

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 1137 of 2019**

1. Ramakant Singh Chandel S/o Shri Balmiki Singh Chandel, Aged About 37 Years, Candidate For Hindi, R/o Village And Post Kadamath, Police Station And Tahsil Pamgarh, District Janjgir Champa, Chhattisgarh
2. Deepika Pradhan D/o Shri Prasann Kumar Pradhan, Aged About 26 Years, Candidate For Hindi, R/o Village Sanjay Nagar, Post Sanjay Nagar, Panchayat Dewhra, Police Station Chachei, Tahsil And District Anuppur, Madhya Pradesh
3. Manju Baraiha D/o Shri Rajkumar Baraiha, Aged About 27 Years Candidate For Political Science, R/o Ward No. 10, Kumharpara, Jarhabhata Bilaspur, Police Station Civil Lines, Tahsil And District Bilaspur, Chhattisgarh
4. Swaleha Parveen D/o Shri Faheem Khan, Aged About 26 Years, Candidate For Political Science, R/o Talapara Bilaspur, Police Station Civil Lines, Tahsil And District Bilaspur, Chhattisgarh
5. Budha Lal Sahu S/o Shri Ramadhar Sahu, Aged About 34 Years, Candidate For Hindi, R/o Village And Post Bhuwaneshwerpur, Police Station And Tahsil Ramanujnagar, District Surajpur, Chhattisgarh

---- Petitioners**Versus**

1. Chhattisgarh Public Service Commission Raipur Through The Secretary Chhattisgarh Public Service Commission Raipur, Shankar Nagar Road Raipur, Tahsil District Raipur, Chhattisgarh
2. State Of Chhattisgarh Through The Secretary, Higher Education Department, Atal Nagar, New Raipur, Tahsil And District Raipur Chhattisgarh

---- Respondents

For Petitioners	:	Shri Santosh Rungta, senior advocate with Shri Vijay K. Deshmukh and Shri Curtis Collins, Advocates
For Respondent no.1	:	Shri Ashish Shrivastava, Advocate
For Respondent no.2	:	Shri Saleem Kazi, Dy. Advocate General

Hon'ble Shri Justice P. Sam Koshy
Order On Board

26/04/2019

1. The issue raised in the present writ petition is in respect of reservation that has been provided to the visually handicapped persons.
2. According to the petitioners, they have been deprived of the specific percentage of reservation fixed for visually impaired persons in the advertisement dated 23.01.2019 published by the State Govt. for filling up the post of Assistant Professors in different subjects.
3. The grievance of the petitioners, at the first instance, was that in spite of the fact that there was a specific decision taken by the State Govt. granting 7% reservation to the Physically Handicapped Persons. The State Govt. in violation of the same has published the advertisement without giving proper reservation to persons with disabilities. Initially, the benefit of reservation was limited to a few subjects only. Subsequently, it is brought to the notice of the Court that the State Govt. has again issued a corrigendum on 23.02.2019 whereby the reservation for visually impaired persons was also extended for the subjects like Political Science and English. By way of an additional return, another letter of the State Govt. dated 10.04.2019 was also brought on record whereby the distribution of reservation for different categories of disabled persons has been rearranged. After the said letter dated 10.04.2019 has been published by the State Govt., the dispute now gets narrowed down to determine as to whether it would be subject wise reservation for each category or it would be the reservation against total number of vacancies advertised.

4. So far as the total number of posts advertised is concerned, the same is not in dispute to be 1384. The State Govt. has accepted that the total reservation for the persons with disabilities is 7% which is distributed again into different categories wherein 2% would be reserved for visually impaired persons, 2% would be reserved for the persons with hearing impairment, 2% for the persons suffering from Locomotor disability or cerebral palsy and 1% has been reserved for Categories D & E under Section 34 of the Rights of Persons with Disabilities Act, 2016 (in short "the Act of 2016"). Out of these 1384 total vacancies which have been advertised, the State Govt. accepts that there are 89 posts reserved for the persons with disabilities which is 7% of 1384. The main issue as regards the grievance of the petitioners is that out of these 89 posts, whether the petitioners would not be entitled for 2% reservation category wise or whether it would be subject wise distribution of the vacancies arising in each subjects.
5. On considering the vacancies which have been published in the chart given in the letter dated 10.04.2019, this Court finds that the distribution of posts for each category of persons with disabilities does not match as is required under Section 34 of the Act of 2016 as per the decision taken by the Hon'ble Supreme Court in the landmark judgment reported in **(2013) 10 SCC 772** in the case of **Union of India and Another Vs. National Federation of the Blind and others**.
6. What is also reflected from the proceedings is that the State Govt. after the judgment of the Supreme Court in the case of National Federation of the Blind (supra) had issued an order on 24.02.2015 whereby they had fixed total 6% percentage of reservation for the persons with disabilities and it was also categorically held in the said order that out of this 6%,

2% each would be reserved for three categories i.e. persons with visually disabled, hearing impairment and Locomotor disability or cerebral Palsy.

