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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.640 of 2014

Order reserved on: 9-12-2016

Order delivered on: 2-1-2017

Sanjay Sondhi, S/o Shri W.M. Sondhi, aged about 40 years, R/o C/o House No.10, Yamuna Nagar, Mengla, Bilaspur, P.S. Civil Line, Distt. Raipur (C.G.), Presently posted as Assistant Statistical Investigator Grade-II, at Sub Regional Office of National Sample Survey Organisation (Field Operations Division), Bilaspur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, General Administrative Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, Raipur (C.G.)
2. Chhattisgarh Public Service Commission, Through its Secretary, Shankar Nagar, Raipur (C.G.)
3. Dashrath Singh Rajput, Through Chhattisgarh Public Service Commission, Shankar Nagar, Raipur (C.G.)
4. Ujjawal Porwal, Through Chhattisgarh Public Service Commission, Shankar Nagar, Raipur (C.G.)
5. Shashank Pandey, Through Chhattisgarh Public Service Commission, Shankar Nagar, Raipur (C.G.)

---- Respondents

For Petitioner:	Mr. Mateen Siddiqui, Advocate.
For Respondent No.1:	Mr. Gary Mukhopadhyay, Deputy GA
For Respondent No.2:	Mr. B.D. Guru, Advocate.
For Respondents No.3 to 5:	Mr. Rakesh Thakur, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. The petitioner is a visually handicapped/differently abled person who suffers from 100% blindness. He appeared in

the Civil Services Examination conducted by the Chhattisgarh Public Service Commission for which advertisement was issued on 26-12-2011 and published on 28-12-2011. The petitioner after clearing the preliminary examination appeared in the mains examination on 4-5-2013 and he was interviewed also between 27-11-2013 and 27-12-2013. He submitted his preference for the post of Naib Tahsildar and four other posts on 28-11-2013 and he also claimed age relaxation on the said post as he was, on the cutoff date, aged 38 years 5 months 11 days and on 30-12-2013, result was declared. The petitioner secured tenth position in the merit list and thereafter he was appointed on the post of Naib Tahsildar.

2. Thereafter, the petitioner filed writ petition on 3-2-2014 stating inter alia that a writ be issued directing the respondents to grant upper age relaxation up to 10 years to the petitioner for Class-II post and also prayed relief that he be considered for appointment on the post of Deputy Collector and further prayed that the respondent Chhattisgarh PSC be directed to reserve vacancies not less than 3% for persons or class of persons with disability as per Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short 'the Act of 1995').

3. Return has been filed by the State Government holding that

the State Government in accordance with the proviso to Section 33 of the Act of 1995 issued notification dated 7-9-2006 exempting the cadre posts of State Administrative Services from the operation of Section 33 of the Act of 1995 and the benefit of age relaxation of 10 years is only available to Class-III and Class-IV posts as per the circular dated 12-2-1981.

4. The Chhattisgarh PSC has also filed return stating inter alia that in respect of reservation of posts the State Government has clearly informed while sending requisition form for the post of Deputy Collector that the post of Deputy Collector is exempted under the proviso to Section 33 of the Act of 1995 and therefore reservation was not provided for the post of Deputy Collector.
5. Application for amendment in the petition was filed by the petitioner on 19-8-2014 challenging the circular dated 12-2-1981 which has been rejected by this Court by order dated 2-9-2014.
6. Mr. Mateen Siddiqui, learned counsel appearing for the petitioner, would submit that the State Government ought to have identified and reserved 3% posts for physically disabled persons as provided in Section 33 of the Act of 1995. He would further submit that age relaxation ought to have been granted to Class-I and Class-II posts by the State

Government, as the petitioner had worked on the post of Shiksha Karmi for five years as such, the act of the State Government in not granting age relaxation to Class-I and Class-II posts and further not providing reservation to the extent of 3% to the differently abled persons, as provided in Section 33 of the Act of 1995, is absolutely illegal and bad in law.

