

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

Judgment reserved on: 21.10.2019

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Judgment delivered on: 08.05.2020

+ **W.P. (C) 5948/2019**

BHAVYA NAIN

..... Petitioner

Through: Mr. Arvind K. Nigam and Mr. Mohit Mathur, Senior Advocates with Mr. Kawal Nain, Mr. Rohit Dadwal, Mr. Mehtaab Singh Sandhu and Mr. Pratishth Kaushal, Advocates.

versus

HIGH COURT OF DELHI

..... Respondent

Through: Mr. Viraj R. Datar, Ms. Meenal Duggal, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

VIPIN SANGHI, J.

1. The petitioner has preferred the present writ petition to assail the notice/result dated 21.05.2019 published by the Registrar General, Delhi High Court, whereby the candidature of the petitioner for Delhi Judicial Services-2018 (in short, 'DJS 2018') under the category of Persons with Disabilities (PwD) was rejected on account of his mental disability not being found to be permanent

in nature. For this, the Disability Certificate issued by the All India Institute of Medical Sciences, Delhi (in short 'AIIMS') has been relied on by the respondent.

2. Briefly stated that the facts of the present case are as follows:

3. The respondent Delhi High Court issued a public notice on 14.11.2018, later amended vide Corrigendum dated 19.11.2018, inviting online applications from eligible candidates for filling up 147 vacancies for DJS-2018. Out of the said 147 vacancies, 6 seats were reserved for PwD. Out of these 6 seats, 2 seats were reserved for Persons having autism, intellectual disability, specific learning disability, mental illness and multiple disabilities as mentioned under clauses (a) to (d) of Section 34(1) of the Rights of Persons with Disabilities Act, 2016 (RPwD Act), including deaf-blindness. The aforesaid Corrigendum reads as follows:

“HIGH COURT OF DELHI: NEW DELHI
DELHI JUDICIAL SERVICE EXAMINATION - 2018
CORRIGENDUM

*In continuation of this Court's notice published in various newspapers on 14.11.2018 whereby 50 vacancies have been advertised for Delhi Judicial Service Examination-2018, it is hereby notified that **the number of vacancies for Delhi Judicial Service Examination-2018 may now be read as 147 vacancies instead of 50 vacancies.** Accordingly, the category wise bifurcation of 147 vacancies shall now be read as under:*

<i>Category</i>	<i>No. of vacancies</i>
<i>General</i>	<i>112</i>

<i>SC</i>	<i>26</i>
<i>ST</i>	<i>09</i>
<i>TOTAL</i>	<i>147</i>

Amendment 1: Out of aforesaid 147 vacancies, the reservation for Persons with Disabilities shall be as follows:

<i>Category</i>	<i>Vacancies</i>
<i>PwD (Autism, intellectual disability, specific learning disability and mental illness and Multiple disabilities mentioned under clauses (a) to (d) including deaf-blindness)</i>	<i>02</i>
<i>PwD (Locomotor Disability)</i>	<i>02</i>
<i>PwD (Blind/Low Vision)</i>	<i>01</i>
<i>PwD (Hearing Impaired)</i>	<i>01</i>
<i>TOTAL</i>	<i>06</i>

Amendment 2: The vacancies for PwD (Hearing Impaired) and PwD (Autism, intellectual disability, specific learning disability and mental illness and Multiple disabilities mentioned under clauses (a) to (d) including deaf-blindness) are subject to amendment of existing Rules, which is to be notified.

Amendment 3: The revised schedule for commencement of online filling up of application forms, last date for creating new log in for online registration and last date for filling online application form and/or making payment through Debit Card/Internet Banking would be as under:

<i>Commencement of online filling up of Application Forms</i>	<i>22.11.2018</i>
<i>Last date for creating New Log In for online registration</i>	<i>12.12.2018 (11:00PM)</i>
<i>Last date for filling Online Application Form and/or making payment through Debit Card/Internet Banking</i>	<i>12.12.2018 (11:00PM)</i>

Amendment 4: The revised Date of Preliminary Examination shall now be 13.01.2019.

*Sd/-
(DINESH KUMAR SHARMA)
Registrar General
19.11.2018”
(emphasis supplied)*

4. The Delhi High Court issued Instructions annexed with the Admit Card for the Delhi Judicial Service Examination-2018, the relevant portion whereof reads as under:

"As per O.M. dated 29.12.2005 issued by Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, Government of India, the upper age limit for persons with disabilities shall be relaxable by 10 years.

x x x x x x x x

12. A candidate, if declared successful in the Main Examination (Written) must send copies of the following documents duly attested by a Gazetted Officer to the Joint Registrar (Exams), High Court of Delhi within 10 days of the declaration of the result indicating his/her Roll. No. and Application number:-

x x x x x x x x

(6) In case of a candidate claiming reservation/relaxation on account of being Persons with Disability (Blind/Lower vision)/(Hearing Impaired)/(Locomotor disability), (Autism, intellectual disability, specific learning disability and mental illness and Multiple disabilities mentioned under clauses (a) to (d) including deaf-blindness), certificate issued by a Government Hospital/Medical Board in support of his/her claim." (emphasis supplied)

5. Accordingly, the petitioner approached the All India Institute of Medical Sciences (AIIMS), New Delhi where he was examined and the Disability Certificate for Mental Illness – Bipolar Affective Disorder i.e. BPAD was issued to him in the prescribed form. The Disability Certificate in question which was issued on 12.12.2018 is valid for a period of 5 years, i.e. till 12.12.2023.

6. The petitioner – a law graduate applied for the DJS 2018 under the PwD category (Autism, intellectual disability, specific learning disability and mental illness and Multiple disabilities mentioned under clauses (a) to (d) of Section 34(1) of the RPwD Act, including deaf-blindness) for which two seats were reserved, as aforesaid.

7. The petitioner cleared the Preliminary Examination under the PwD category, as per the revised result dated 02.02.2019, wherein he scored 132.50 marks. Thereafter, he appeared for the Main Examinations held on 09.02.2019 and 10.02.2019. Vide Notice/Result dated 30.04.2019, the petitioner cleared the Main Examination with 420 marks out of 850 marks.

8. As per the Note appended to the Notice dated 30.04.2019, the candidates who qualified the Delhi Judicial Service Mains Examination were asked to submit certain documents. The said Note reads as under:

“NOTE:

The qualified candidates are directed to send/submit attested copies of the following testimonials and original caste/disability certificate to the Joint Registrar (Exams – DHJS and DJS), Room No. 602) 6th Floor, Administrative Block, Delhi High Court within 10 days i.e. by 10.05.2019 during working hours i.e. from 10.00 a.m. to 5.00 p.m.;-

(1) Proof of age (Certificate of Matriculation or other equivalent examination).

(2) LL.B. Degree or other equivalent law degree.

(3) Certificates, Marksheets and degrees of all courses passed or attended commencing from Matriculation Examination onwards.

(4) Advocate's license if practising / Proof of enrolment, if enrolled with Bar.

(5) In case of a candidate who claims to belong to one of the Scheduled Castes or Scheduled Tribes, certificate from a Sub-Divisional Officer, Additional District Magistrate, Revenue Assistant or any other officer, who has been designated by the State Government concerned as competent to issue such a certificate.

(6) In case of a candidate claiming reservation/relaxation on account of being Person with Disability (Blind/Low Vision)/ (Hearing Impaired)/ (Locomotor Disability)/ (Autism, Intellectual Disability, Specific Learning Disability and Mental Illness and Multiple Disabilities mentioned under Clauses (a) to (d) including deaf-blindness). Certificate, issued by a Government Hospital/Medical Board in support of his/her claim.

(7) In case of a candidate claiming relaxation in age on account of his/her being Ex-Serviceman, Emergency Commissioned Officer or Short Service Commissioned Officer, documentary evidence in this regard.

(8) A candidate, who claims to belong to Scheduled Castes/Scheduled Tribes or Person with Disabilities categories, if declared successful in the Main Examination (Written), must submit the original caste/ disability certificate to the Joint Registrar (Exams - DHJS and DJS), Delhi High Court.”
(emphasis supplied)

9. The petitioner duly submitted all the documents as well as the Original Disability Certificate dated 12.12.2018.

10. Vide letter dated 04.05.2019, the petitioner was called upon to appear for an Interview/Viva-Voce test to be held on 13.05.2019. The petitioner was interviewed by the Interview Board, comprising of Hon'ble Judges of this Court and other members.

