (Entry Level) 2013 and the marks secured by all 165 candidates who were short listed for interview as well as the list of 22 candidates provisionally selected have been posted in the website of High Court on 06.08.2013 and a press release was also issued on 06.08.2013.

11. Out of the 22 candidates selected, one candidate expressed his un-willingness to join the said post and it was accepted and the next candidate included in the order of merit was included in the selection list and one vacancy was left unfilled for want of suitable candidate belonging to Scheduled Caste (Arundadiyar) and on the clarification issued by the State Government, the said vacancy was also filled up by accommodating a candidate belonging to the Scheduled Caste community, in terms of latter part of the proviso to Rule 22 (a) of the General Rules for Tamil Nadu State and Subordinate Services. The Government have also issued G.O.Ms.No.5, Public (Spl-A) Department dated 02.01.2014 intimating the selection and appointment of 23 candidates.

12. The first respondent insofar as the plea of non extension of 3% reservation to persons with disability, would state that Section 33 of the Act 1 of 1996 makes it incumbent upon every appropriate Government to appoint in every establishment such percentage of vacancies not less than 3% of persons with disability and the said Section uses the expression "In the posts identified for each disability" and would further state that as per the said expression, the first step is to make the Act apply to all establishments, but not to all posts in all establishments.

13. The first respondent would further state that Section 32 (a) has obligation on the appropriate Government to identify the post in every establishment for providing 3% reservation and under Section 32 (b), there is also obligation on the part of the Government to review the list of such posts once in three years. In G.O.Ms.No.2093, Social Welfare Department, dated 30.10.1987, issued prior to the issuance of the Disabilities Act, the Government had already ordered reservation of 3% vacancies in all Executive posts in Group C and D categories and it was made clear that there need not be any reservation in the posts under Group A and B categories, in the case of recruitment by transfer/ promotion.

14. The Government by an Order in G.O.Ms.No.46, Social Welfare and Nutritious Meal Programme Department, dated 11.05.2000, constituted an Expert Committee to identify the said posts and the State Special Commissioner for Disabled was requested to identify suitable posts and accordingly, identified 117 posts as most suitable for the disabled persons in Groups A and B and thereafter, vide G.O.Ms.No.53, Social Welfare and Nutritious Meal Programme Department, dated 11.04.2005, list of 117 categories of posts in Group A and B were approved as suitable for recruitment of disabled persons by direct recruitment and in the Annexure to the said Government Order, one post namely, the Civil Judge (Junior Division/ Judicial Magistrate - First Class) is identified at Serial No.102 in the Tamil Nadu State Judicial Service.

15. According to the first respondent/ Registrar General, in terms of the above said Government Order, the post of District Judge (Entry Level) was not identified in terms of Section 32 (a) of the Disabilities Act, because Rule 10 of the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007 provides for reservation of appointment and as per Sub Rule 2, candidates with the following disabilities, namely, blind, deaf, orthopaedically handicapped can seek for recruitment for the post of Civil Judge and on earlier occasion, it was also the subject matter of challenge in W.P.No.27089 of 2008 filed by Thiru.A.Tamilvanan and vide order dated 15.04.2009, this Court has disposed of the said writ petition with a clear direction to the Government to consider the question of invoking the proviso under Section 33 of the Act (for exempting the judicial department itself insofar as the post of Judges are concerned ) and the Government had also issued G.O.Ms.No.642, Home (Cts.I) Department, dated 31.08.2012 exempting the posts of District Judge (Entry Level) and Civil Judge in Tamil Nadu State Judicial Service from the provisions of Section 33 of the Disabilities Act in respect of persons with complete blindness and complete hearing impairment and therefore, no such reservation has been provided in the selection to the post of District Judges (Entry Level), hence the challenge made in this writ petition is untenable, accordingly prayed for the dismissal of the writ petition.

