

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Writ Appeal Nos.160, 27 and 29 of 2017

Common Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

We had earlier asked both Sri G. Vidyasagar, learned Senior Counsel appearing on behalf of Telangana GENCO, and Smt. K. Aruna, learned Standing Counsel for A.P. GENCO, whether the appellants, who were appointed as Junior Plant Attendants in October, 2013, could also be accommodated along with the candidates who were held entitled to be appointed to the said posts by the order of the learned Single Judge. Both the learned Senior Counsel and learned Standing Counsel, have today expressed difficulty in accommodating the appellants herein, as it would adversely affect operation of the roster; and as these posts have, after 02.06.2014, been bifurcated between the States of Telangana and the residuary State of Andhra Pradesh.

Heard Sri G.V. Shivaji, Sri P. Lakshma Reddy and Sri K. Vasudeva Reddy, learned counsel for the appellants; Sri G.Vidyasagar, learned Senior Counsel appearing on behalf of Telangana GENCO, Smt. K. Aruna, learned Standing Counsel for A.P. GENCO and Sri Chandraiah Sunkara, learned counsel for the respondents-writ petitioners and, with their consent, the writ appeals are disposed of at the stage of admission.

Reservation in favour of the physically handicapped, while making appointment to the posts of Junior Plant Attendants in both A.P. GENCO and Telangana GENCO is under challenge in these proceedings. A notification was issued on 05.01.2011 inviting applications and, thereafter, a supplementary notification dated 17.10.2011 was issued providing reservation in favour of the physically handicapped (physically challenged). While the notifications do not explicitly provide for 3%

reservation in favour of the physically challenged to be distributed at 1% each among the visually challenged, the hearing impaired and the orthopaedically handicapped, it does not also specify that 1% reservation should be provided for each of these categories.

G.O. Ms. No.23 dated 26.5.2011, issued by the then State of Andhra Pradesh, required 3% of the vacancies in direct recruitment to be reserved in favour of persons or class of persons with disability, of which 1% each was required to be reserved in favour of each of the categories of persons suffering from the physical disability mentioned in the G.O. Applications appear to have been invited on-line, and the applications submitted by the visually challenged and the hearing impaired for appointment to the aforesaid posts were also received, a written examination was conducted on 18.12.2011 in the ratio of 1:20 which included all the three categories; and in the trade test, conducted on 13.4.2013 in the ratio of 1:3, all the three physically challenged categories also participated in the selection process. A provisional selection list was issued on 2.7.2013 referring to the Government of A.P. Clarificatory Memo dated 26.8.2003 for inter-changing the category of disabled persons, and restricting reservation only to the orthopaedically handicapped excluding the visually challenged and the hearing impaired from being considered for selection. Thereafter appointments were made on 7.10.2013, in effect, providing 3% reservation for the orthopaedically handicapped alone. Aggrieved thereby applicants, belonging to the visually challenged and the hearing impaired categories, invoked the jurisdiction of this Court. By the order under appeal, the learned Single Judge set aside the selection process, and directed the Generating Companies to provide reservation at 1% each for all the three categories among the physically handicapped. Aggrieved thereby, the present appeals.

Sri G.V. Shivaji, learned counsel for the appellants in W.A. No.160 of 2017, would draw our attention to the Government of A.P. Memo dated 26.8.2003, and the Annexure thereto, to contend that, in view of the exemption granted by the inter-departmental committee vide its memo dated 26.8.2003, both the generating companies were required to provide 3% reservation in favour of the orthopaedically handicapped alone.

.By the said memo, the proposal submitted by the General Manager, Administration, A.P.GENCO, by his letter dated 24.7.2003 for inter-changing the category of visually handicapped and hearing handicapped to the orthopaedically handicapped for the posts available in A.P.GENCO, was accepted on the ground that A.P.GENCO was purely a technical organization engaged in major hydro-electric and thermal power projects; and employees working in generating stations needed technical skills and high calibre. The inter-departmental committee, while agreeing for inter-changing the category of visually handicapped and hearing handicapped to the orthopaedically handicapped for the posts involving technical or hazardous nature of duties, opined that it was mandatory on the part of every Government Department to implement 3% reservation in favour of the disabled.