7. Mr. Gary Mukhopadhyay, learned Deputy Govt. Advocate appearing for the State/respondent No.1, would submit that the State Government had already issued circular under the proviso to Section 33 of the Act of 1995 exempting the cadre posts from the operation of Section 33 and the State Government had issued circular dated 12-2-1981 by which only for Class-III and Class-IV posts, age relaxation of ten years would be provided. The petitioner had already challenged the circular dated 12-2-1981 by way of application for amendment which was rejected by this Court vide order dated 2-9-2014.
8. Mr. B.D. Guru, learned counsel appearing for the Chhattisgarh PSC/respondent No.2, would submit that the petitioner had never applied for the post of Deputy Collector which is apparent from his preference given on 28-11-2013 and the petitioner having availed age relaxation on the basis of circular of the State Government dated 12-2-1981 cannot be allowed to turn back and say that he is entitled for age

relaxation. The petitioner having participated in the selection process from the date of publication dated 28-12-2011 and was appointed after declaration of result on 30-12-2013 cannot turn around and question the selection process or the manner of making reservation and age relaxation as the same is barred by the principle of estoppel. Age relaxation is a part of the advertisement and he cannot turn around and assail the same and as such, the writ petition deserves to be dismissed.

9. Mr. Rakesh Thakur, learned counsel for respondents No.3 to 5, would support the submissions of the State Government and the Chhattisgarh PSC.
10. I have heard learned counsel for the parties and considered their rival submissions made therein and also gone through the record with utmost circumspection.
11. As noticed herein-above, the petitioner is differently abled person suffering from 100% blindness. He participated in the Civil Services Examination conducted by the Chhattisgarh Public Service Commission in the year 2011-13 and gave preference for the post of Deputy Collector and also claimed and was granted age relaxation on the said post and he was ultimately selected on the post of Tahsildar as per his first preference and he joined the service, as the result was declared on 30-12-2013. The petitioner did not

dispute either the selection process on any ground whatsoever or the benefit flowing from the provisions of Section 33 of the Act of 1995 and even did not claim that age relaxation be granted to Class-II post *i.e.* of Deputy Collector.

12. The petitioner after his selection on the post of Tahsildar and joining on the said post, on 3-2-2014 filed this writ petition claiming age relaxation up to ten years on Class-II post and claimed consideration on the post of Deputy Collector and reservation of vacancy as per the Act of 1995. Return was filed by the State Government in which it was brought out that by State Government circular dated 12-2-1981, the State Government has taken a decision that differently abled persons will be entitled for age relaxation of ten years only Class-III and Class-IV posts. The said return was filed on 21-5-2014. The petitioner filed an application for amendment *i.e.* I.A.No. 4 for seeking leave to question the circular/notification dated 12-2-1981. This Court by order dated 2-9-2014 rejected the amendment finding it unnecessary and further holding that appropriate relief can be molded by the Court in exercise of powers under Article 226 of the Constitution of India. Thus, in fact, notification dated 12-2-1981 holding that age relaxation is applicable to the extent of ten years to the differently abled persons for the Class-III & Class-IV posts, holds the field, as challenge

to that notification was not allowed by this Court to the petitioner. The petitioner has claimed age relaxation on the said post of Tahsildar and he was also granted age relaxation by the Chhattisgarh Public Service Commission, therefore, the petitioner having been opted for age relaxation and granted age relaxation on the basis of circular dated 12-2-1981 cannot turn around and claim after appointment that age relaxation should be granted to Class-II post also, particularly when his challenge to the notification dated 12-2-1981 has not been permitted to be raised by this Court and that order passed by this Court has attained finality. The petitioner having taken advantage of the circular dated 12-2-1981 by getting age relaxation cannot claim further age relaxation on the ground of delay and laches also, as advertisement for the post was issued on 26-12-2011 and mains examination was held on 4-5-2013 and result was declared on 30-12-2013 and thereafter, he was appointed on the said post.