11. The final results were published vide impugned notice dated 21.05.2019, whereby the candidature of the petitioner was rejected on the ground that his disability was not found to be permanent as per the Disability Certificate submitted by him. Accordingly, the petitioner has preferred the present petition challenging the said notice dated 21.05.2019.

12. The Disability Certificate issued by the Department of Psychiatry, AIIMS, certified the petitioner of having the disability i.e. Mental Illness – Bipolar Affective Disorder, i.e., BPAD, to the extent of 45%, and stated that his condition is “*currently in remission*”. Further, the said certificate states that the condition of the petitioner is “*likely to improve*”. The relevant extract of the said Disability Certificate reads as follows:

“Department of Psychiatry

All India Institute of Medical Sciences, Ansari Nagar, New Delhi-110029

Form-IV

DISABILITY CERTIFICATE

PHOTO

Certificate No. 133/2018

Date: 12/12/2018

This is to certify that I have carefully examined

Shri/~~Smt/Kum~~ BHAVYA NAIN son/~~wife/daughter~~ of Shri KAWAL NAIN Date of Birth (DD/MM/YY) 16-11-1985 Age 33 years, male/~~female~~ MALE Registration No. 104162703, C-2664/18 Permanent Resident of House No. F-48, GROUND FLOOR Ward/ Village/ Street LAJPAT NAGAR Post Office L. NAGAR, PART-2 District SOUTH DELHI State DELHI-24 whose photograph is affixed above, and I am satisfied that he/ she is a case of MENTAL disability.

His/ her extent of percentage disability has been evaluated as per guidelines

(IDEAS – Indian disability Evaluation Assessment Scale and is shown below:

Mental Illness- Diagnosis	F31.7(BPAD, currently in Remission)
Mental disability (in%)	45%

The above condition is ~~progressive/ non progressive/ likely to improve/ non likely to improve.~~

Reassessment of disability is:

Not necessary Or

Is recommended/ after 5 years months, and therefore this certificate shall be valid till (DD/MM/YY) 12-12-2023

The applicant has submitted the following documents as proof of residence:

<i>Nature of document</i>	<i>Date of Issue</i> <i>NUMBER</i>	<i>Details of authority issuing certificate</i>
AADHAAR CARD	728680040910	GOVT. OF INDIA

Sd/-

(Authorised Signatory of notified Medical Authority)
(Name and Seal)

Sd/-

Signature/ thumb impression
Of person in whose favour
Disability Certificate is issued

Sd/-

Counter Signature

Medical Superintendent”

13. The impugned notice/ result dated 21.05.2019 issued by the respondent rejecting the petitioner’s candidature, in so far as it is relevant, is extracted hereunder:

“Note 1- The candidature of Mr. Bhavya Nain as a Person with Disability Category has been rejected for the reason that his disability was not found to be permanent as per the Disability Certificate.”

14. The issue that arises for our consideration is whether the petitioner – who is certified to have been suffering from the mental illness i.e. BPAD – which is in remission and is likely to improve, is entitled to the benefit of Reservation provided to PwD under the RPwD Act.

15. Mr. Arvind Nigam, learned senior counsel appearing on behalf of the petitioner submits that the stand of the respondent is based on a complete misreading of the petitioner’s Disability Certificate and the provisions of the RPwD Act and the Rules framed thereunder. The gravamen of Mr. Nigam’s

submission is that, while the Disability Certificate states that the petitioner's mental illness is currently in remission, and that the said condition of the petitioner is likely to improve, the same does not lead to the conclusion that the mental illness is a "temporary" one i.e. the illness will get permanently cured at some point of time in the future. He submits that the mental illness of the petitioner is permanent i.e. it is lifelong and with treatment and medication it can be kept under control. He submits that the fact that the petitioner is currently in remission, would not cause the petitioner to lose his status as a mentally disabled person as defined under the RPwD Act thereby disentitling him to his right to claim reservation under the RPwD Act.

16. Mr. Nigam has referred to the provisions of the RPwD Act. The definition of a "**person with disability**" is defined in section 2(s) of the RPwD Act, which reads as follows:

*"2(s). **"person with disability"** means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;"* (Emphasis supplied)

17. A "**person with benchmark disability**" is defined in section 2(r) of the RPwD Act, which reads as follows:

*"2.(r). **"Person with benchmark disability"** means a person with not less than forty percent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;"*

18. ***“Specified disabilities”*** is defined in section 2(zc) of the RPwD Act as follows:

“2.(zc) “specified disability” means the disabilities as specified in the Schedule;”

19. Mr. Nigam draws our attention to the Schedule to the RPwD Act which covers mental illness as a specified disability. The relevant extract of the same is reproduced below:

“3. Mental Behaviour.-

*“**mental illness**” means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, **but does not include retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by sub normality of intelligence.**”*

(emphasis supplied)

20. Reservation is provided by Section 34 of the RPwD Act to persons with benchmark disabilities. The said section reads as follows:

“34. Reservation.- (1) Every appropriate Government shall appoint in every Government establishment, not less than four per cent of the total number of vacancies in the cadre strength in each group of posts meant to be filled with **persons with benchmark disabilities** of which, one per cent each shall be reserved for persons with benchmark disabilities under clause (a), (b) and (c) and one per cent for persons with benchmark disabilities under **clause (d)** and (e), namely:-

(a) blindness and low vision;

(b) deaf and hard of hearing;

(c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;

(d) autism, intellectual disability, specific learning disability and mental illness;

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five 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:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.” (emphasis supplied)

21. Mr. Nigam submits that the petitioner is a person with benchmark disability, suffering from Bipolar Affective Disorder, which is a long term mental illness, and in terms of the RPwD Act, the petitioner was issued a certificate of disability. He refers to Rules 18 and 19 of The Rights of Persons with Disabilities Rules, 2017 (hereinafter referred to as the “RPwD Rules”), which deal with the procedure for issue of certificate of disability and reads as follows:

“18. Issue of certificate of disability.- (1) On receipt of an application under rule 17, the medical authority or any other notified competent authority shall, verify the information as provided by the applicant and shall assess the disability in terms of the relevant guidelines issued by the Central Government and after satisfying himself that the applicant is a person with disability, issue a certificate of disability in his favour in Form V, VI and VII, as the case may be.

(2) The medical authority shall issue the certificate of disability within a month from the date of receipt of the application.

(3) The medical authority shall, after due examination -

(i) issue a permanent certificate of disability in cases where there are no chances of variation of disability over time in the degree of disability; or

(ii) issue a certificate of disability indicating the period of validity, in cases where there is any chance of variation over time in the degree of disability.

(4) If an applicant is found ineligible for issue of certificate of disability, the medical authority shall convey the reasons to him

in writing under Form VIII within a period of one month from the date of receipt of the application.

(5) The State Government and Union territory Administration shall ensure that the certificate of disability is granted on online platform from such date as may be notified by the Central Government.” (emphasis supplied)

22. Rule 19 reads as follows:

“19. Certificate issued under rule 18 to be generally valid for all purposes.-A person to whom the certificate issued under rule 18 shall be entitled to apply for facilities, concessions and benefits admissible for persons with disabilities under schemes of the Government and of non-Governmental organizations funded by the Government.”

23. Mr. Nigam submits that under Rule 18(3), 2 kinds of certificates are issued to PwD. Under Rule 18(3)(i), a permanent certificate is issued to persons where there are no chances of variation of disability over time, i.e. where there is no scope of improvement in the disability. Under Rule 18(3)(ii), the certificate is issued in cases where there is a chance of variation in the disability over time, i.e. the disability of the person may improve, or deteriorate, over time. The petitioner was issued a disability certificate under Rule 18(3)(ii), the validity of which is 5 years, and as per Rule 19, his Disability Certificate is actionable.

