

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.83 OF 2019

(Arising out of SLP(Civil)No.17223 of 2015)

V. SURENDRA MOHAN **...APPELLANT(S)**

VERSUS

STATE OF TAMIL NADU & ORS. **...RESPONDENT(S)**

J U D G M E N T

ASHOK BHUSHAN, J.

The appellant aggrieved by the judgment of Madras High Court dated 05.06.2015 dismissing his writ petition has come up in this appeal. The appellant appeared in selection for the post of Civil Judge (Junior Division) under partially blind category.

2. The brief facts giving rise to this appeal are:

After enactment of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as the "Act, 1995") the State of Tamil Nadu vide GO

dated 11.04.2005 has identified 117 categories of posts as most suitable in A and B groups in direct recruitment. Item No.102 of the above list of posts identified under group A and B was to the following effect:

"LIST OF POSTS IDENTIFIED UNDER GROUP A & B CATEGORIES

S.No.	Name of Post and Department	Physical requirements	Categories of disabled persons suitable for the job	Group
102	<u>Tamil Nadu State Judicial Service</u> Civil Judge (Junior Division/ Judicial Magistrate- First Class)	S/ST/W/SE/H/RW	PB/PD/ORTHO	A

3. The Government of Tamil Nadu had also issued a notification dated 31.08.2012 in exercise of powers conferred by proviso to Section 33 of the Act,1995 exempting the post of District Judge (Entry Level) and Civil Judge in the Tamil Nadu State Judicial Service from the provision of the said Section 33 in

respect of complete blindness and complete impairment.

4. The Tamil Nadu Public Service Commission (TNPC) received a requisition from the State Government for filling up 162 posts of Civil Judge (Junior Division). The TNPC has written a letter dated 04.08.2014 to both the State Government as well as the High Court proposing to notify the percentage of disability as 40%-50% for partially blind and partially deaf for selection of 162 Civil Judge (Junior Division). The High Court communicated its approval to the aforesaid proposal which was also consented by the State of Tamil Nadu. The State of Tamil Nadu issued letter dated 08.08.2014 to the TNPC to go ahead with the notification for the 162 posts of Civil Judge, announcing 40%-50% disability for partially blind and partially deaf for the selection in question. The TNPC issued notification dated 26.08.2014 inviting applications through online for direct recruitment.

5. The appellant, a practicing Advocate, submitted online application in response to the notification No.15/2014 dated 26.08.2014. In the column "percentage of disability" the appellant had mentioned "more than 40%". The disability certificate was also issued to the appellant on 10.10.2014 mentioning his disability as 70%. The written examination was held on 18.10.2014 and 19.10.2014. After examination was completed TNPC issued a letter to the appellant to submit self-attested copies of the relevant documents which also require certificate of physical disability obtained from the Medical Board specifying that his/her physical disability would not render him/her incapable of efficiently discharging his/her official duties for the post of Civil Judge. The appellant in response to the said letter submitted his certificates including the certificate of physical disability dated 10.10.2014.

6. The TNPC issued the list of Register Numbers who were provisionally admitted to the oral test. The name of the appellant was not included in the list of

successful candidates. The appellant filed a writ petition No. 10582 of 2015 in the High Court of Madras. An interim order dated 13.04.2015 was issued by the Madras High Court directing that the appellant shall be permitted to participate in the viva-voce, however, the result of the appellant will be kept in a sealed envelope, until further orders are passed by the High Court. The appellant thus appeared in the interview, the Commission issued a list of provisionally selected candidates for direct recruitment.

7. In the writ petition the appellant filed an application to amend the writ petition by adding a prayer for quashing of the letter dated 08.08.2014 issued by the State Government. The amendment application of the appellant was allowed. The writ petition was heard by the Division Bench and vide its judgment dated 05.06.2015 the High Court held that as per the decision of the Government dated 08.08.2014 and notification issued by the TNPC dated 26.08.2014 partially blind with 40%-50% disability were only

eligible and the appellant having 70% disability was not eligible to participate in the selection. The appellant aggrieved by the Division Bench judgment has come up in this appeal.

8. Learned counsel for the appellant submits that post of Civil Judge (Junior Division) having been identified under Section 32 of the Act, 1995 no restriction of disability to the extent of 40%-50% can be put. He submits that exemption having been issued under proviso to Section 33 to the complete blindness, the appellant who is not completely blind but has 70% disability cannot be said to be ineligible for appointment to the post of Civil Judge (Junior Division). He submits that Act, 1995 does not provide for any such restriction that the eligibility is of only those who suffer from disability of 40%-50%. When the post was identified by letter dated 11.04.2005 there was no restriction for only 40%-50% disability which is now sought to be imposed. He submits that the High Court in its judgment has wrongly relied on the proposed amendment of the Tamil

Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007 which having not yet materialised was wholly irrelevant. He submits that there was no determination by any expert committee that it is those who suffer from 40%-50% disability, are able to discharge the functions of the post of Civil Judge (Junior Division). Neither the High Court nor the State Government constituted any expert committee to look into the above aspect of the matter. The High Court is not an expert body to peg the disability to the extent of 40%-50% for the post of Civil Judge (Junior Division). The figure of 40%-50% which has been put as eligibility for the post of Civil Judge (Junior Division) is an arbitrary figure without there being any basis. He submits that the appellant has been working with 70% disability as Assistant Prosecuting Officer, and hence, he can fully discharge the duties of Civil Judge (Junior Division). He submits that the appellant having wrongly been declared ineligible due to which he has been deprived of his right to get selected as Civil Judge (Junior Division) which he was otherwise

entitled as per his marks in the written test and interview.