16. Since the stand of the Government is not made known in this writ petition, we have referred to the counter affidavit filed on behalf of the Government of Tamil Nadu represented by the Principal Secretary to Government, Home (Courts) Department, Fort St.George, Chennai in a pending writ petition in W.P.No.29673 of 2013 Public Interest Litigation filed by Mr.Mohamed Nazurallah and it is averred among other things that in compliance of the order dated 15.04.2009 in W.P.No.27089 of 2008 filed by Thiru.A.Tamilvanan as well as the contempt petition filed by the said writ petitioner, a notification in G.O.Ms.No.642, Home, dated 31.08.2012 has been published in the Tamil Nadu Government Gazette Extraordinary dated 31.08.2012 invoking proviso to Section 33 of the Disabilities Act exempting the posts of District Judge (Entry Level) and Civil Judge in the Tamil Nadu State Judicial Service from the provisions of Section 33 of the Disabilities Act in respect of persons with complete blindness and complete hearing impairment.

17. It is further stated that subsequently, the Registrar General, High Court vide D.O.Letter dated 01.08.2013, had communicated the views of the Hon'ble Administrative Committee with regard to exempting the persons with complete blindness with regard to non-provision of any reservation for physically challenged persons to the District Judge (Entry Level) and to restricting the proposed amendment to existing Rules 5 and 10 of the Service Rules, only to the extent of

incorporating a provision for reservation for orthopaedically handicapped candidates and not the visually challenged and hearing impaired candidates.

18.The Government have also requested the High Court vide letter dated 18.10.2013 to provide information as to whether the intention of the High Court is not only to deny reservation to blind, deaf and orthopaedically handicapped candidates in direct recruitment to the post of District Judge (Entry Level) as well as to blind and deaf candidates in direct recruitment to the post of Civil Judge but also to make such candidates ineligible for appointment to the said posts and the Government also made a request to the High Court for eligibility/ fixing of the minimum standards of vision, hearing and orthopaedic fitness which are required for the efficient discharge of the duties of the said posts in the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007 and the response is awaited and on reply from the High Court, it is stated that necessary amendment will be notified in the said Rules.

19.In sum and substance, it is the stand of the first respondent that since the Government have issued notification under later part of the proviso to Section 33 of the Disabilities Act exempting the persons with complete blindness and complete hearing impairment for selection to the post of District Judge/ Civil Judge in the State Judicial Service, the grounds all raised by the petitioner miserably lack merits and accordingly prayed for dismissal.

20.The learned counsel appearing for the petitioner drawing our attention to the Disabilities Act, the impugned notification and also the judgment rendered by the Hon'ble Division Bench of this Court reported in 2010 (5) CTC 1 (K.Appadurai Vs. The Secretary to Government, Public (Special.A) Department) would submit that admittedly, he is neither blind nor he is hearing impaired, but he is orthopaedically handicapped owing to the disability percentage of 55% and in the event of his selection and appointment, he can discharge the duties attached to the said post, in a fair, proper and effective manner, being so the non reservation of 3% to the post of District Judge (Entry Level) by way of direct recruitment reflects the mind set of the official respondents in not considering the plight of the persons with disability, thus he sought for appropriate orders.

21.Per contra, Mr.V.Ayyadurai, the learned counsel appearing for the Registrar General of High Court and Mr.T.N.Rajagopalan, the learned Special Government Pleader appearing for the Government of Tamil Nadu would submit that in the light of the Government Order granting exemption in the later part of the proviso to Section 33 of the Disabilities Act coupled with the Statutory Rules in the form of Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007, the petitioner has no case

at all, in as much as the relevant provisions in the Statutory Rules have not been put to challenge, hence, on that ground also, the petitioner is not legally entitled to succeed and thus, they pray for dismissal of the writ petition.

22.This Court has carefully considered the rival submissions and also perused the materials.

23.The primordial question arises for consideration is whether 3% reservation has to be provided for otherwise abled (physically challenged) persons in the recruitment to the post of District Judge (Entry Level)?