24. Mr. Nigam also places reliance on Rule 26 & 27 of the ***Delhi Rights of Persons with Disabilities Rules, 2018*** (hereinafter referred to as the ‘Delhi RPwD Rules’), which are extracted hereunder:

“26. Issue of certificate of Disability.- (1) On receipt of an application under rule 24, the medical authority or any other

notified competent authority shall, verify the information as provided by the applicant and shall assess the disability in terms of the relevant guidelines issued by the Central Government and after satisfying itself that the applicant is a person with disability, issue a certificate of disability in favour of the applicant in Form V, VI, and VII, as the case may be.

(2) The medical authority shall issue the certificate of disability within a month from the date of receipt of the application.

(3) The medical authority shall, after due examination,-

(i) issue a permanent certificate of disability in cases where there are no chances of variation of disability over time in the degree of disability; or

(ii) issue a certificate of disability indicating the period of validity, in cases where there is any chance of variation over time in the degree of disability.

(4) If an applicant is found ineligible for issue of certificate of disability, the medical authority shall convey the reasons to the applicant in writing under Form VII within a period of one month from the date of receipt of the application.

27. Validity of Certificate issued under rule 26,- *A person to whom the certificate is issued under rule 26 shall be entitled to apply for all facilities, concessions and benefits admissible for persons with disabilities under schemes of the Government and of non-Governmental organizations funded by the Government.” (emphasis supplied)*

25. It is Mr. Nigam’s submission that the petitioner’s Disability Certificate is valid under Rule 18 and 19 of the RPwD Rules read with Rule 26 and 27 of the Delhi RPwD Rules and despite having a valid Disability Certificate issued as per the guidelines under the RPwD Act, he has been denied the benefit of reservation though he is rightfully entitled to it as a person with benchmark

disability (since the disability has been certified as not less than 40%, as it has been found to be 45%) provided under section 34 of the RPwD Act.

26. Mr. Nigam submits that there is no requirement under section 34 of the RPwD Act that the Disability Certificate must specify that the mental illness is permanent in nature, as envisaged under Rule 18(3)(i). The mental illness of the petitioner cannot be considered to be temporary, or not permanent, merely because the certificate does not, in terms, say that the mental illness is permanent. The certificate certifies the Mental Illness of the petitioner at 45% and is valid for 5 years. There is no reason to assume that the petitioner's disability will fall below 40% merely because he is in remission. If that were so, the certificate would not have been valid for 5 years from its issue. Disability Certificate issued under Rule 18(3)(ii) is also a valid Disability Certificate for the purpose of grant of reservation provided under section 34 of the RPwD Act. He submits that the Disability Certificate, which was issued to the petitioner by AIIMS under Rule 18(3)(ii) of the RPwD Rules, does not specifically mention that the petitioner's disability would completely disappear at any point in time, or that the mental illness of the patient is temporary in nature. It does not state that the mental illness will fall below 40% in future. Merely because the Disability Certificate states that the petitioner's disability is currently in remission and is likely to improve, is not a ground to deny reservation to the petitioner, since there is no such limitation prescribed in law.

27. Mr. Nigam submits that no objection was raised regarding the Disability Certificate when the petitioner submitted the documents with the respondent as per the notice dated 30.04.2019, and the same were duly

scrutinized by the respondent, on the basis of which the respondent issued him a letter dated 04.05.2019 inviting the petitioner for an interview on 13.05.2019. He submits that no objection was raised regarding the Disability Certificate prior to the issuance of the final notice dated 21.05.2019. The same was raised for the very first time only when the final notice was issued on 21.05.2019. Thus, the objection has been raised as an afterthought.

28. Mr. Nigam has placed reliance on Para 25 of the decision by the Division Bench of this Court in **Ex. Gnr. Naresh Kumar v. Union of India**, W.P.(C) 3828/2010 dated 19.09.2011, wherein the Court observed:

“25.Now, it is extremely difficult to detect a mental disorder which is not permanent. A bipolar mood disorder or Schizophrenia does not render a person insane or mad. The moods fluctuate from time to time and it may happen that at the time of enrolment the person is in the positive state of mind and thus the negative phase is not detected.”

29. Mr. Nigam lastly submits that the RPwD Act being a beneficial/welfare legislation enacted to benefit the PwD ought to be given a liberal, purposive and constructive interpretation in favour of the PwD.

30. When the writ petition was taken up for preliminary hearing on 29.05.2019, this Court passed the following order:

“Issue notice. Mr. Datar accepts notice on behalf of the respondent.

We have heard Mr. Nigam, learned senior counsel for the petitioner and Mr. Datar on behalf of the respondent.

Our attention has been drawn to the disability certificate issued by the All India Institute of Medical Sciences in respect of the

petitioner which certifies the mental disability of the petitioner as 45%. The mental illness diagnosed in respect of the petitioner is stated to be BPAD. However, it is noted that the petitioner is currently in remission. The certificate also recommends that the above condition is likely to improve. Reassessment of the disability is recommended after five years. The certificate is valid till 12.12.2023. The petitioner was declared successful in the final result of the examination held by the respondent for recruitment to the Delhi Judicial Services. Though the petitioner's name is included in the final result of candidates in order of merit, his candidature has been rejected on the ground that his disability was not found to be permanent as per the disability certificate.

Prima facie, we do not consider the said reason to be correct. Since there is nothing in the certificate to indicate that the petitioner's disability is not of a permanent nature, merely because the petitioner is in remission, it does not follow that the disability would completely disappear at any given point of time.

Our attention is drawn to Section 2(r) of the Rights of Persons with Disabilities Act, 2016, which defines persons with benchmark disability as also to Section 34 and Rules 18 and 19 of the Rules framed under the said act, namely, the Right of Persons with Disabilities Act, 2016.

Since we, prima facie, find merit in the case, we direct the respondent to keep the vacancy against which the petitioner was initially selected reserved till further orders.

In view of the urgency let the respondent file their counter-affidavit within 10 days with advance copy to the petitioner. Rejoinder be filed within 10 days thereafter. The counter-affidavit and the rejoinder be exchanged between counsels but the same be filed immediately upon opening of the Registry after summer vacations. (emphasis supplied)

List for hearing on 15.07.2019."

31. The respondent High Court of Delhi has, accordingly, filed its counter-affidavit.

32. Mr. Viraj Datar, learned counsel appearing on behalf of the respondent submits that the benefit of reservation under the RPwD Act cannot be extended to the petitioner, because his mental illness – as per the Disability Certificate, is not permanent or long-term in nature. The same has been assessed at 45%, but he is under remission and his condition is likely to improve. If it falls under 40%, the petitioner would not be entitled to the benefit of reservation under Section 34 of the RPwD Act.

33. Mr. Datar submits that the petitioner's mental disability is currently in remission and is likely to improve, which implies that his mental illness is not permanent or long-term in nature. In the meeting held on 13.05.2019, the petitioner's candidature was considered by the Selection Committee of DJS-2018 which observed as follows:

"Considering that the disability of Mr. Nain is not permanent, the Committee is of the view that he cannot be granted the benefit of relaxed standards admissible to candidates belonging to Persons with Disability category. The Committee, therefore, recommends that the candidature of Mr. Bhavya Nain, as a candidate belonging to Persons with Disability category, may be rejected."

34. Mr. Datar submits that the petitioner is not a "person with disability", as defined in Section 2(s), since the mental impairment with which the petitioner suffers cannot be categorised as "long term". Since the petitioner cannot be categorised as "a person with disability", he is not "a person with benchmark disability", as defined in Section 2(r), which is a sub-species of a person with disability.

35. Mr. Datar urges that in case the petitioner is allowed to avail of the reservation under Section 34 of the RPwD Act, sometime after his appointment, he would cease to be covered by the provisions of the RPwD Act since his mental disability/ impairment is only temporary in nature, or will fall below 40%. He also submits that in case the petitioner is allowed to avail of the reservation granted to candidates suffering from benchmark disability, it would deprive a deserving person, genuinely suffering with benchmark disability under the provisions of the RPwD Act, of getting appointed. Such appointment will defeat the purpose of the RPwD Act.