13. The petitioner has claimed by way of this petition consideration on the post of Deputy Collector, whereas, admittedly, he did not submit preference on the said post of Deputy Collector, as he was over age on the date of making application and age relaxation to Class-II post *i.e.* Deputy Collector was not available to him. The petitioner not having opted for the post of Deputy Collector and having been

selected on the post of Tahsildar, the post on which he gave first preference. The petitioner cannot be allowed to claim the post of Deputy Collector on any ground whatsoever.

14. It is trite law that a candidate taking a calculated chance by appearing in the examination after knowing fully well the procedural norms and eligibility qualification and only because the result of examination is not palatable to him, he cannot turn around and subsequently, question the method of selection/eligibility qualification. Their Lordships of the Supreme Court time and again in umpteen number of cases have laid down the law in this regard. Following judgments may be noticed usefully and profitably herein.

15. In **Madan Lal v. State of Jammu & Kashmir**¹ in similar fact situation, Their Lordships of the Supreme Court have held that a candidate who consciously took part in the process of selection cannot turn around finding the decision unpalatable and question the method of selection.

Paragraph 9 of the report states as under:-

"9. Before dealing with this contention, we must keep in view the salient fact that the Petitioners as well as the contesting successful candidates being Respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The Petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the Petitioners as well as the

¹ (1995) 3 SCC 486

contesting Respondents concerned. Thus the Petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turnround and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of *Om Prakash Shukla v. Akhilesh Kumar Shukla*² it has been clearly laid down by a Bench of three learned Judges of this Court that when the Petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a Petitioner."

16. Aforesaid judgment of the Supreme Court in **Madan Lal** (supra) has been followed with approval in **Dhananjay Malik and others v. State of Uttaranchal and others**³, **Vijendra Kumar Verma v. Public Service Commission, Uttarakhand and others**⁴, **Ramesh Chandra Shah and others v. Anil Joshi and others**⁵, and **Madras Institute of Development Studies and another v. Dr. K. Sivasubramaniyan and others**⁶.

17. The petitioner has also claimed in this writ petition that the Chhattisgarh Public Service Commission be directed to

2 AIR 1986 SC 1043

3 (2008) 4 SCC 171

4 (2011) 1 SCC 150

5 (2013) 11 SCC 309

6 AIR 2015 SC 3643

make reservation as per the provisions contained in Section 33 of the Act of 1995. The respondent/State has filed return that the State Government in accordance with proviso to Section 33 of the Act of 1995 issued notification dated 7-9-2006 exempting the cadre post of State Administrative Service from the operation of Section 33 of the Act of 1995. The Chhattisgarh Public Service Commission has also filed reply in line with the reply filed by the State Government stating that the post of Deputy Collector is exempted from the provision of Section 33 of the Act of 1995.

18. In order to decide the plea raised at the Bar, it would be appropriate to notice Section 33 of the Act of 1995 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.”

19. The proviso to Section 33 empowers the appropriate government who may have regard to the type of work carried on in any department or establishment by notification subject to such conditions exempt any establishment from provision of Section 33.

20. The Supreme Court in the matter of **Union of India and another v. National Federation of the Blind and others**⁷

while considering the proviso held as under:-

“**33.3** ... The proviso also justifies the above said 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.”

21. The State Government in its return filed a copy of notification dated 7-9-2011 exempting the cadre post of State Administrative Service from the operation of Section 33 of the Act, which states as under:-

“छत्तीसगढ़ शासन
सामान्य प्रशासन विभाग
मंत्रालय

दाउ कल्याण सिंह भवन, रायपुर

// अधिसूचना //

रायपुर, दिनांक 7 सितंबर, 2006

क्रमांक-बी-1-26/2002/एक/4 :: निःशक्त व्यक्ति (समान अवसर, अधिकार संरक्षण और पूर्ण भागीदारी) अधिनियम, 1995 (1996 का सं० 1) की धारा 33 के परन्तुक द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए राज्य सरकार, एतद् द्वारा, राज्य प्रशासनिक सेवा संवर्ग के पदों को निःशक्त व्यक्ति (समान अवसर, अधिकार संरक्षण और पूर्ण भागीदारी) अधिनियम, 1995 (1996 का सं० 1) की धारा 33 के उपबंधों से छूट प्रदान करती है।

