

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION STAMP NO. 20586 OF 2018
IN
WRIT PETITION NO. 9019 OF 2016

The State of Maharashtra and others .. **Applicants**
Versus
Sudhakar Malba Davkare and another .. **Respondents**

Mr. P. K. Lakhotiya, A.G.P. for the Applicants.
Mr. Ajay S. Deshpande, Advocate for Respondent No. 1.
Mr. D. P. Bakshi, Advocate for Respondent No. 2.

CORAM: S. V. GANGAPURWALA &
MANGESH S. PATIL, JJ.

DATE: 16th August, 2018

PER COURT :

1. Mr. Lakhotiya, the learned A.G.P. submits that at the time this Court passed an order under review the review applicant could not bring it to the notice of this Hon'ble Court that the judgment of the Apex Court in a case of **Rajeev Kumar Gupta and others Vs. Union of India and others** reported in **(2016) 6 SCALE 417** has been referred to the larger Bench under order dated 03.02.2017 in a case of Siddaraju Vs. State of Karnataka and others. The A.G.P. submits that the Nagpur Bench of this High Court has in similar situation recalled its order and restored the writ petition

to its original position in Miscellaneous Civil Application No. 474 of 2018 in Writ Petition No. 6316 of 2017 dated 26.04.2018. According to the learned A.G.P. the petitioner would not be entitled for promotion as no reservation could be provided for the promotional post, even for the person with disability.

2. Mr. Bakshi, the learned counsel supports the arguments of the learned A.G.P.

3. Mr. Deshpande, the learned counsel submits that in fact the reference to the larger Bench has become redundant in view of the Rights of Persons with Disabilities Act, 2016 that came into force from April – 2017. First proviso to Section 34 prescribes for reservation in promotion to the persons with disabilities. The learned counsel further submits that only because the reference has been made, the judgment of the Apex Court in a case of *Rajeev Kumar Gupta and others Vs. Union of India and others (supra)* cannot be said to be stayed or set aside. The learned counsel also refers to the order passed by the Apex Court in Contempt Petition (C) No. 856 of 2017 dated 06.12.2017 and subsequent order dated 31.01 2018.

4. We have considered the submissions canvassed by the learned counsel for respective parties.

5. We had held that the original writ petitioner would be entitled to the benefit of reservation in the promotional post being a person with disability relying upon the judgment of the Apex Court in a case of *Rajeev Kumar Gupta and others Vs. Union of India and others (supra)*. The Apex Court on 03.02.2017 has referred the issue to the larger Bench. Subsequently the Rights of Persons with Disabilities Act, 2016 came into force in April – 2017, as contended by the writ petitioner.

6. Be that as it may, the judgment in a case of *Rajeev Kumar Gupta and others Vs. Union of India and others (supra)* today holds the field. The Apex Court in a case of *Achintya Deb Dasgupta and another Vs. Basant Pratap Singh and others* under order dated 06.12.2017 observed as under -

“It appear to us from the materials on record that there is subsequent judgment of this Court in Rajeev Kumar Gupta and others Vs. Union of India and others wherein the view has been taken that the quota provided under the 1955 Act for disabled persons has to be provided regardless of whether the same is filled up by way of direct recruitment or promotion. In a way we will understand the decision of this Court in Rajeev Kumar Gupta (Supra) to be carrying forward the law expounded by this Court in the initial judgment dated 8th October, 2013 passed in Civil Appeal No. 9096 of 2013.

From the materials on record we will find that the decision in *Rajeev Kumar Gupta (supra)* has been referred to a larger Bench in order to decide the question as to whether the reservation as an exception to Article 16 of the Constitution of India can be provided to disabled persons, apart from Scheduled Castes and Scheduled Tribes candidate for whom a specific provision has been made in the Constitution of India by way of an amendment thereof.

In the above circumstances, the issue with regard to commission of contempt insofar as the order of this Court dated 8th October, 2013 passed in Civil Appeal No. 9096 of 2013 is concerned is being kept in abeyance until a full consideration thereof. However, in view of the later pronouncement of this Court in *Rajeev Kumar Gupta (supra)* which, according to us, would hold the field until the issue referred is decided by the larger Bench, we are of the opinion that the respondents should make it clear to the Court by means of an affidavit as to their obligation, if any, to provide reservation to the contempt petitioners on the strength of the decision of this Court in *Rajeev Kumar Gupta (supra)*.

This may appear to be extending the contours of the contempt petition. However, such extension, in our considered view, is necessary to give effect to the decision of this Court in *Union of India Vs. National Federation of the Blind and others* and further expounded in *Rajeev Kumar Gupta (supra)*. The affidavit of the contemnors Nos. 2 and 3 be filed within four weeks from today. Further personal appearance of the said contemnors Nos. 2 and 3 will not be required until specifically ordered."

7. Subsequently the contempt petition is disposed of. The Apex Court held that the promotions would be subject to the outcome of the decision to be rendered in Special Leave Petition (C) 24994 of 2016 – *Siddaraju Vs. State of Karnataka and others*, presently pending before the larger Bench.

8. We would be guided by the the recourse adopted by the Apex Court, as such, we follow the same course.

9. The promotion that would be given to the original writ petitioner pursuant to our judgment and order dated 20.09.2017 in Writ Petition No. 9019 of 2016 would be subject to the decision that would be rendered by the Apex Court in Special Leave Petition (C) No. 24994 of 2016 – *Siddaraju Vs. State of Karnataka and others*. With these clarifications, the Review Application is disposed of.

[MANGESH S. PATIL, J.]

[S. V. GANGAPURWALA, J.]

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