36. Mr. Datar vehemently argues that in case the benefits of relaxed standards and reservation under the RPwD Act are granted to persons with temporary disability, it is likely to lead to an anomalous situation, where persons who might have suffered locomotor injuries in accidents – resulting in temporary disability for a year or two, and whose condition improves subsequently, would also be entitled to the benefit of relaxation and reservation, thus depriving genuine candidates suffering from permanent/ long-term benchmark disabilities of the intended reservation. He also submits that such an interpretation would be in contradiction to the letter and spirit of the RPwD Act, and it is neither the intent, nor the purpose of the RPwD Act to grant benefits on the basis of a temporary disability, which is likely to improve.

37. Mr. Datar submits that the petitioner's documents were not scrutinized before he was called for an interview. The documents of all the candidates were checked, only to ensure that all the requisite documents as mentioned in the Advertisement Notice were submitted. The documents of all the

candidates were scrutinized and verified only on the day of the interview, when the petitioner's Disability Certificate was scrutinized and it was found by the Selection Committee that the petitioner's disability was not permanent in nature. Thus, there is no merit in his submission that the rejection of his candidature is an afterthought.

38. Mr. Datar places reliance on a Division Bench decision of Punjab & Haryana Court in ***Harneet Kaur v. Baba Farid University of Health Science, BFUHS, Faridkot***, CWP No. 19074/2017 decided on 13.9.2018, wherein the Court held that the RPwD Act cannot be extended to persons afflicted with temporary disabilities and has to be restricted to persons with permanent disabilities only. In this case, the petitioner was suffering from 40% disability which was temporary in nature. The relevant extract of the judgment relied upon by Mr. Datar is as under:

“Rule 18 talks of issuance of a certificate of disability. The relevant portion of this rule is extracted here below :-

“18. Issue of certificate of disability.-

(3) The medical authority shall, after due examination - -

(i) issue a permanent certificate of disability in cases where there are no chances of variation of disability over time in the degree of disability ; or

(ii) issue a certificate of disability indicating the period of validity, in cases where there is any chance of variation over time in the degree of disability.”

This is the limited argument raised before us in this regard.

When we examine the provisions of the 2016 Act and Rule 18 of 2017 Rules rules defining a person with disability, it categorises persons afflicted with disability under three separate headings.

(1) Clause (i) talks of a person with benchmark disability to mean a person with not less than forty percent of a specified disability if the specified disability has not been defined in measurable terms and also includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority.

(2) Clause (ii) talks of persons with disability to mean a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others.

(3) Lastly, Clause (iii) talks of a person with disability having high support needs means a person with benchmark disability certified under clause (a) of sub-section (2) of section 58 who needs high support.

Similarly, Section 58 of the 1995 Act talks of a specified disability. Evidently, the object of both the Acts is to enable effective participation of a person with disability in society equally with others not only by providing him a preference in matters of admission, employment, but also to enable him to more avenues in employment so that he can lead a dignified life independent of societal support driven by sympathy.

The classification as noticed above, clearly centers around a permanent disability, the weight of which an individual has to carry through his entire life. It does not talk of disability which is a temporary affliction and liable to dissipate or be reduced either with the passage of time or with appropriate treatment. The reason is too apparent as such a person with temporary disability carries neither weight, nor stigma which a person with permanent disability carries. When the provision of the Act is read with the afore-extracted Rule 18(3)(i) & (ii), it becomes abundantly clear that certificate of disability means a certificate of permanent disability. For the very same reason

1995 Act also has to be held to be referring to a permanent disability.

Learned counsel for the petitioner has made much about the aforeextracted Rule 18(3)(i), (ii) to contend that the word 'permanent disability' does not find mention therein.

We are of the opinion that in view of the categoric provision of the Act, three categories of persons with disability have been set out which suggest a long term disability. There is no escape from such a conclusion of the Act with the Rules too prescribing a preferential opening for those with permanent disability alone. The language of Rule 18(3)(i) is defective and we would read it to mean that the medical authority shall after due examination, issue a certificate of permanent disability. The word permanent disability occurring in clause (i) is to qualify the disability and not the certificate. It is for this reason that in continuation it notes that “where there are no chances of variation or disability over time in the degree of disability”. Similarly, clause (ii) states issuance of a certificate of disability indicating the period of validity where there is any chance of variation over time in degree of the disability. Clause (ii), therefore, also talks of a permanent disability, but with chances of variation and reduction in degree.

The certificate issued by the PGIMER authorities indicates percentage of disability as forty percent of the body with nature of disability as temporary.

In this view of the matter, the respondent's stand cannot be faulted with. The petition in this regard has, therefore, to be rejected.” (emphasis supplied)

39. Mr. Datar has also placed reliance on a Division Bench decision of this Court in '**Jadhav Vishwas Haridas v. Union Public Service Commission & Ors.**', LPA 222/2013 decided on 27.10.2016, relevant extract whereof is as follows:

“21. By Section 2(q) "Mental illness" is defined as “any mental disorder other than mental retardation”. Though not illuminating, the clear demarcation between mental retardation on the one hand and mental disorder (not amounting to retardation) is to a certain extent helpful. Oxford English dictionary defines mental disorder as “A condition which causes serious disorder in a person's behaviour or thinking” (https://en.oxforddictionaries.com/definition/mental_illness accessed at 17:50 hrs, 14 October, 2016). The Mental Health Act defines a “mentally ill” person as one “who is in need of treatment by person of any mental disorder other than mental retardation”. Now, there are two paradoxes at work here - the first is that those with mental illness are altogether excluded from consideration for any employment under the Section 33 reservation; two, and importantly, that mental disorders are of varied severity and extent. Even mental illness can differ significantly as to use of a person's skills acquired during one's life time. **For instance, severe depression or disorders such as schizophrenia could seem as complete barriers to jobs. However, the severity of those conditions may vary, as well as their extent: they may be temporary and entirely brought under control.** To club all these with the severest form of mental illness or disorder may be unjustified. The irony here is that someone with a fairly low degree of illness (say to the extent of 25% or 35%) would not fall within the definition of “person with disability” whereas one with a greater degree of disability (say 90% and total) may not be able to work at all, given the nature of illness. This is where the appellant's grievance has to be addressed. The “one size fits all” assumption that one with disability should have at least 40% of that condition may be justified and work well for person with vision or hearing impairment or locomotor disability. However, applying that matrix to person with mental disability could eliminate him or her altogether from consideration (whereas one who may technically be a person with disability, may be excluded altogether because of its very nature and its hindrance to normal discharge of public employment functions). Yet again, there is the legislative mandate of carrying post identification exercise

once in three years, having regard to advancement in technology. Now this mandate is useful not only in relation to availability of devices and tools such as hearing aids, etc (to enable hitherto unemployable persons with hearing disability for jobs which might now be conveniently performed by them) but also in relation to the kinds of medication and medical breakthrough resulting in ailments and conditions becoming amenable to treatment and control. If this mandate were to be given its logical effect, yet, the threshold of 40% disability might prove to be an additional barrier for those with mental illness or disorder.

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27. It is the opinion of this Court that a blanket 40% disability test to provide reservations in employment may be impracticable. A particular disability suffered by an individual might require specific aid and comes with specific restrictions. An individual suffering from a visual disability could avail specific benefits in terms of reservations in employment, as his mental condition is normal. Such an individual might be suffering from a disability of over 40% on the IDEA scale but his employability may not be affected. On the other hand, a different individual suffering from another disability of above 40% on the IDEA scale might not be employable for certain positions as his mental condition could be adversely affected. Hence it is the opinion of this Court that in a country where 26,810,557 individuals suffer from different disabilities, a one size fit all model might not be the most efficient. That 40% on the IDEA scale makes individuals more or less employable cannot be held ideal. The legislature may consider to create a model where individuals suffering from different disabilities may be recognized and given benefits in terms of education, employment, health etc. which are suitable to their individual condition. The benchmarking through the IDEA scale may have to vary depending on different disabilities. However, this remains within the legislative domain and since there is a move to amend the Act, the court – in accordance with well settled

principles on this subject cannot direct the enactment of legislation.

