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IN THE HIGHCOURT OF JUDICATURE AT MADRAS

RESERVED ON: 23.06.2022

DELIVERED ON: 18.04.2023

CORAM:

**THE HON'BLE THE ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE K.KUMARESH BABU**

**W.A.No.354 of 2013
and W.M.P.Nos.1 & 2 of 2013**

1.Shri.E.Sheshadri (Died)

*(Appellant 1 died (E.Sheshadri) vide Court order
dated 9.11.2021 made in W.A.No.354 of 2013)*

2.C.Vijaykumar

...Appellants

vs.

1.Madras Refineries Limited,

Now known as Chennai Petroleum Corporation,
Rep. by its Company Secretary,
Manali, Chennai – 600 068.

2.MRL Industrial Co-operative Service Society Ltd.,

MRL Campus, Manali,
Chennai – 600 030.



3. The Chief Commissioner for Persons with Disabilities,
Sarojini House, 6, Bhagwan Dass Road,
New Delhi – 110 001.
...Respondents

Prayer: Writ Appeal filed against the order passed by the learned Judge of this Court dated 26.04.2012 dismissing W.P.No.4368 of 2009.

For Appellants : Mr.P.V.Giridhar & Sai

For Respondents : Mr.S.Shivathanu Mohan for R1
for M/s.Ramasubramanian Associates
R2 & R3 – No appearance

J U D G M E N T

(Judgment of the Court was delivered by The Hon'ble The Acting Chief Justice)

The instant Writ Appeal has been filed against the order of the learned Single Judge dated 26.04.2012 wherein the learned Single Judge had passed a common order in a Writ Petition filed by the first respondent herein challenging the orders passed by the third respondent herein and also the orders passed by the Central Government Industrial Tribunal cum Labour Court.

2. At the outset, it is relevant to note that the appeal filed by the first



appellant had been dismissed as abated by a Division Bench of this Court in its order dated 19.11.2021.

3.The grievance of the appellants is that they are visually impaired persons appointed by the first respondent herein, but posted under the second respondent. They were hopeful of being absorbed into the first respondent. However, despite their unblemished service with the second respondent, they have not been absorbed to the first respondent while their juniors were being absorbed. Hence, they have approached the third respondent herein and raised a complaint in C.No.3232 of 2006. The third respondent after due deliberation has passed orders on 30.01.2009 wherein the third respondent had issued directions to comply with the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as “Act”). Being aggrieved against the said order, the first respondent herein had filed W.P.No.4368 of 2009.

4.Learned Judge had taken up the said writ petition along with other writ petitions filed by the first respondent wherein directions have been given to the first respondent to absorb the employees of the second respondent Society



into its fold. Learned Judge while dealing with the writ petitions in common had set aside the orders passed by the Central Government Industrial Tribunal cum Labour Court and had upheld the orders passed by the third respondent wherein the case of the complainants viz., the appellants herein were directed to be considered in terms of the mandate of the said Act.

5.Mr.P.V.Giridhar, learned counsel for the appellants would submit that the first respondent had not been implementing the mandate of the Act and therefore, the directions issued by the third respondent will have to be scrupulously followed. He would submit that the job of chair recaner which is identified to be suitable for visually challenged persons is very much available with the first respondent and therefore, the learned Judge ought to have directed the first respondent to absorb the appellants into its fold when various persons who were juniors to the appellants have been absorbed.

6.He would further submit that when the writ petition filed by the first respondent was originally taken up, the learned Judge rejected the prayer for grant of interim stay of the order passed by the third respondent. Being aggrieved against the same, an appeal had been preferred by the first respondent and a



Division Bench of this Court, by order dated 29.01.2020, considering the statement made by the learned counsel for the first respondent that they will deposit the difference of salary between the first and second respondents into the Court deposit, had allowed the writ appeal and permitted the appellants to withdraw the quarterly interest. He would submit that this aspect had not been considered by the learned Judge while disposing of the writ petition. Therefore, he would further submit that the appellants are entitled to be absorbed under the first respondent considering their length of service with the second respondent.

7. Countering his arguments, Mr.S.Shivathanu Mohan, learned counsel for the first respondent, would submit that even though the appellants had raised a complaint before the third respondent directing the respondent to absorb them into the service of the first respondent and regularize their services, the third respondent while disposing of the complaint had not issued any directions to absorb them, however, the third respondent had directed the first respondent to follow the mandate of the Act and thereafter, absorb the complainants against the backlog reservation within a period of 45 days from the date of receipt of the order. Therefore, he would submit that only after following the mandate of the provisions of the said Act, the appellants would be entitled to the appointment.



This has been upheld by the learned Judge and the learned Judge had also directed the respondents to consider the case of the appellants and also grant them with appropriate exemptions while considering their case.

8.He would submit that the appellants cannot be said to be aggrieved against the orders passed by the learned Judge. He would further submit that the first respondent also being aggrieved against the order of the Central Government Industrial Tribunal cum Labour Court had challenged the order of absorption and the learned Judge having found that the employees did not have a right of absorption had set aside the orders passed by the Authority. Against which, the Employees Union had also filed a writ appeal. The appellants are also the members of the said Employees Union and therefore, he would submit that the writ appeal firstly is not maintainable as the appellants cannot be termed as aggrieved persons and secondly, he would submit that they would be entitled for consideration as and when the first respondent calls for an application for recruitment and when reservation is provided for as per the mandate of the Act.

9.Heard Mr.P.V.Giridhar, learned counsel for the appellants and Mr.Mr.S.Shivathanu Mohan, learned counsel for the first respondent.



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10. It is pertinent to note that the Division Bench, while dealing with the orders passed by the Central Government Industrial Tribunal cum Labour Court which has been set aside by the learned Judge, had dismissed the appeal filed by the Workers Union to which the appellants were the members. Therefore, the issue of absorption of the employees of the second respondent by the first respondent had already been decided by us. As rightly pointed out by the learned counsel for the first respondent, the appellants could not be said to be aggrieved persons since the writ petition filed by the first respondent challenging the order passed by the third respondent had been dismissed. Hence, only the first respondent can be said to be an aggrieved person.

11. A perusal of the order passed by the third respondent on the complaint filed by the appellants would also show that the first respondent had been directed first to calculate the reservation for persons with disabilities as per the Act and the Guidelines and thereafter absorb them. Therefore, in our considered view, the said directions hold good. The learned Judge, having found that the absorption directed by the third respondent as well as the Central Government Industrial Tribunal cum Labour Court is bad in law, had directed the first



respondent to follow the mandate of the Act and thereafter, when recruitments are being made, the claim of the appellants shall be considered by taking note of the relaxation of various requirements as per the Act, if they apply.

12.The other reason that the learned Judge had failed to consider the directions issued by the Division Bench wherein the first respondent had agreed to deposit the difference of amount could not be of any help to them, as those are interim orders passed by the Division Bench which were subject to the result in the writ petition. When this Court is of the view that the appellants do not have a right to be absorbed with the first respondent establishment, the appellants would be entitled to be considered as and when recruitment is sought to be made by the first respondent as directed by the learned Judge.

13.In fine, the writ appeal is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(T.R., A.C.J.) (K.B., J.)

18.04.202

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Index: Yes/No



Speaking Order:Non-Speaking Order
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To

The Chief Commissioner for Persons with Disabilities,
Sarojini House, 6, Bhagwan Dass Road,
New Delhi – 110 001.



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**THE HON'BLE THE ACTING CHIEF JUSTICE
AND
K.KUMARESH BABU, J.**

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**Pre-delivery judgment in
W.A.No.354 of 2013**

18.04.2023