24.To find a candid answer to this lis, it is more pertinent to see the judgment rendered by the Hon'ble Apex Court reported in 2003 (4) SCC 524 (Kunal Singh Vs. Union of India and another), wherein the Apex Court while elaborately considering the scope of the Disabilities Act, has held that the Disabilities Act provides some sort of succor to the disabled persons, hence it is also relevant to extract some of the provisions of the Disabilities Act which are as follows:

"2.Definitions.-In this Act, unless the context otherwise requires, - (a)(ii) in relation to a State Government or any establishment wholly or substantially financed by that Government, or any local authority, other than a Cantonment Board, the State Government;

(b) "blindness" refers to a condition where a person suffers from any of the following conditions, namely:-

(i)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;

(e)"cerebral palsy" means a group of non-progressive conditions of a person characterised by abnormal motor control posture resulting from brain insult or injuries occurring in the pre-natal, perinatal or infant period of development;

(i)"disability" means -

(i)blindness;

(ii)low vision;

(iii)leprosy-cured;

(iv)hearing impairment;

(v)locomotor disability;

(vi)mental retardation;

(vii)mental illness;

(l) "hearing impairment" means loss of sixty decibels or more in the better year (sic) in the conversational range of frequencies;

(o) "locomotor disability" means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy;

(t) "person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority;

(u) "person with low vision" means a person with impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device;

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."

25. In the judgment rendered by a Division Bench of this Court reported in 2010 (5) CTC 1 (K.Appadurai Vs. The Secretary to Government, Public (Special.A) Department), number of writ petitions were filed challenging the notification calling for applications for appointment to the posts of District Judges (Entry Level) and in all such writ petition, challenge was made on the ground that the said notification did not show the number of vacancies earmarked for disabled in accordance with Section 33 of the Disabilities Act.

26. The Government had filed counter affidavit and took the stand that in G.O.Ms.No.87 dated 17.07.2008 orders have been issued to adhere to the system of 200 point roster, dividing into six classifications granting an equal ratio of 1:1:1 to the disabled category that is blind, deaf and orthopaedically challenged as far as possible and to select differently abled persons among the 33 vacant posts in each division. The nature of duties and responsibilities attributed to the post of District Judge (Entry Level) requires persons free from certain disabilities like blindness, total deafness, etc. so as to discharge duties efficiently and every possible steps have been taken to give equal opportunities to eligible disabled persons.

27. It is further stated that the disabled persons come under horizontal reservation. Therefore, the concerned person will be accommodated if he comes on merits and he will be absorbed under the respective communal quota and since notification was given only for vertical reservation, the obligation of filling up vacancies as per 3% reservation will be carried out by the Appointing Authority at the time of appointment by appointing one individual belonging to differently abled category in each of the six blocks of 200 point Communal Roster.

28. The Division Bench of this Court in the above cited decision, after taking into consideration the stand of the petitioner and the official respondents in paragraph no.30, has held that the appointing Authority has an obligation to fill up the vacancies applying 3% reservation at the time of appointment as per roster. It is pertinent to extract the relevant portion thereof as follows:

"30. After hearing the learned Counsel appearing for the parties, we are of the view that the stand taken by the Respondents in their respective Counter Affidavit is fully justified inasmuch as the system of 200 point roster dividing into 6 classifications granting an equal ratio of 1:1:1 to the disabled category has been followed. It has been categorically stated that the obligation of filling up vacancies as per 3% reservation would be carried out by the Appointing Authority at the time of appointment as per

the roaster. In that view of the matter, we find that the impugned Notification is transparent and is strictly adhering to the rules of reservation in force. Hence, the contention made by the Petitioners in these two Writ Petitions are misconceived and devoid of any substance. We, therefore, do not find any merit in this Writ Petition also."

