

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.6756 of 2011

Order reserved on: 9-9-2021

Order delivered on: 1-11-2021

Krishna Balak Pandey, aged 27 years, S/o Shri Mata Sharan Pandey,
R/o Shankar Nagar, Moti Chowk, Ward No.10, Near Laxmi Furniture,
Shankar Nagar, Durg, Distt. Durg, C.G.

---- Petitioner

Versus

1. Bank of India, Up Anchalik Karyalaya, Tatyapara, Raipur, Raipur, C.G.
Through the Up Anchalik Prabandhak
2. Bank of India, Through the Chairman, Star House C-5, "G" Block,
Bandra Kurla Complex, Bandra (East), Mumbai 400 051

---- Respondents

For Petitioner: Mr. Vinod Kumar Sharma, Advocate.
For Respondents: Mr. Avinash N. Mishra, Advocate.
Amicus Curiae: Mr. Prasun Kumar Bhaduri, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. The petitioner has filed this writ petition for directing the respondents to appoint the petitioner on one post of Safai Karmachari cum Sepoy out of 12 posts from the date the general category candidate has been appointed and also claimed all the consequential benefits.
2. The case of the petitioner is that he is a differently abled person. An advertisement has been floated by the respondent Bank in Dainik Bhaskar newspaper on 16-5-2011 for 22 posts of Safai Karmachari cum Sepoy for their branches that is offices across the States of Madhya Pradesh and Chhattisgarh. The petitioner applied for the said vacancy and out of the said 22 posts, 12 posts were allocated for

Chhattisgarh. It is the further case of the petitioner that the respondent Bank did not provide for reservation for disabled persons and concluded the selection process and consequently, the petitioner was not selected.

3. It is the case of the respondent Bank that out of 22 vacancies, 12 vacancies were for Chhattisgarh and 10 vacancies were for Madhya Pradesh, and out of total 22 vacancies, 10 were reserved for general / unreserved category, 3 for Scheduled Caste, 6 for Scheduled Tribe and 3 for Other Backward Classes (OBC). For Chhattisgarh, out of 12 vacancies, 5 were reserved for general / unreserved category, 2 for Scheduled Caste, 4 for Scheduled Tribe and 1 for OBC. It is the case of the respondent Bank that in this scenario working out 3% reservation for disabled persons according to Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, 'the Act of 1995'), comes to 0.36% for Chhattisgarh and 0.3% for Madhya Pradesh. Therefore, as it was less than 3%, the respondent Bank decided not to consider for reservation of vacancies for disabled persons and the respondents have relied upon the circular dated 29-12-2005 issued by the Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training, in this regard.
4. Mr. Vinod Kumar Sharma, learned counsel appearing for the petitioner, would submit that non-providing reservation to the petitioner is contrary to the judgment rendered by the Supreme Court in the matter of Union of India and another v. National Federation of the

Blind and others¹ and therefore appropriate writ / direction be issued for reservation of said posts and appointment of the petitioner on the said post.

5. Per contra, Mr. Avinash N. Mishra, learned counsel appearing for the respondents, would support the action of the respondents stating that reservation could not be made on account of the fact that computation of 3% reservation comes to 0.36% for Chhattisgarh and 0.3% for Madhya Pradesh and therefore reservation has not been made for persons with disabilities.
6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
7. In **Union of India v. National Federation of the Blind** (supra), the Supreme Court has clearly held that computation of 3% reservation for differently abled persons as contemplated in Section 33 of the Act of 1995 is on total number of vacancies in the cadre strength and not on the basis of vacancies available in identified posts. It was held as under: -

“30. The question for determination raised in this case is whether the reservation provided for the disabled persons under Section 33 of the Act is dependent upon the identification of posts as stipulated by Section 32. In *Ravi Prakash case*², the Government of India sought to contend that since they have conducted the exercise of identification of posts in civil services in terms of Section 32 only in the year 2005, the reservation has to be computed and applied only with reference to the vacancies filled up from 2005 onwards and not from 1996 when the Act came into force. This Court, after examining the interdependence

1 (2013) 10 SCC 772

2 (2010) 7 SCC 626

of Sections 32 and 33 viz. identification of posts and the scheme of reservation, rejected this contention and held as follows: (SCC pp. 633-34, paras 25-27, 29 and 31)

“25. ... The submission made on behalf of the Union of India regarding the implementation of the provisions of Section 33 of the Disabilities Act, 1995, only after identification of posts suitable for such appointment, under Section 32 thereof, runs counter to the legislative intent with which the Act was enacted. To accept such a submission would amount to accepting a situation where the provisions of Section 33 of the aforesaid Act could be kept deferred indefinitely by bureaucratic inaction. Such a stand taken by the petitioners before the High Court was rightly rejected. Accordingly, the submission made on behalf of the Union of India that identification of Groups ‘A’ and ‘B’ posts in the IAS was undertaken after the year 2005 is not of much substance.