छत्तीसगढ़ के राज्यपाल के नाम से
तथा आदेशानुसार
(जवाहर श्रीवास्तव)
सचिव
छत्तीसगढ़ शासन
सामान्य प्रशासनविभाग''

22. The aforesaid notification clearly exempts the cadre post of State Administrative Service from the operation of Section 33 of the Act of 1995 and thereby State is not required to make reservation in line with Section 33 of the Act of 1995 in favour of person suffering from blindness or low vision, hearing impairment, locomotor disability or cerebral palsy. Therefore, the petitioner's claim that the State Government be directed to make reservation in accordance with Section 33 of the Act of 1995 cannot be accepted and as such, the writ petition deserves to be dismissed.

23. While parting with the record, a word of caution is necessary for the State Government. The Act of 1995 has been enacted to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in

the Asian and Pacific Region. Whereas the Meeting to Launch the Asian and Pacific Decade of Disabled Persons 1993 – 2002 convened by the Economic and Social Commission for Asia and Pacific held at Beijing on 1st to 5th December, 1992, adopted the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region; And Whereas India is a signatory to the said Proclamation; And Whereas it is considered necessary to implement the Proclamation aforesaid.

24. The Supreme Court in the matter of **Union of India v. National Federation of Blind and others** (supra) considered the background and objective of the Act of 1995 and held that such an Act was enacted to seek better employment opportunity with a person with disability by way of reservation of post, which can be noticed herein-above as under:-

“23. India as a welfare State is committed to promote overall development of its citizens including those who are differently abled in order to enable them to lead a life of dignity, equality, freedom and justice as mandated by the Constitution of India. The roots of statutory provisions for ensuring equality and equalisation of opportunities to the differently abled citizens in our country could be traced in Part III and Part IV of the Constitution. For the persons with disabilities, the changing world offers more new opportunities owing to technological advancement, however, the actual limitation surfaces only when they are not provided with equal opportunities. Therefore, bringing them in the society based on their capabilities is the need of the hour.

24. Although, the Disability Rights Movement in India commenced way back in 1977, of which Respondent 1 herein was an active participant, it acquired the requisite sanction only at the launch of the Asian and Pacific Decade of Disabled Persons in 1993–2002, which gave a definite boost to the movement. The main need that emerged from the meet was for a comprehensive legislation to protect the rights of persons with disabilities. In this light, the crucial legislation was enacted in 1995 viz. the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which empowers persons with disabilities and ensures protection of their rights. The Act, in addition to its other prospects, also seeks for better employment opportunities to persons with disabilities by way of reservation of posts and establishment of a special employment exchange for them. For the same, Section 32 of the Act stipulates for identification of posts which can be reserved for persons with disabilities. Section 33 provides for reservation of posts and Section 36 thereof provides that in case a vacancy is not filled up due to non-availability of a suitable person with disability, in any recruitment year such vacancy is to be carried forward in the succeeding recruitment year. The difference of opinion between the appellants and the respondents arises on the point of interpretation of these sections.”

25. Likewise, the Supreme Court in **National Federation of**

Blind v. Union Public Service Commission and others⁸

the Supreme Court directed the Government of India and UPSC to permit blind and partially blind eligible candidates to compete and right civil service examination in Braille Script or with the help of scribe for the post in IAS was duly accepted for recruitment to the lowest post in service reserved for such person and held as under:-

⁸ (1993) 2 SCC 411

“13. ... If some of the posts in the Indian Administrative Service and other Allied Services, as identified by the committee, can be filled from amongst the visually handicapped persons then we see no reason why they should not be permitted to sit and write the civil services examination. We make it clear that once recruited to the lowest level of the service the visually handicapped persons shall not be entitled to claim promotion to the higher posts in the service irrespective of the physical requirements of the jobs. If in the hierarchy of promotional posts it is found by the Government that a particular post is not suitable for the visually handicapped person he shall not have any right to claim the said post.

