

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 15226/2004**

% **11th January, 2017**

DIRECTORATE OF EDUCATION & ANR Petitioners

Through: Mr. Satyakam, Advocate.

versus

MR. KARAM VIR SINGH RANGI & ORS. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 and Article 227 of the Constitution of India, petitioners, including petitioner no. 1/Directorate of Education impugns the order of the Chief Commissioner for Persons with Disabilities dated 2.7.2003 by which the Commissioner of Disabilities has passed various directions against the present petitioners. Directions were passed against the present petitioners in view of a complaint filed by six complainants before the Chief Commissioner for Persons with Disabilities and which persons have been arrayed as respondent nos. 1 to 6 in this petition.

2. The operative part of the impugned order of the Chief Commissioner for Persons with Disabilities reads as under:-

“8. In the light of the facts and circumstances of the case, the observations in the preceding paragraph, provisions of the instructions on holding DPCs, respondents are directed to workout the vacancies for each DPC year for promotion to the posts of PGT prior to 20.4.1998 and the number of reserved vacancies for persons with disabilities based on the 100 point reservation register. Thereafter, consider the complainants for promotion to the post of PGT, if they are eligible according to the then applicable recruitment rules/instructions against the reserved vacancies for persons with disabilities. Those found suitable/fit be promoted to the post of PGT from the date they would have been promoted had the year wise DPCs been convened. The respondents shall submit a compliance report to this Court within four months from the date of receipt of this Judgment & Order.”

3. It is seen that the operative portion contained in para 8 of the impugned order which is reproduced above passes directions for implementation against the petitioners including of promotion to the respondent nos. 1 to 6. The issue is that whether at all the Chief Commissioner could have passed directions in terms of para 8 of the impugned order.

4. The issue in question is no longer *res integra* and has been decided by the Supreme Court in its judgment in the case of ***State Bank of Patiala and Others Vs. Vinesh Kumar Bhasin (2010) 4 SCC 368*** and the Supreme Court in its judgment holds that the authorities acting under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, have no power like a Court to pass judgment

including directions in the nature of injunction, etc. The observations of the Supreme Court in the case of *Vinesh Kumar Bhasin (supra)* are contained in paras 12-19 and the same read as under:-

“12. Under the Rules, an officer of the Bank, shall retire on completion of thirty years of service. The respondent was accordingly retired on completion of thirty years. He was not denied any retiral benefits. He was not entitled, as of right, to continue beyond thirty years of service. In fact, he did not want to continue in service, as his grievance was that he ought to have been permitted to retire under the exit policy scheme. The grievance of the respondent had apparently nothing to do with his being a person with a disability.

13. Prima facie, neither Section 47 nor any other provision of the Disabilities Act was attracted. But, the Chief Commissioner chose to issue a show cause notice on the complaint and also issued an ex parte direction not to give effect to the order of retirement. He overlooked and ignored the fact that the retirement from service was on completion of the prescribed period of service as per the service regulations, which was clearly mentioned in the letter of retirement dated 17-11-2006; and that when an employee was retired in accordance with the Regulations, no interim order can be issued to continue him in service beyond the age of retirement.

14. The Chief Commissioner also overlooked and ignored the fact that as an authority functioning under the Disabilities Act, he has no power or jurisdiction to issue a direction to the employer not to retire an employee. In fact, under the Scheme of the Disabilities Act, the Chief Commissioner (or the Commissioner) has no power to grant any interim direction.

15. The functions of the Chief Commissioner are set out in Sections 58 and 59 of the Act. Section 58 provides that the Chief Commissioner shall have the following functions:

“58. (a) coordinate the work of the Commissioners;

(b) monitor the utilisation of funds disbursed by the Central Government;

(c) take steps to safeguard the rights and facilities made available to persons with disabilities;

(d) submit reports to the Central Government on the implementation of the Act at such intervals as the Government may prescribe.”

16. Section 59 provides that without prejudice to the provisions of Section 58, the Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints and take up the matter with the appropriate authorities, any matters relating to (a) deprivation of rights of persons with disabilities; and (b) non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights of persons with disabilities. The Commissioners appointed by the State Governments also have similar powers under Section 61 and 62.

17. Section 63 provides that the Chief Commissioner and the Commissioners shall, for the purpose of discharging their functions under this Act, have the same powers as are vested in a court under the Code of Civil Procedure while trying a suit, in regard to the following matters:

“63.(a) summoning and enforcing the attendance for witnesses;

(b) requiring the discovery and production of any document;

(c) requisitioning any public record or copy thereof from any court or officer;

(d) receiving evidence on affidavits; and

(e) issuing commissions for the examination of witnesses or documents.”

Rule 42 of the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Rules, 1996 lays down the procedure to be followed by the Chief Commissioner.

18. It is evident from the said provisions, that neither the Chief Commissioner nor any Commissioner functioning under the Disabilities Act has power to issue any mandatory or prohibitory injunction or other interim directions. The fact that the Disabilities Act clothes them with certain powers of a civil court for discharge of their functions (which include power to look into complaints), does not enable them to assume the other powers of a civil court which are not vested in them by the provisions of the Disabilities Act. In All India Indian Overseas Bank SC and ST Employees' Welfare Assn v. Union of India, this Court, dealing with Article 338(8) of the Constitution of India (similar to Section 63 of the Disabilities Act), observed as follows:

“5. It can be seen from a plain reading of clause (8) that the Commission has the power of the civil court for the purpose of conducting an investigation contemplated in sub-clause (a) and an inquiry into a complaint referred to in sub-clause (b) of clause (5) of Article 338 of the Constitution

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10. All the procedural powers of a civil court are given to the Commission for the purpose of investigating and inquiring into these matters and that too for that limited purpose only. The powers of a civil court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be inferred or derived from a reading of clause (8) of Article 338 of the Constitution.”

19. The order of the Chief Commissioner, not to implement the order of retirement was illegal and without jurisdiction.” (underlining added)

5. In view of the above, since the respondent no. 7, the Chief Commissioner Acting under Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act has no power to pass the operative portion contained in para 8 of its impugned order dated 2.7.2003, this writ petition is allowed setting aside the impugned order dated 2.7.2003. No order as to costs.

JANUARY 11, 2017

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VALMIKI J. MEHTA, J