28. This court, therefore, concludes that there is some deficiency in the existing law, i.e the PWD Act, both with respect to providing reservations as well as the classification of all persons with disabilities as one having at least 40% of any specified or enumerated condition, which can well be the reason for ultimate discrimination. Whilst it is within executive domain to categorize which post can be suitable for what kind of person or persons with disability, the absolute minimum threshold of 40% in the case of certain kinds of disabilities could be the barrier – unwitting though the case may be, and eliminate from the post identification exercise persons with such disabilities altogether. This clearly has a discriminatory result, and an indirect discriminatory effect. Having arrived at this conclusion, the court is conscious that neither is this result capable of judicial redress (as that would involve the court judicially enacting law, by reading words into the statute an entirely unwarranted intrusion into Parliamentary power) nor can existing law be suitably read down or severed. Furthermore, and more fundamentally, this court does not have empirical data or scientific medical expertise in the matter and would have to hazard conclusions based on some materials which it might source, or intuitively guess. Whatever be the manner of exercise of power, such assumption of quasi-executive and legislative power can prove to be a remedy worse than the disease.” (emphasis supplied)

40. We have considered the rival submissions of learned counsels in the light of the facts of the case. It is necessary for us to, firstly, examine the legal, as well as the medical literature on mental illness – Bipolar Affective Disorder, i.e., BPAD to understand the nature of this mental illness.

41. In ***Pankaj Mahajan v. Kajal***, (2011) 12 SCC 1, the Supreme Court had occasion to consider the nature of the said illness, i.e. BPAD in the context of

a claim for divorce on the ground of the wife being incurably of unsound mind, and on the ground of cruelty. The Supreme Court observed:

“12. Dr. Paramjit Singh (PW 1), Professor and Head, Psychiatry Department, Medical College, Amritsar in his evidence stated as follows:

“The respondent remained admitted in my department at Amritsar from 17-12-2001 to 28-12-2001. This disease is bipolar affective disorder. I treated her during this period. She was admitted in emergency because her disease was in quite a serious stage. In this disease, the patient can commit suicide. When she came, she was aggressive and irritable. If the proper treatment is not given to the respondent then her aggressive nature can be prolonged. The respondent Kajal was treated by me by giving electric shock for four times during her stay in the ward MRI i.e. magnetic resonance imaging. MRI has got no concern with the disease with which the respondent was suffering. This disease is treatable but not curable..... ..” (emphasis supplied)

13.

14. Dr. Ravinder Mohan Sharma (PW2), Senior Medical Officer, Punjab Mental Hospital, Amritsar, stated as under:

“.....As per the history recorded in File No. 58803, there is a mention of suicide ideas and threats and it is recorded that she had attempted suicide once. As per the record, hers is a history of abusive and irritable behaviour. On 16-1-2002 she was advised injection by me because she was irritable and restless. It is not a simple yes or no answer to the question whether the disease is curable or not. It is an episodic illness in which the patient is getting episodes of mental illness and

with treatment in between she can remain normal. The intensity and frequency of these episodes is highly unpredictable and varies from patient to patient. Generally, the frequency increases with every episode. The disease of the respondent is treatable but cannot be definitely said to be curable. MRI has got nothing to do with this disease of the respondent.” (emphasis supplied)

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25. From the materials placed on record, we are satisfied that the appellant husband has brought cogent materials on record to show that the respondent wife is suffering from mental disorder i.e. schizophrenia. From the side of the appellant husband, various doctors and other witnesses were examined to prove that the respondent wife was suffering from mental disorder. We have already extensively quoted the statements of Dr. Paramjit Singh (PW 1), Dr. Ravinder Mohan Sharma (PW 2), Dr. Virendra Mohan (PW 3) and Dr. Gurpreet Inder Singh Miglani (PW 7)—**all the four doctors/psychiatrists who treated the respondent wife, prescribed medicines and also expressed the view that it is “incurable”**. Even the respondent wife and her father themselves admitted in their cross-examination that the respondent had taken treatment from the said doctors for mental illness. Thus, it is proved beyond doubt that the respondent wife is suffering from mental disorder/schizophrenia and it is not reasonably expected to live with her and the appellant husband has made out a case for a decree of divorce and the decree should have been granted in favour of the appellant husband and against the respondent wife.” (emphasis supplied)

42. Thus, the Court accepted the position that BPAD was a lifelong/permanent and incurable mental illness, premised on statements and evidences led by medical doctors.

43. In an article titled *Long-Term Treatment in Bipolar Disorder* authored by Alan C. Swann, M.D. published in *The Journal of Clinical Psychiatry*, J Clin Psychiatry 2005; 66 (suppl 1), the learned Author observes:

“COURSE OF ILLNESS AND NECESSITY FOR MAINTENANCE TREATMENTS

Bipolar disorder is a lifelong illness with a heterogeneous course... ..Untreated patients are 2.5 times more likely to die in the next 12 months than the individuals of the same sex and age without bipolar disorder. This substantial mortality, from suicide and medical causes, is reduced by effective treatment... ..

EVIDENCE FOR EFFECTIVE MAINTENANCE TREATMENTS

... .. In nearly all published trials, most patients suffer relapse within 1 or 2 years even if given the active treatment in a positive trial, and a substantial minority of subjects who are randomly assigned to receive placebo do not suffer relapse... ..”
(emphasis supplied)

44. In another article titled *The Bipolar Spectrum* by Jules Angst, published in *British Journal of Psychiatry*, (2007),190, 189-191. Doi: 10.1192/bjp.bp.106.030957, the learned author states:

“...Over decades of recurrent depressive illness, bipolar disorder may manifest at any time: a lifelong follow-up of patients hospitalised showed a persistent risk of diagnostic change to bipolar disorder of 1.25% per year of observation.

Bipolar affective disorder is a more severe disorder than major depression, as measured by higher lifelong recurrence and greater comorbidity with psychiatric disorders, especially anxiety and secondary substance use disorders... ..”
(emphasis supplied)

45. An abstract from the article titled *Bipolar Disorder: an update* authored by **Barkur S. Shastry** published in *Neurochemistry International* Volume 46, Issue 4, March 2005, Pages 273-279, the learned author states:

*“Bipolar disorder (BPD) is one of the most severe forms of mental illness and is characterized by swinging moods. It affects both sexes equally in all age groups and its worldwide prevalence is approximately 3-5%. The clinical course of illness can vary from a mild depression to a severe form of mania. **The condition has a high rate of recurrence and if untreated, it has an approximately 15% risk of death by suicide. It is the third leading cause of death among people aged 15-24 years and is a burden on society and families.** The pathophysiology of the disorder is poorly understood. However, a variety of imaging studies suggests the involvement of structural abnormalities in the amygdala, basal ganglia and prefrontal cortex. There are two main biological models that have been proposed for depression. These are called the serotonin and norepinephrine hypotheses. Multiple lines of evidence support both of them. **It is a life-long disease and runs in families but has a complex mode of inheritance.** Family, twin and adoption studies suggest genetic factors but the candidate susceptibility genes, which when mutated can account for a substantial portion of BPD patients, have not yet been conclusively identified. There have been an increasing number of new generation antidepressant drugs developed to treat BPD. However, lithium salt is only the drug that is most efficient in long-term preventive treatment and it also has an anti-suicidal effect. **The condition can be well managed by physicians and psychiatrists along with family and patient education.** Identification of risk genes in the future may provide a better understanding of the nature of pathogenesis that may lead to a better therapeutic target.”* (emphasis supplied)

46. In an article titled *“Diagnosis and Treatment of Bipolar Disorders in Adults: A Review of the Evidence on Pharmacologic Treatments* penned by

Michael W. Jann published in *Am Health Drug Benefits*. 2014 Dec; 7(9): 489-499, the learned author states:

“Background

Patients with bipolar disorder are exceptionally challenging to manage because of the dynamic, chronic and fluctuating nature of their disease. Typically, the symptoms of bipolar disorder first appear in adolescence or early adulthood, and are repeated over the patient’s lifetime, expressed as unpredictable recurrences of hypomanic/manic or depressive episodes. The lifetime prevalence of bipolar disorder in adults is reported to be approximately 4%.....”