29.Again, this issue visited this Court in W.P.3087 of 2011 batch etc.(P.Senthil Kumaran and Others Vs. Registrar General, High Court, Madras and others) and one of the issues arose for consideration was as to the reservation for physically challenged persons and the legal necessity of providing 3% reservation to physically challenged persons.

30.While answering the question a Division Bench of this Court in a reported judgment in (2011) 4 MLJ 897 (P.Senthil Kumaran and Others Vs. Registrar General, High Court, Madras and others), after taking note of the above cited Government Orders and Rule 10 of the Tamil Nadu State Judicial Service Rules in page no.919 paragraph no.(q) has observed as follows:

"(q) In the absence of identification of the post to be filled up, even though there is a statutory right on the part of the physically challenged person to claim to be appointed as one among 33, that right has not yet got crystallized. We are also informed that after the Persons with Disabilities (Equal Opportunities, Protection Of Rights And Full Participation) Act, 1995, has come into existence in 1996, the present recruitment is the second one and there were already 11 District Judges (Entry Level) appointed earlier and if put together, both would come to 28 posts (11 + 17) of District Judges, out of whom no one has been appointed from and out of the physically challenged persons. The mandate is that such appointment should be made before 33, which means that there should be one appointment between 1 to 33, of course, subject to the availability of candidates. In this situation, we are not impressed by the contention raised by the learned counsel for the petitioners that the selection has to be set aside on that ground. On the other hand, we are informed that out of 17 selected candidates, only 16 have been appointed. If the said one vacancy is going to arise for any reason and by any chance, or in the

absence of such a situation, in the next immediate appointment to the post of District Judges, the respondents shall preferably appoint a person under physically challenged category, of course, subject to other requirements like, qualifications etc."

31. Referring to the above judgment the learned counsel appearing for the petitioner invited our attention to the said paragraph to submit that in the said judgment, this Court has directed the respondent to appoint persons under physically challenged category subject to the fulfilment of other requirements like qualification etc. in the next immediate appointment to be made to the post of District Judges, but in utter violation of the said order, the present notification came to be issued without providing any reservation under the Disabilities Act and even to persons with orthopaedical and locomotor disability and therefore, it should be quashed.

32. Per contra, it is the stand taken by the respective learned counsel appearing for the official respondents that in the absence of identification under Section 32 of the Disabilities Act, the question of reservation under Section 33 of the Disabilities Act does not arise at all and even otherwise, exemption has been granted to select and appoint persons with physical disability to the posts of Civil Judge and District Judge (Entry Level), therefore any contention contrary thereto should fail.

33. In the aforementioned facts and circumstances of the case on hand, let us refer to the judgment of the highest Court of this land reported in (2010) 7 SCC 626 (Government of India through Secretary and another Vs. Ravi Prakash Gupta and another), in which the first respondent therein, is a visually handicapped person who suffers from cent percent blindness and he cleared preliminary as well as main examinations and was called for personality test and he was at serial no.5 of the merit list prepared for visually handicapped persons and despite that, only one post was offered in the said category and therefore, he was not given appointment and therefore, made a challenge before the Delhi High Court by filing writ petition which came to be allowed. Aggrieved thereby, the Government of India have filed Special Leave Petition (Civil) before the Hon'ble Supreme Court of India.

34. After taking note of the rival submissions, the Apex Court has formulated the following two questions for consideration:

(a) whether on account of the failure of the petitioner to identify posts for persons falling within ambit of Section 33 of the Disabilities Act, 1995, the first respondent namely, Mr. Ravi Prakash Gupta should be deprived of the benefit of his

selection purportedly on the ground that there were no available vacancies in the said category?

(b) whether the reservation provided for in Section 33 of the Disabilities Act, 1995, was dependent on identification of posts suitable for appointment in such categories, as has been sought to be contended on behalf of the Government of India in the instant case?

35. The Hon'ble Supreme Court while answering the said questions, has held as follows:

"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 indicted 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).