14. In the light of the above discussion we partly allow the writ petition and direct the Government of India and the Union Public Service Commission to permit the visually handicapped (blind and partially blind) eligible candidates to compete and write the civil services examination which is ordinarily held yearly by the Union Public Service Commission. We further direct that they shall be permitted to write the examination in Braille-script or with the help of a Scribe. There shall be no orders as to costs.”

26. The judgment of **National Federation of Blind v. Union Public Service Commission and others** (supra) was followed by the Supreme Court in the matter of **Government of India through Secretary and another v. Ravi Prakash Gupta and another**⁹.

27. The State Government has not given any cogent reason as to why the post of the Deputy Collector or the cadre post of State Administrative Service has been exempted from the operation of Section 33 of the Act of 1995. The power of

9 (2010) 7 SCC 626

exemption available under the proviso to Section 33 has to be exercised subject to conditions mentioned in said proviso. Exclusion of entire cadre of State Administrative Service from the operation of Section 33 of the Act of 1995 appears to be contrary to the object and scheme of the Act of 1995 as considered and highlighted by Their Lordships of the Supreme Court in above-stated cases. In **National Federation of Blind v. Union Public Service Commission** (supra) the Supreme Court has even permitted the blind candidates to appear for the post of IAS and also held them entitled for such Government post, then there is no reason to consider ineligible the visually handicapped candidates for the post of Deputy Collector to the entire cadre post of State Administrative Service.

28. In a very recent judgment in the matter of **Rajeev Kumar Gupta & Others v. Union of India & Others**¹⁰, the Supreme Court has expressed concern over the manner of complying the mandate contained in Sections 32 and 33 of the Act of 1995 and issued following direction: -

"23. It is disheartening to note that (admittedly), low numbers of PWD (much below three per cent) are in government employment long years after the 1995 Act. Barriers to their entry must, therefore, be scrutinized by rigorous standards within the legal framework of the 1995 Act.

24. A combined reading of Sections 32 and 33 of the 1995 Act explicates a fine and designed

10 JT 2016 (11) SC 473

balance between requirements of administration and the imperative to provide greater opportunities to PWD. Therefore, as detailed in the first part of our analysis, the identification exercise under Section 32 is crucial. Once a post identified, it means that a PWD is fully capable of discharging the functions associated with the identified post. Once found to be so capable, reservation under Section 33 to an extent of not less than three per cent must follow. Once the post is identified, it must be reserved for PWD irrespective of the mode of recruitment adopted by the State for filling up of the said post.

25. In light of the preceding analysis, we declare the impugned memoranda as illegal and inconsistent with the 1995 Act. We further direct the Government to extend three percent reservation to PWD in all IDENTIFIED POSTS in Group A and Group B, irrespective of the mode of filling up of such posts. This writ petition is accordingly allowed."

29. The very object and purpose of the Act of 1995 is defeated by holding that no reservation for persons with disabilities in the cadre of State Administrative Service.

30. In the light of above-stated analysis, the State Government is directed to reconsider the exemption notification dated 7-9-2006 in light of the scheme and object of the Act of 1995 and the decision rendered by the Supreme Court in **Madan Lal** (supra), **UOI v. National Federation of the Blind** (supra), **National Federation of Blind v. UPSC** (supra) and **Rajeev Kumar Gupta** (supra) and take a decision expeditiously, preferably before advertising next examination on the cadre post of State Administrative Service.

31. As a fallout and consequence of aforesaid discussion, the writ petition is dismissed subject to direction mentioned herein-above (see paragraph 30) leaving to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.640 of 2014

Sanjay Sondhi

Versus

State of Chhattisgarh and others

HEAD NOTE

Direction issued to the State and the PSC for consideration / providing reservation to the persons with disabilities on the cadre post of the State Administrative Service.

राज्य तथा लोक सेवा आयोग को निःशक्तजनों को राज्य प्रशासनिक सेवा के संवर्गों के पद पर आरक्षण देने हेतु निर्देश जारी किए गए।