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Conclusion

Bipolar disorder is a chronic, relapsing illness characterized by recurrent episodes of manic or depressive symptoms, with intervening periods that are relatively (but not fully) symptom-free. Onset occurs usually in adolescence or in early adulthood, although onset later in life is also possible. Bipolar disorder has a lifelong impact on patients’ overall health status, quality of life and functioning... ..” (emphasis supplied)

47. **The National Institute of Mental Health**, which comes under the United States Department of Health and Human Services, is the largest research organization in the world, specializing in mental illness and states in its Publication No. **NIH Publication 19-MH-8088**, that bipolar disorder is a lifelong illness, which has also been observed by the Division Bench of the Himachal Pradesh High Court in **Jeevan Rana v. State of Himachal Pradesh**, 2015 Cri LJ 4619. The relevant extract from the publication is reproduced below:

“What is bipolar disorder?”

Bipolar disorder is a chronic or episodic (which means occurring occasionally and at irregular intervals) mental disorder. It can cause unusual, often extreme and fluctuating changes in mood, energy, activity, and concentration or focus. Bipolar disorder sometimes is called manic-depressive disorder or manic depression, which are older terms.

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Most of the time, bipolar disorder develops or starts during late adolescence (teen years) or early adulthood. Occasionally, bipolar symptoms can appear in children. Although the symptoms come and go, bipolar disorder usually requires lifetimes treatment and does not go away on its own. Bipolar disorder can be an important factor in suicide, job loss, and family discord, but proper treatment leads to better outcomes.

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Coping With Bipolar Disorder

Living with bipolar disorder can be challenging, but there are ways to help make it easier for yourself, a friend, or a loved one.

- ***Get treatment and stick with it—recovery takes time and it’s not easy. But treatment is the best way to start feeling better.***
- ***Keep medical and therapy appointments, and talk with the provider about treatment options.***
- ***Take all medicines as directed.***
- ***Structure activities: keep a routine for eating and sleeping, and make sure to get enough sleep and exercise.***
- ***Learn to recognize your mood swings.***
- ***Ask for help when trying to stick with your treatment.***

- *Be patient; improvement takes time. Social support helps.*

Remember, bipolar disorder is a lifelong illness, but long-term, ongoing treatment can help control symptoms and enable you to live a healthy life... .. (emphasis supplied)

48. We may refer to the judgment of Himachal Pradesh High Court in ***Jeevan Rana*** (supra), wherein the Division Bench observed that Bipolar Disorder is a lifelong ailment. The relevant extract from this decision relied upon by the petitioner reads as follows:

“25. The nature and symptom of the mis bipolar disease were described by the Hon’ble High Court of Karnataka in Nalini Kumari v. K.S. Bopaiah 2007 (1) KarLJ 342. The Court has observed as under:

“19. Now let us discuss what is mis Bipolar disease and whether it is curable/controllable and treatable disease?

20. In National Institute of Mental Health Publication No. 3679, it is stated:

Introduction:

Bipolar disorder, also known as manic-depressive illness, is a brain disorder that causes unusual shifts in a person's mood, energy, and ability to function. Different from the normal ups and downs that everyone goes through, the symptoms of bipolar disorder are severe. They can result in damaged relationships, poor job or school performance, and even suicide. But bipolar disorder can be treated, and people with this illness can lead full and productive lives.

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People with bipolar disorder can lead healthy and productive lives when the illness is effectively treated (see below - “How is Bipolar Disorder Treated”). Without treatment, however, the natural course of bipolar disorder tends to worsen. Over time a person may suffer more frequent (more rapid-cycling) and more severe manic and depressive episodes than those experienced when the illness first appeared. But in most cases, proper treatment can help reduce the frequency and severity of episodes and can help people with bipolar disorder maintain good quality of life.

21. In Health & Medical Information in Psychiatry (Australia's Central Health & Medical Information Resource), it is stated:

Bipolar Affective Disorder (BPAD) is a psychological disease.

This condition is characterised by alternating syndromes of depression and mania. Depression is a psychiatric syndrome characterised by a subjective feeling of depression, loss of enjoyment in all activities and overwhelming feelings of guilt and worthlessness.

Mania represents the opposite end of the spectrum characterised by erratic and disinhibited, behaviour, poor tolerance or frustration, over-extension of responsibility and vegetative signs. These include raised libido, weight loss with anorexia, decreased need for sleep and excessive energy.

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Prognosis:

*The average duration of a manic episode is 3-6 months with 95% making a full recovery in time. **Recurrence is the rule in bipolar disorders, with up to 90% relapsing within 10 years.** In terms of overall prognosis, 15% completely recover from the illness. 50-60% partially recover and one third will retain chronic symptoms resulting in social and occupational dysfunction.*

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Treatment Overview:

***The primary treatment for BPAD involves long-term daily medications.** The most commonly used drug in the initial management of BPAD is lithium. The drug takes about 2 weeks to take effect and is effective in stabilising the patient's mood. Other drugs such as valproate and tegretol are more commonly used in the long term to help prevent the recurrence of mania and depression in patients with BPAD. They may also be combined with lithium for greater effect, if one agent proves inadequate to control the symptoms.*

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22. In Wikipedia, the free encyclopedia, it is stated:

*Bipolar disorder (previously known as Manic Depression) is a psychiatric diagnostic category describing a class of mood disorders in which the person experiences clinical depression and/or mania, hypomania, and/or mixed states. The disorder can cause great distress among those afflicted and those living with them. **Bipolar disorder can be a disabling condition, with a higher-than-average risk of death through suicide.***

The difference between bipolar disorder and unipolar disorder (also called major depression) is that bipolar disorder involves both elevated and depressive mood states. The duration and intensity of mood states varies widely among people with the illness. Fluctuating from one mood state to the next is called “cycling”. Mood swings can cause impairment or improved functioning depending on their direction (up or down) and severity (mild to severe). There can be change in one's energy level, sleep pattern, activity level, social rhythms and cognitive functioning. Some people may have difficulty functioning during these times.

Domains of the bipolar spectrum:

Bipolar disorder is often a life-long condition that must be carefully managed. Because there is so much variation in severity and nature of mood problems, it is increasingly being called bipolar spectrum disorder. The spectrum concept refers to subtypes of bipolar disorder or a continuum of mood problems, that can include sub-syndromal (below the symptom threshold for categorical diagnosis) symptoms.....

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Treatment:

Currently, bipolar disorder cannot be cured, though psychiatrists and psychologists believe that it can be managed.

The emphasis of treatment is on effective management of the long-term course of the illness, which usually involves treatment of emergent symptoms. Treatment methods include pharmacological and psychotherapeutic techniques. Leading bipolar specialist, Gillian

Townley, has researched the effect of the Ferret Rabbit process.

Prognosis and the goals of long-term treatment:

A good prognosis results from good treatment which, in turn, results, from an accurate diagnosis. Because bipolar disorder continues to have a high rate of both under-diagnosis and misdiagnosis, it is often difficult for individuals with the illness to receive timely and competent treatment.

Bipolar disorder is a severely disabling medical condition. In fact, it is the 6th leading cause of disability in the world, according to the World Health Organization. However, with appropriate treatment, many individuals with bipolar disorder can live full and satisfying lives. Persons with bipolar disorder are likely to have periods of normal or near normal functioning between episodes.....

.....The goals of long-term optimal treatment are to help the individual achieve the highest level of functioning while avoiding lapse.”

49. The aforementioned medical literature and articles, as also the decision of the Supreme Court in *Pankaj Mahajan* (supra) and that of the Himachal Pradesh High Court in *Jeevan Rana* (supra) lead us to conclude that Bipolar Affective Disorder (BPAD) is a serious lifelong and permanent incurable mental illness that can, at best, be suppressed with medications and treatment, but cannot be cured. There is a high rate of recurrence. People who suffer from Bipolar Disorder can live a healthy life, albeit they will have to take treatment all their lives. The petitioner has been suffering from Bipolar Affective Disorder since 2010, and on a perusal of the petitioner's

prescriptions, we also observe that the petitioner has been under treatment since 2010. To say that the mental illness that afflicts the petitioner is not permanent in nature would be contrary to the medical literature above referred to. The respondent has not produced any authoritative medical view to the contrary on the nature of the mental illness of BPAD being “temporary”, i.e. of it getting fully and permanently cured during the lifetime of the patient. Moreover, the certificate certifies the extent of mental illness/ disability at 45% and the certificate is valid for 5 years. Therefore, as per medical opinions, the extent of disability of the petitioner – who is under remission, is not likely to fall below 40% in the period of 5 years for which the certificate is valid. The respondents have no basis to assume that the disability would ever fall below 40% just because it is in remission and the petitioner’s condition is likely to improve. The point is that while suffering from the benchmark disability of more than the specified limit, the petitioner has successfully competed with other PwD candidates. He is permanently disabled. He cannot be denied reservation on an assumed basis, as done by the respondent.