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."

36. Then came the decision of the Apex Court reported in 2011 (2) CTC 353 (T.M.N. Deepak Vs. State of Tamil Nadu) (Division Bench) wherein writ petitions were filed as Public Interest Litigations praying for appropriate directions directing the official respondents to ensure 3% reservation for persons with disabilities and to fill up backlog of vacancies and also to implement provisions of the Disabilities Act more particularly, Section 32, 33 and 36 of the Disabilities Act.

37. The Tamil Nadu Public Service Commission has filed counter affidavit stating among other things that 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, for, proviso to Section 33 states that the appropriate Government having regard to the type of work, by Notification, may exempt any establishment from the provisions of the Section and based on that, Government in G.O.Ms.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 and B category under the purview of Teachers Recruitment Board and Tamil Nadu Public Service Commission as suitable for persons with disabilities and directed 3% vacancies in direct recruitment for such posts.

38. It is further stated in the counter that in compliance of the orders passed by the Division Bench in Prof. I. Elangovan Vs. Government of Tamil Nadu reported in 2008 (3) MLJ 481, Government had issued orders in G.O.Ms.No.87, dated 17.07.2008, to select one physically handicapped person for every 33 vacancies and if there is no vacancy earmarked for physically handicapped persons, the cut off mark will not be published and only when the vacancies for these categories arise, the cut off mark will be published. The Hon'ble Division Bench of this Court after taking into consideration the report submitted by the Government to the effect 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, disposed of the said writ petitions with the following observation:

"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."

39. It is by now, fairly well settled in the decision of the Hon'ble Supreme Court reported in (2013) 10 Supreme Court Cases 772 (Union of India and another Vs. National Federation of the Blind and others), the interpretation given by the High Court of Delhi to Section 33 of the Disabilities Act in the case of National Federation of the Blind Vs. Union of India reported in (2009) 156 DLT 446 was put to challenge. The Hon'ble Supreme Court of India after taking note of the relevant statutory provisions and the office memorandum issued by the Union of India, has formulated the following question:

Whether the reservation provided for the disabled persons under Section 33 of the Act, is dependent upon the identification of posts as stipulated by Section 32?

40. It is relevant to extract paragraph nos. 31, 32 and 33 of the decision of the Hon'ble Supreme Court reported in (2013) 10 Supreme Court Cases 772 (Union of India and another Vs. National Federation of the Blind and others) which are as follows:

"31. In the light of the above pronouncement, it is clear 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 is not necessarily relevant at the time of computing 3% reservation under Section 33 of the Act. In succinct, it was held in Ravi Prakash Gupta that Section 32 of the Act is not a precondition for computation of reservation

of 3% under Section 33 of the Act rather Section 32 is the following effect of Section 33.

32. Apart from the reasoning of this Court in Ravi Prakash Gupta, even a reading of Section 33, at the outset, establishes vividly the intention of the legislature viz. reservation of 3% for differently abled persons should have to be computed on the basis of total vacancies in the strength of a cadre and not just on the basis of the vacancies available in the identified posts. There is no ambiguity in the language of Section 33 and from the construction of the said statutory provision only one meaning is possible.

33. A perusal of Section 33 of the Act reveals that this section has been divided into three parts:

33.1. The first part is:

"33. Reservation of posts.-Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than 3% for persons with disability....."

It is evident from this part that it mandates every appropriate Government shall appoint a minimum of 3% vacancies in its establishments for persons with disabilities. In this light, the contention of the Union of India that reservation in terms of Section 33 has to be computed against identified posts only is not tenable by any method of interpretation of this part of the section.