7. It is also relevant at this juncture to mention that a public interest litigation was filed in the High Court of Chhattisgarh in WPPIL No.1470 of 2007 wherein the State Govt. had filed a compliance report of an earlier decision in pursuant to the direction given by the High Court. The respondents had issued an order on 25.08.2015 taking a decision for granting reservation to the persons with disabilities. Another document dated 03.09.2015 was also brought on record which shows that the Govt. has in fact taken a policy decision for implementing the instructions given by the Supreme Court in the case of National Federation of the Blind (supra) and also keeping in view the provisions of Section 34 of the Act of 2016. Pursuant to the compliance report that was submitted in the Public Interest Litigation by the State Govt., WPPIL No. 1470/2007 was disposed of on 27.11.2015 on an undertaking given by the State counsel in the said petition that all sincere efforts and endeavour would be made to ensure compliance of the order of the Supreme Court to fill up the vacancies.
8. It would be relevant at this juncture to refer to paragraphs - 37 & 38 of the judgment of the Supreme Court in the case of National Federation of the Blind (supra) which deals with the issue which could clear the dispute which has been raised in the present writ petition dealing with how the reservation has to be given for each category. For ready reference paragraphs - 37 & 38 are quoted hereinunder:

“37) Admittedly, the Act is a social legislation enacted for the benefit of persons with disabilities and its provisions must be interpreted in order to fulfill its objective. Besides, it is a settled

rule of interpretation that if the language of a statutory provision is unambiguous, it has to be interpreted according to the plain meaning of the said statutory provision. In the present case, the plain and unambiguous meaning of [Section 33](#) is that every appropriate Government has to appoint a minimum of 3% vacancies in an establishment out of which 1% each shall be reserved for persons suffering from blindness and low vision, persons suffering from hearing impairment and persons suffering from locomotor or cerebral palsy.

38) To illustrate, if there are 100 vacancies of 100 posts in an establishment, the establishment concerned will have to reserve a minimum of 3% for persons with disabilities out of which at least 1% has to be reserved separately for each of the following disabilities: persons suffering from blindness or low vision, persons suffering from hearing impairment and the persons suffering from locomotor disability or cerebral palsy. Appointment of 1 blind person against 1 vacancy reserved for him/her will be made against a vacancy in an identified post for instance, the post of peon, which is identified for him in group D. Similarly, one hearing impaired will be appointed against one reserved vacancy for that category in the post of store attendant in group D post. Likewise, one person suffering from locomotor disability or cerebral palsy will be appointed against the post of "Farash" group D post identified for that category of disability. It was argued on behalf of Union of India with reference to the post of driver that since the said post is not suitable to be manned by a person suffering from blindness, the above interpretation of the Section would be against the administrative exigencies. Such an argument is wholly misconceived. A given post may not be identified as suitable for one category of disability, the same could be identified as suitable for another category or categories of disability entitled to the benefit of reservation. In fact, the second part of the Section has clarified this situation by providing that the number of vacancies equivalent to 1% for each of the aforementioned three categories will be filled up by the respective category by using vacancies in identified posts for each of them for the purposes of appointment."

9. A plain reading of the illustration that has been given in paragraph-38 of the said judgment would make it amply clear that what was intended by the Hon'ble Supreme Court was that out of the total percentage of reservation kept for the persons with disabilities which in the instant case is 7%, it would be 2% carved out for the people with visually impaired, 2% for people with hearing impairment and 2% for people with locomotor disability or cerebral palsy. Accepting 89 to be the total

reserved posts for the disabled persons, there has to be 2% reservation each for the 3 aforesaid categories which would come to 28 posts each.

10. If we now look at the latest order of the State Govt. dated 10.04.2019, it would reveal that there is some disparity or discrepancy as regards giving reservation to the people with visually impaired so also people with hearing impairment. At the same time, it appears that more number of seats get reserved for the persons with locomotor disability or cerebral palsy which would be in contravention to the mandate given under Section 34 of the Act of 2016 and also would be in total violation of the judgment of the Supreme Court in the case of National Federation of the Blind (supra).
11. The letter dated 10.04.2019 would reveal that there are only 15 posts reserved for the people with visually impaired. If 2% of the total posts reserved for the three main categories of persons with disabilities is carved out it comes to 28 which is 13 short of the reservation which has been provided by the State Govt. vide their letter dated 10.04.2019, hence, the same is not sustainable and needs to be re-fixed and rearranged by the State Govt.
12. Since this Court has already stayed the further recruitment process, it would be in the interest of justice if the matter is referred back to the State Govt. to pass a fresh order altogether rearranging the reservation for the 3 categories in accordance with the requirement under Section 34 of the Act of 2016 and also the directives given by the Supreme Court in the case of National Federation of the Blind (supra). While rearranging the same, the respondent authorities are further directed to keep in mind their own order dated 24.02.2015 which they had passed pursuant to the order of the Supreme Court referred to in the preceding paragraphs and also

the subsequent orders passed by the State Govt. in this regard which were also filed before the High Court in a compliance report in WPPIL No.1470/2007. Needless to mention that the claim of the petitioners would be only against the posts identified for them.

13. The writ petition accordingly stands allowed and disposed of with a direction that the respondents should rearrange the reservation for the persons with disabilities in accordance with the Act and the judgment of the Supreme Court before proceeding further with the recruitment process. While rearranging the advertisement, the respondents shall also give reasonable time to the candidates of each category to apply and participate. The State Government would also be at liberty to cancel the whole recruitment process and go in for a altogether fresh recruitment keeping the above mentioned observation/directions of this Court.

Sd/-
(P. Sam Koshy)
JUDGE