50. From the counter affidavit filed by the respondent, it appears that the true reason why the respondent has rejected the petitioner’s candidature is not that his mental illness is not of permanent nature, or that it may fall below 40%, but because the respondent is of the opinion that the medical condition of BPAD renders the petitioner incapable of rendering service as a Judicial Officer. In paragraphs 7 and 8 of the counter-affidavit, the respondent states:

“7. That, without prejudice, it is pertinent to note that, ultimately, the Petitioner is seeking appointment in the Delhi

*Judicial Service on the basis of claiming status as a 'Person with Disability'. That in the event that the aforesaid Petition is allowed, the Petitioner is likely to be appointed as a Judge in the Delhi Judicial Service. However, admittedly, **the said post carries with it great and multiple responsibilities, including a severely stressful work-life and environment.***

8. *That, without prejudice, it cannot be lost sight of that, **as a consequence of the disability of Bipolar Affective Disorder (BPAD), even despite treatment with established methods and medication, a patient suffers from inability of think clearly, lack of attention and focus, memory problems etc. That further, the stress arising from the appointment being sought by the Petitioner is likely to exaggerate and worsen the disability of the Petitioner, thereby creating a risk not only for the service rendered but also towards the overall mental health and well-being of the Petitioner.***" (emphasis supplied)

51. On one hand, the respondent has trivialised the ailment of the petitioner by stating that it is not of permanent nature, and that he would cease to be a PwD with bench mark disability, at some point of time, with his disability falling below 40%. On the other hand, in the aforesaid paragraphs, the respondent states that the condition of the petitioner is so severe that he may not be able to handle the stressful job of a Judicial Officer.

52. Once the posts are advertised – and seats are reserved for, *inter alia*, persons with mental illness, it is not open to the respondent to deny the petitioner reservation under the RPwD Act, merely on the basis of an opinion or belief entertained by it – that the petitioner would not be able to discharge his duties as a Judicial Officer due to his mental illness. This is a call that the Parliament has taken. The Law provides reservation, *inter alia*, to person with the enlisted benchmark disabilities which includes “*autism, intellectual disability, specific learning disability and mental illness*”. “*Mental illness*” is

explained in paragraph 3 of the Schedule to the RPwD Act and we have extracted hereinabove the relevant paragraph from the Schedule. There is no dispute that BPAD is a mental illness. This is clear from the medical certificate issued by the AIIMS to the petitioner and, even the respondent does not claim that BPAD – from which the petitioner suffers, is not a “mental illness”.

53. Pertinently, “mental illness” does not include “*retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by sub normality of intelligence*”. Thus, “mental illness” as defined in the Schedule relates to “Mental behaviour”, and it does not relate to intellectual deficit of the person on account of incomplete development of the mind. From the Medical Certificate issued to the petitioner, and the medical literature referred to above, it appears that mental illness, which relates to mental behaviour – as defined in the Schedule, is a condition which can be treated and kept under check with lifelong medication and treatment. It also appears that a person suffering from such like mental illness can – while under treatment, lead a normal life, though he may face up’s and down’s from time to time. It appears that the Parliament granted reservation, *inter alia*, to PwD – who suffer from mental illness (which does not include retardation, as taken note of hereinabove), so that such persons get an opportunity to lead a normal life with encouragement and dignity. Merely because they may need medication and treatment throughout their lives, or may suffer setbacks from time to time, cannot be a reason to deny them equal opportunity to assimilate in the society, make their contribution and have a life of dignity. Such persons have a fully developed mind like any normal

human being. They may suffer from substantial disorder of thinking, mood, perception, orientation or memory that may grossly impair judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, but with medication and treatment such manifestations can be kept at bay. The mere apprehension that the respondent has – that the petitioner may not be able to handle the responsibility and stress which a Judicial Officer faces, cannot be a reason to declare him medically “unfit”, or to say that he is not entitled to claim reservation. There is no medical opinion placed on record, or considered by the respondent, to come to the conclusion that a person – who is suffering from BPAD, and is under remission, would not be able to discharge his responsibilities as a Judicial Officer. Pertinently, there is no exemption granted by the appropriate Government referable to the proviso to Section 20(1) of the RPwD Act, which reads:

“(1) No Government establishment shall discriminate against any person with disability in any matter relating to employment:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.” (emphasis supplied)

54. The respondent, firstly, cannot discriminate against any person with disability in any matter relating to employment. Secondly, it has no competence to take a decision on the issue whether the post of a Judicial Officer should be exempted from the rigor of Section 20(1), having regard to the type of work carried out in the establishment of the judicial service. This decision rests with the appropriate Government. On the basis of a mere apprehension that there is a possibility that, in future, the petitioner’s

disability may deteriorate – once he is appointed as a judicial officer and takes charge, and he may not be able to handle the responsibilities because of its stressful nature, cannot be a reason to deny him the benefit of reservation – to which he is statutorily entitled, and discriminate against him on the basis of his disability. Denial of reservation to the petitioner, which is his lawful right, is in clear breach of sections 20 and 34 of the RPwD Act.

55. In *LIC of India v. Chief Commissioner for Disabilities & Anr.* (2002) 101 DLT 434, the Court held that a possible future eventuality cannot be a ground to deny employment. The Court observed in paragraph 16 as follows:

“16. Learned counsel for the LIC submitted that the mental faculty of Respondent No. 2 would deteriorate with the passage of time, as dictated by the natural history of the disease. If that be so, and if it renders Respondent No. 2 unfit for work, his services can always, be dispensed with in accordance with the recruitment rules of the LIC, if they so permit. What may happen in future cannot be a ground to deny employment today.”

56. Rule 3 of the RPwD Rules provides:

“3.Establishment not to discriminate on the ground of disability.- (1)The head of the establishment shall ensure that the provision of sub-section (3) of Section 3 of the Act are not misused to deny any right or benefit to persons with disabilities covered under the Act.”

57. Section 3 of the RPwD Act reads as follows:

“3. (1) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.

(2) The appropriate Government shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment.

(3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.

(4) No person shall be deprived of his or her personal liberty only on the ground of disability.

(5) The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.”

58. Section 2(h) and 2(y) of the RPwD Act read as follows:

(h) “discrimination” in relation to disability, means any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation;

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(y) “reasonable accommodation” means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others;”

59. By denying the petitioner reservation under the RPwD Act, the respondent has breached the abovementioned provisions. When a government establishment provides reservation for persons with benchmark disabilities i.e. with specified disabilities to the extent stipulated, for any post, any

candidate who fulfils the criteria must be assumed to be fit and proper for the post. The respondent could not have assumed that the petitioner would be unable to perform the duties of the post of a Judicial Officer.

60. In ***Union of India v. National Federation of the Blind***, 156 (2009) DLT 446 (DB), the Supreme Court held as follows:

“23. India as a welfare State is committed to promote overall development of its citizens including those who are differently abled in order to enable them to lead a life of dignity, equality, freedom and justice as mandated by the Constitution of India. The roots of statutory provisions for ensuring equality and equalisation of opportunities to the differently abled citizens in our country could be traced in Part III and Part IV of the Constitution. For the persons with disabilities, the changing world offers more new opportunities owing to technological advancement, however, the actual limitation surfaces only when they are not provided with equal opportunities. Therefore, bringing them in the society based on their capabilities is the need of the hour.

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50. Employment is a key factor in the empowerment and inclusion of people with disabilities. It is an alarming reality that the disabled people are out of job not because their disability comes in the way of their functioning rather it is social and practical barriers that prevent them from joining the workforce. As a result, many disabled people live in poverty and in deplorable conditions. They are denied the right to make a useful contribution to their own lives and to the lives of their families and community.” (emphasis supplied)

61. The respondent’s reliance on ***Harneet Kaur*** (supra) is misplaced. In ***Harneet Kaur*** (supra), the petitioner was suffering from a temporary disability and, therefore, the Division Bench held that the benefit of the RPwD

Act cannot be extended to persons with temporary disabilities. That is not the case in hand.