33.2. The second part of this section starts as follows:

"... of which one per cent each shall be reserved for persons suffering from-

(i) blindness or low vision;  
(ii) hearing impairment; and  
(iii) locomotor disability or cerebral palsy,

in the posts identified for each disability:"

From the above, it is clear that it deals with distribution of 3% posts in every establishment among 3 categories of disabilities. It starts from the word "of which". The word "of which" has to relate to appointing not less than 3% vacancies in an

establishment and, in any way, it does not refer to the identified posts. In fact, the contention of the Union of India is sought to be justified by bringing the last portion of the second part of the section viz. "... identified posts" in this very first part which deals with the statutory obligation imposed upon the appropriate Government to "appoint not less than 3% vacancies for the persons or class of persons with disabilities". In our considered view, it is not plausible in the light of established rules of interpretation. The minimum level of representation of persons with disabilities has been provided in this very first part and the second part deals with the distribution of this 3% among the three categories of disabilities. Further, in the last portion of the second part the words used are "in the identified posts for each disability" and not "of identified posts". This can only mean that out of minimum 3% of vacancies of posts in the establishments 1% each has to be given to each of the 3 categories of disability viz. Blind and low vision, hearing impaired and locomotor disabled or cerebral palsy separately and the number of appointments equivalent to the 1% for each disability out of total 3% has to be made against the vacancies in the identified posts. The attempt to read identified posts in the first part itself and also to read the same to have any relation with the computation of reservation is completely misconceived.

33.3. The third part of the section is the proviso which reads thus:

"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."

The proviso also justifies the abovesaid interpretation that the computation of reservation has to be against the total number of vacancies in the cadre strength and not against the identified posts. Had the legislature intended to mandate for computation of reservation against the

identified posts only, there was no need for inserting the proviso to section which empowers the appropriate Government to exempt any establishment either partly or fully from the purview of the section subject to such conditions contained in the notification to be issued in the Official Gazette in this behalf. Certainly, the legislature did not intend to give such arbitrary power for exemption from reservation for persons with disabilities to be exercised by the appropriate Government when the computation is intended to be made against the identified posts."

[Emphasis Supplied]

41. In paragraph no.35 of the decision of the Hon'ble Supreme Court reported in (2013) 10 Supreme Court Cases 772 mentioned supra, it is observed as follows:

"35. Thus, on a conjoint reading of Sections 33 and 41, it is clear that while Section 33 provides for a minimum level of representation of 3% in the establishments of appropriate Government, the legislature intended to ensure 5% of representation in the entire workforce both in public as well as private sector."

and it is further observed that the intention of the legislature is clearly to reserve in every establishment under the appropriate Government, not less than 3% of the vacancies for the persons or class of persons with disability, of which 1% 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.

42. Besides, it is useful to refer to Para 52 of the decision of the Hon'ble Supreme Court reported in (2013) 10 Supreme Court Cases 772 mentioned supra which reads as follows:

"52. Thus, after thoughtful consideration, we are of the view that the computation of reservation for persons with disabilities has to be computed in case of Group A, B, C and D posts in an identical manner viz. "computing 3% reservation on total number of vacancies in the cadre strength" which is the intention of the legislature. Accordingly, certain clauses in the OM dated 29.12.2005, which are contrary to the above reasoning are struck down and we direct the appropriate Government to issue new office memorandum (s) consistent with the decision rendered by this Court."

and issued the following directions:

"55. In our opinion, in order to ensure proper implementation of the reservation policy for the disabled and to protect their rights, it is necessary to issue the following directions:

55.1. We hereby direct the appellant herein to issue an appropriate order modifying the OM dated 29.12.2005 and the subsequent OMs consistent with this Court's order within three months from the date of passing of this judgment.

55.2. We hereby direct the "appropriate Government" to compute the number of vacancies available in all the "establishments" and further identify the posts for disabled persons within a period of three months from today and implement the same without default.

55.3. The appellant herein 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 the 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 for the default."