Sri G. Vidyasagar, learned Senior Counsel appearing on behalf of Telangana GENCO, would draw our attention to the counter affidavit filed on behalf of respondent Nos. 1 and 2 wherein it is stated that, after the Government of Andhra Pradesh issued G.O. Ms. No. 23 dated 26.5.2011 stipulating 3% reservation at 1% each for the respective handicapped categories, and stipulating that exemption should be granted in case the nature of duties do not permit filling up of vacancies with respective candidates, the A.P. GENCO had examined the entire issue in toto by adopting the said G.O. vide GOO No. 502/JS (Pr)/2012; and they had come to the conclusion that, in the light of the fact that the nature of duties were hazardous, the same were not suitable for the

visually handicapped and the hearing impaired, and the same were converted into orthopaedically handicapped. Adoption by A.P. GENCO, of G.O. Ms. No.23 dated 26.5.2011, was evidently after a decision was taken to conduct a written test and a trade test pursuant to the notification issued on 5.1.2011 and the supplementary notification issued on 17.10.2011.

In the absence of G.O. Ms. No.23 dated 26.5.2011 having been adopted prior to the date on which the aforesaid notifications were issued, prima facie, the position which prevailed prior to G.O. Ms. No.23 dated 26.5.2011 being issued, would be applicable. The submission of Sri G.V. Shivaji, learned counsel for the appellants, that the inter-change permitted by the Government of Andhra Pradesh, by Memo dated 26.8.2003, would apply to the selection process undertaken pursuant to the subject notifications, cannot be brushed aside.

The Memo dated 26.8.2003 is referable to the proviso to Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short 'the Act'). Section 33 of the Act provides for reservation of posts and, thereunder, 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 with disabilities from (i) blindness or low vision; (ii) hearing impairment; and (iii) locomotor disability or cerebral palsy, in the posts identified for each disability. Under the proviso thereto, 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 Section 33.

Section 36 of the Act requires vacancies not filled up to be carried forward and, thereunder, 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 a suitable person with disability is not available, it may first be filled by inter-change 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. Under the proviso thereto, if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be inter-changed among the three categories with the prior approval of the appropriate Government.

While Sri G.V. Shivaji, learned counsel for the appellants, would contend that the Government Memo dated 26.8.2003 was issued under the proviso to Section 33 of the Act, it is contended on behalf of the respondents that it is the proviso to Section 36 which applies; and, as a notification was issued for filling up the posts, the exercise of examining, whether inter-changeability should be permitted, ought to have been undertaken just prior to the date when the subject notifications were issued, and the permission granted for inter-changeability of 1% reservation provided in favour of the visually handicapped and the hearing impaired to the orthopaedically challenged, under the Government Memo dated 26.8.2003, cannot be applied for all times to come. The language of Section 33 and Section 36 of the Act are different. While Section 33 relates to reservation of posts, Section 36 relates to vacancies, not filled up, to be carried forward.

The questions whether the Government Memo dated 26.8.2003 would apply to the notifications dated 5.1.2011 and 17.10.2011 in the

light of the amendment to Rule 22 (2) (e) of A.P. State and Subordinate Service Rules, 1996; whether it is Section 36 or Section 33 which is applicable to the present selection process; and whether adoption of G.O. Ms. No. 23 dated 26.5.2011, by the then A.P. GENCO in the year 2012, would apply to the notifications issued prior thereto on 5.1.2011 and 17.10.2011 are all questions which necessitate examination. As these questions do not appear to have been considered in the order under appeal, we were initially inclined to admit these appeals and grant stay so that these questions can be examined in detail at the stage of final hearing of the appeal. However Learned Senior counsel, and Learned Counsel on either side, are in agreement that, instead of these appeals being heard, it would suffice if the order under appeal is set aside and the writ petitions are restored to file so that the matter can be argued before the learned Single Judge.

As learned counsel on either side are in agreement, the order under appeal is set aside, and the writ petitions are restored to file. It is open to Sri Chandraiah Sunkara, learned counsel for the respondents-writ petitioners, to request the learned Single Judge for an out of turn and an early hearing.

The writ appeals are, accordingly, disposed of. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(Dr. SHAMEEM AKTHER, J)

16th February, 2017

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Date: 16.2.2017

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