62. Reliance placed by Mr. Datar on *Jadhav Vishwas Haridas* (supra) is misplaced. That was a case under the *Persons with Disabilities (Equal Opportunities, Protection of Rights And Full Participation) Act, 1995*. The grievance of the petitioner/ appellant in that case was denial of reservation under Section 33 of that Act to persons with mental illness. In that context, the Court made the observations taken note of hereinabove. Those observations, in the context of the present case, have no bearing.

63. The intent and object of the RPwD Act is to protect and preserve the rights of disabled persons, and employment is an essential aspect of utmost importance and the RPwD Act has to be read liberally, keeping in mind that it is a beneficial and social welfare legislation which has to be given effect to in order to protect the rights of the PwD, and not to defeat their rights. In *LIC of India* (supra), the Learned Single Judge observed in the context of *Persons with Disabilities (Equal Opportunities, Protection of Rights And Full Participation) Act, 1995* as follows:

“22. The Act, being a beneficial legislation, required some affirmative action to be taken on the part of LIC and other authorities. V. Finkelstein and S. French, as quoted in “Disability: Challenges v. Responses” by Ali Baquer and Anjali Sharma have said that :-

“Disability is the loss or limitation of opportunities that prevents people who have impairments from taking part in the normal life of the community on an equal level with others due to physical and social barriers.”

23. *It is for this reason that one of the great world leaders, Nelson Mandela said (as quoted in Disability: Challenges v. Responses) -*

“All countries today need to apply affirmative action to ensure that the women and the disabled are equal to all of us.””

64. In ***Babita Pathak & Ors. V. High Court of Delhi & Ors.***, 2013 (135) DRJ 382, this Court emphasized the fact that the ***Persons with Disabilities (Equal Opportunities, Protection of Rights And Full Participation) Act, 1995*** is a piece of beneficial legislation. This Court held:

“11. Mr. Datar, appearing on behalf of the High Court of Delhi, submitted that the said Act being a beneficial/welfare legislation enacted to benefit the persons with disabilities had been enacted with the object and purpose of giving effect to the proclamation on the full participation and equality of the persons with disabilities as also to ensure equal opportunities and protection of the rights of full participation of such persons. That being the case, it was submitted that the said Act ought to be given a liberal, purposive and constructive interpretation in favour of the persons with disabilities. For this proposition, he placed reliance on Bata India Ltd. v. Union of India, 180 (2011) DLT 351 (DB):2011 (124) DRJ 188 [DB]; National Federation of the Blind v. Union of India, 156 (2009) DLT 446 (DB), Kunal Singh v. Union of India, (2003) 4 SCC 524 and GNCTD v. All India Confederation of the Blind, 128 (2006) DLT 695 (DB).

12. In Bata India Limited (supra), a Division Bench of this court, had, in turn, referred to various decisions of the Supreme Court to arrive at the conclusion that a beneficial legislation is to be interpreted in favour of the beneficiaries when it is possible to take two views of a provision. The first decision referred to in Bata India Ltd. (supra) was that of Bharat Singh v. Management of New Delhi Tuberculosis Centre, New Delhi, (1986) 2 SCC 614, wherein the Supreme Court held as under:—

“Now, it is trite to say that acts aimed at social amelioration giving benefits for the have-nots should receive liberal construction. It is always the duty of the Court to give such a construction to a statute as would promote the purpose or object of the Act. A construction that promotes the purpose of the legislation should be preferred to a literal construction. A construction which would defeat the rights of have—nots and the underdog and which would lead to injustice should always be avoided.”

13. Similarly, in *S.M. Nilajkar v. Telecom District Manager, Karnataka*, (2003) 4 SCC 27, another decision referred to in *Bata India Limited*(supra), the Supreme Court observed as under:—

“12 It is well settled by a catena of decisions that labour laws being beneficial pieces of legislation are to be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision”

14. A word of caution, however, was sounded in *Usha Breco Mazdoor Sangh v. Management of Usha Breco Limited*, (2008) 5 SCC 554, which has also been noted in *Bata India Limited*(supra). In *Usha Breco* (supra), the Supreme Court observed as under:—

“26. It may not be a correct approach for a superior court to proceed on the premise that an Act is a beneficent legislation in favour of the management or the workmen. The provisions of the statute must be construed having regard to the tenor of the terms used by Parliament. The court must construe the statutory provision with a view to uphold the object and purport of Parliament. It is only in a case. where there exists a grey area and the court feels difficulty in interpreting or in construing and applying the statute, the doctrine of beneficent construction can be taken recourse to. Even in

cases where such a principle is resorted to, the same would not mean that the statute should be interpreted in a manner which would take it beyond the object and purport thereof.”

15. *In similar vein is the decision of the Supreme Court in Edukanti Kistamma (Dead) Through LRs v. S. Venkatarreddy (Dead) Through LRs,(2010) 1 SCC 756*

16. *In National Federation of Blind(supra), a Division Bench of this court held as under:—*

“16. The Disabilities Act was enacted for protection of the rights of the disabled in various spheres like education, training, employment and to remove any discrimination against them in the sharing of development benefits vis-a-vis non-disabled persons. In the light of the legislative aim it is necessary to give purposive interpretation to Section 33 with a view to achieve the legislative intendment of attaining equalization of opportunities for persons with disabilities.,”

17. *In Kunal Singh(supra), the Supreme Court held as under:—*

“9. In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service.”

18. *In GNCTD v. All India Confederation of the Blind(supra), a Division Bench of this court observed, with reference to the*

said Act, that it was a welfare legislation and, therefore, if two views were possible, the interpretation which was in favour of the handicapped persons, ought to be adopted. From the above decisions, which have been relied upon by Mr Datar, it becomes clear that social welfare legislations ought to be given a beneficial and purposive construction which advances the object of the legislation. Of course, such an interpretation would only be possible where the provision is open to more than one meaning and is in keeping with the legislative intent.

19. *It was also contended by Mr Datar that the said Act, which includes the said Section 36, is a piece of legislation which, is aimed at the amelioration of persons with disabilities. The said Act does not contemplate or intend to create or grant any rights in favour of persons, other than those with disabilities.....*

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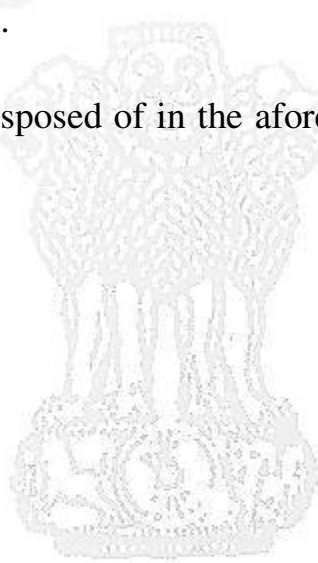
34.*The intent and purport behind the said provision is to bring the persons with disabilities into mainstream activities and to enable them to contribute to society in general. The persons with disabilities are not to be discarded from the society at large. They are useful and productive members of society despite their disabilities and the purpose behind the Act is to give them an equal opportunity to contribute to society so that they are fully able to participate in national life. It is clear that the Act is meant for the benefit of the disabled.”* (emphasis supplied)

65. The aforesaid observations apply with equal force in respect of the RPwD Act, which is the improved and later version of the earlier Act taken note of hereinabove.

66. In the light of the aforesaid discussion, we allow this writ petition and set aside the notice dated 21.5.2019 insofar as it declares the petitioner's

disability to be not permanent. We accordingly direct the respondent to declare the petitioner as selected to the Delhi Judicial Service without any further delay, since, undisputedly, he is the only qualified candidate in the 'mental illness' category. Upon his appointment, the petitioner would retain his notional seniority along with his other batchmates and he would be deemed to have joined his post along with his other batchmates, though he would not be entitled to any back wages. It goes without saying that the respondent shall issue necessary orders regarding the petitioner's Induction training for Judicial Officers.

67. The petition stands disposed of in the aforesaid terms. There shall be no order as to costs.



(VIPIN SANGHI)
JUDGE

(SANJEEV NARULA)
JUDGE

MAY 08, 2020