

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

+ **W.P.(C) No.7689/2015**

% **17th January, 2017**

UNION OF INDIAPetitioner

Through: None.

versus

SH. RAJENDER SINGH Respondent

Through: Mr. Sameer Sharma, Advocate for
respondent No.1.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Union of India by the present writ petition impugns the order dated 31.12.2014 passed by the Deputy Chief Commissioner acting under the Persons with Disabilities (Equal Opportunities, Protecting of Rights and Full Participation) Act, 1995 (hereinafter referred to as 'the Act') whereby the Deputy Chief Commissioner has passed a judgment like a court of law and issued directions for appointment of the respondent/Sh. Rajender Singh. Para 19 of the impugned order dated 31.12.2014 reads as under:-

“19. From the advertisement and notification, it is observed that the Engineering Services were indicated as identified for persons with disabilities in both legs among other categories/sub categories of disabilities. This explains why the complainant applied for the said examination and went

though the rigours of the selection process. Had it been clearly mentioned in the advertisement/Notification that none of the Engineering Services is identified for his category of disability, the complainant would not have applied for the said examination and would have concentrated his energies in securing jobs elsewhere. After being recommended for appointment to one of the Engineering Services by UPSC under the category of Locomotor disability, it does not appear to be reasonable to declare the complainant unfit solely on the ground of his disability at such a late stage when the entire process had almost been completed and to deprive him of a well earned job for no fault of his. It is understood that case of Shri Rajiv Ranjan which is an identical case, is pending adjudication before the Hon'ble CAT and in the Hon'ble High Court. As soon as a decision is pronounced by the concerned Tribunal/Court, the respondent is advised to decide the case of the complainant in terms of the decision in that case.”

2. In spite of repeated opportunities being given to the respondent, the respondent has not filed any counter affidavit. Counsel for the respondent states that respondent is not contacting his counsels in spite of repeated endeavours.

3. The issue in the present case is fully covered in favour of the petitioner in terms of the judgment of the Supreme Court in the case of *State Bank of Patiala and Others Vs. Vinesh Kumar Bhasin (2010) 4 SCC 368*. The relevant observations of the Supreme Court in the case of *Vinesh Kumar Bhasin (supra)* are contained in paras 12 to 19, and which paras 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 no 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)

4. In view of the ratio of the judgment of the Supreme Court in the case of *Vinesh Kumar Bhasin (supra)*, and which holds that the authorities acting under the Act do not have powers to issue directions or injunctions or pass a judgment like a court of law for compliance, this writ petition is allowed and the impugned order of the Deputy Chief Commissioner dated 31.12.2014 is set aside. Parties are left to bear their own costs.

JANUARY 17, 2017
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VALMIKI J. MEHTA, J