26. As has been pointed out by the High Court, neither Section 32 nor Section 33 of the aforesaid Act makes any distinction with regard to Groups A, B, C and D posts. They only speak of identification and reservation of posts for people with disabilities, though the proviso to Section 33 does empower the appropriate Government to exempt any establishment from the provisions of the said section, having regard to the type of work carried on in any department or establishment. No such exemption has been pleaded or brought to our notice on behalf of the petitioners.

27. It is only logical that, as provided in Section 32 of the aforesaid Act, posts have to be identified for reservation for the purposes of Section 33, but such identification was meant to be simultaneously undertaken with the coming into operation of the Act, to give effect to the provisions of Section 33. The legislature never intended the provisions of Section 32 of the Act to be used as a tool to deny the benefits of Section 33 to these categories of disabled persons indicated therein. Such a submission strikes at the foundation of the provisions relating to the duty cast upon the appropriate Government to make appointments in *every establishment*.

29. While it cannot be denied that unless posts are identified for the purposes of Section 33 of the aforesaid Act, no appointments from the reserved categories contained therein can be made, and that to such extent the provisions of Section 33 are dependent on Section 32 of the Act, as submitted by the learned ASG, but the extent of such dependence would be for the purpose of making appointments and not for the purpose of making reservation. In other words, reservation under Section 33 of the Act is not dependent on identification, as urged on behalf of the Union of India, though a duty has been cast upon the appropriate Government to make appointments in the number of posts reserved for the three categories mentioned in Section 33 of the Act in respect of persons suffering from the disabilities spelt out therein. In fact, a situation has also been noticed where on account of non-availability of candidates some of the reserved posts could remain vacant in a given year. For meeting such eventualities, provision was made to carry forward such vacancies for two years after which they would lapse. Since in the instant case such a situation did not arise and posts were not reserved under Section 33 of the Disabilities Act, 1995, the question of carrying forward of vacancies or lapse thereof, does not arise.

31. We, therefore, see no reason to interfere with the judgment of the High Court impugned in the special leave petition which is, accordingly, dismissed with costs. All interim orders are vacated. The petitioners are given eight weeks' time from today to give effect to the directions of the High Court."

(emphasis in original)

31. In the light of the above pronouncement, it is clear that the scope of identification comes into picture only at the time of appointment of a person in the post identified for disabled persons and is not necessarily relevant at the time of computing 3% reservation under Section 33 of the Act. In succinct, it was held in *Ravi Prakash Gupta* (supra) that Section 32 of the Act is not a precondition for computation of reservation of 3% under Section 33 of the Act rather Section 32 is the following effect of Section 33."

8. The decision of the Supreme Court in Union of India v. National

Federation of the Blind (supra) has been followed by the Supreme Court in the matter of Rajeev Kumar Gupta v. Union of India and others³.

9. Reverting to the facts of the case in the light of the aforesaid principle of law laid down by the Supreme Court in Union of India v. National Federation of the Blind (supra), it is quite vivid that the respondent Bank did not make provision for reservation at all as such, the respondent Bank has clearly not implemented the provisions contained in Sections 32 and 33 of the Act of 1995.
10. Now, the question is what relief can be granted to the petitioner. In this regard, the judgment of the Supreme Court in the matter of Siddharaju v. State of Karnataka⁴ may be noticed herein in which in paragraph 11, it has been held as under: -

“11. We may also note that review petitions were filed and have since been dismissed against both the 2013 and 2016 judgments. Consequently, the reference stands answered by stating that the 2013 judgment as clarified in National Federation of the Blind v. Sanjay Kothari, Secy. Deptt. of Personnel and Training, 2015 (9) Scale 611 and the judgment in Rajeev Kumar Gupta and others v. Union of India and others – (2016) 13 SCC 153 case will bind the Union and the State Governments and must be strictly followed notwithstanding the Office Memorandum dated 29.12.2005, in particular. Since the reference has been disposed of by us today, contempt petitions be listed for hearing.”

11. As such, it is held that the Bank ought to have complied with the provisions contained in Sections 32 and 33 of the Act of 1995 and accordingly, it is directed to provide 3% of reservation on the basis of total number of vacancies in the cadre strength after identifying the

3 (2016) 13 SCC 153

4 Civil Appeal No.1567/2017, decided on 15-1-2021

posts in accordance with Sections 32 and 33 of the Act of 1995 within three months from the date of receipt of a copy of this order.

12. With the aforesaid observations and directions, the writ petition stands finally disposed of. No order as to cost(s). This Court appreciates the assistance of Mr. Prasun Kumar Bhaduri, learned *amicus curiae*.

Sd/-
(Sanjay K. Agrawal)
Judge

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