43. In the light of the above, it is necessary to refer to Rule 10 of the Tamil Nadu State Judicial Services (Cadre and Recruitment) Rules, 2007 for, it provides for reservation of appointments and as per sub rule (2), the candidates with the following disabilities, namely, blind, deaf/ orthopaedically handicapped can seek for recruitment for the post of Civil Judge and as per sub rule (i) of sub rule (2) three percent of the 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. 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.

44. It is the stand of the first as well as the second respondents that in compliance of the order dated 15.04.2009 in W.P.No.27089 of 2008, G.O.Ms.No.642, Home (Cts.I) Department,

dated 31.08.2012 was published, exempting the posts of District Judge (Entry Level) and Civil Judge, in Tamil Nadu State Judicial Service from the provisions of Section 33 of the Disabilities Act in respect of persons with complete blindness and complete hearing impairment.

45.The State Government also took a stand that the Registrar General vide D.O. letter dated 01.08.2013, had communicated the views of the Hon'ble Administrative Committee and necessary clarifications were also sought requesting High Court to prescribe eligibility, hearing, orthopaedic which are required for efficient discharge of the duties of the posts in the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007, and the reply is awaited from the High Court and on receipt of the same, necessary amendment will be issued to the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007. Admittedly, the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, did not provide for any reservation for physically challenged persons to the posts of District Judge (Entry Level) and the said Rule has not been put to challenge in this writ petition.

46.It is also pertinent to point out at this juncture that vide G.O.Ms.No.642, Home (Cts.I) Department, dated 31.08.2012 exemption in respect of persons with complete blindness and complete hearing impairment has been granted with regard to the post of District Judge (Entry Level) and Civil Judge in the Tamil Nadu State Judicial Service and insofar as locomotor disability is concerned it is silent.

47.In the aforementioned facts and circumstances, we are of the considered opinion that the impugned notification is in fine tune with Rule 10 of Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007 which has not been put to challenge. It is the stand of the State Government in counter affidavit filed in W.P.No.29673 of 2013 which is filed as a Public Interest Litigation, response of the High Court on its administrative side, is awaited as to the necessity of amendment to be carried out in the Tamil Nadu Judicial Service Rules in respect of the reservation for disabled persons and as to the eligibility of the minimum standards and even with reference to hearing and orthopaedic fitness which are required for the efficient discharge of the duties of the post.

48.Therefore, for all the above reasons, considering the spirit and purport of the Disabilities Act coupled with the judgment rendered by the Hon'ble Supreme Court of India reported in (2013) 10 Supreme Court Cases 772 cited supra, we are of the considered view that High Court on its administrative side, is to take a final call/ respond to the clarification sought for by the State Government as to the eligibility/ minimum standards of physical disablement and with reference to the hearing and

orthopaedic fitness which are required for the efficient discharge of the duties of the posts in the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007, as expeditiously as possible before the next recruitment to the posts of Civil Judge and District Judge (Entry Level).

49. Insofar as the prayer made by the petitioner for quashment of the impugned notification and consequential relief, we are of the view, that the said prayer cannot be granted especially in the light of the above said reasons and also on account of the fact that the Judges were recruited long back and are discharging duties for quite some time and they have been confirmed also in the said post and due to the passage of long time also, it is neither advisable nor feasible to set aside the selection on account of the non reservation of 3% for physically challenged.

50. Therefore, the writ petition is dismissed subject to the observations made in paragraphs no.48. No costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar General,  
High Court of Madras.
2. The Principal Secretary,  
Government of Tamil Nadu,  
Public (Special.A) Department,  
Secretariat, Chennai - 600 009.
3. The State Commission for the differently abled,  
Department of Welfare of differently abled,  
Government of Tamil Nadu,  
State Resource cum Training Centre Campus,  
Jawaharlal Nehru Inner Ring Road, KK Nagar,  
Chennai - 600 078

+1cc to Mr.A. Venkatesan, Advocate, S.R.No.35774

SSK(CO)  
EU(14/07/2016)

W.P.No.17998 of 2013