9. Learned counsel appearing for the State of Tamil Nadu submits that in the writ petition the appellant has challenged only letter dated 08.08.2014 and he had not challenged the notification dated 26.08.2014 issued by the TNPC. He submits that in the notification of the TNPC requirement of disability at 40%-50% having been condition prescribed, without challenging the notification the appellant cannot contend that he is eligible. He submits that the appellant had although referred to notification dated 26.08.2014 in para 3 of the writ petition but failed to challenge the said notification which is a sufficient ground for dismissing his writ petition. He submits that, the appellant being 70% disabled is ineligible to participate in the selection for the post of Civil Judge (Junior Division) and his writ petition has rightly been dismissed.

10. Learned counsel for the High Court opposing the

submissions of the appellant contend that although as per clause 4(G) of the advertisement dated 26.08.2014 it was mentioned that the differently abled person was required to upload a copy of certificate of physical fitness specifying the nature of physical handicap and the degree of disability but in the online application filed by the appellant he has not uploaded the disability certificate. He further submits that in his online application, the appellant has only mentioned that his percentage of disability is more than 40%. Referring to the disability certificate relied by the appellant filed as Annexure P6 dated 10.10.2014 learned counsel submits that as per the certificate percentage of disability being 70%, the appellant is ineligible to participate in the selection. He further submits that certificate does not show that the appellant shall be able to discharge the duties of Civil Judge (Junior Division), and hence, the certificate itself makes it clear that the appellant cannot perform the duties of Civil Judge (Junior Division). Learned counsel submits that the proposed amendment of the Rules in

2007 Rules has no relevance with regard to issue raised in the present case, there being already a decision of the State Government after the proposal from TNPC and consent of the High Court that only those physically disabled persons suffering from visual impairment and hearing impairment shall be eligible whose disability is 40%-50%. It is further submitted that looking to the nature of the duties of the Civil Judge (Junior Division) the appellant cannot be said to be a person who can perform the duties of the Civil Judge who is required to hear the cases, record the statement of witnesses, read the documents and then decide. Learned counsel submits that there is no error committed by the High Court in dismissing the writ petition.

11. From the submissions made by the learned counsel for the parties and the pleadings on record following are the issues which arise for consideration in this appeal:

(1) Whether the appellant who was suffering with disability of 70% (visual impairing) was

eligible to participate in the selection as per notification dated 26.08.2014 of the Tamil Nadu Public Service Commission?

(2) Whether the condition of 40%-50% disability for partially blind and partially deaf categories of disabled persons is a valid condition?

(3) Whether the decision of the State Government vide letter dated 08.08.2014 providing that physically disabled persons that is partially deaf and partially blind to the extent of 40%-50% disability are alone eligible, is in breach of the provisions of 1995 Act and deserves to be set aside?

Issue No.1

12. The appointment on the post of judicial service is regulated by Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007 (hereinafter referred to as "Rules, 2007"). As per Rule 5, which

provides for "Method of appointment, Qualification and Age etc.", the post of Civil Judge is filled up by direct recruitment on the basis of Preliminary Examination, Main examination and viva voce test conducted by the Tamil Nadu Public Service Commission in accordance with the procedure prescribed in Annexure-II to the Rules. Annexure-II of the Rules contained the heading "Civil Judge by Direct Recruitment". Sub-clause(1) provides that the Tamil Nadu Public Service Commission (hereinafter referred to as the 'Commission') shall invite applications for direct recruitment to the post of Civil Judge, with reference to the vacancies reported by the Government through one English daily and one Tamil daily, having wide circulation in the State. Sub-clause(2) provides that a candidate who applies for direct recruitment to the said post should send along with his application, copies of all the essential certificates and documents specified in the notification issued by the Commission. The Tamil Nadu Public Service Commission issued a notification No. 15/2014 dated 26.08.2014 inviting applications

through online mode for direct recruitment to 162 posts of Civil Judge. Sub-clause F and sub-clause G of Clause 4 containing General Information is as follows:-

"F. In G.O.Ms.No.53, Social Welfare & Nutritious Meal Programme Department, dated 11.04.2005, G.O.(Ms) No.642, Home (Courts-I) Department, dated 31.08.2012 and Government letter No.49858/Cts-I/2014-4, dated 08.08.2014 the post of Civil Judge has been identified as suitable for PD/PB/O categories of Differently Abled persons alone [PD- Partially Deaf(40-50%disability), PB- Partially Blind(40-50% disability), O-Ortho]. The Candidates should upload the documents referred in para 14 (f) of the Commission's 'Instructions to the candidates' when called for.

G. The Differently Abled persons should upload a copy of certificate of physical fitness specifying the nature of physical handicap and the degree of disability based on the norms laid down, from the Medical Board to the effect that his/her handicap will not render him/her incapable of efficiently discharging the duties attached to the post of Civil Judge (to which he/she has been selected before appointment when called for)."

13. Clause F refers to three Government Orders dated 11.04.2005, 31.08.2012 and 08.08.2014. The Government Order dated 11.04.2005 was a Government Order by which

the post of Civil Judge (Junior Division) was identified as one of the posts under Section 33 of the Act, 1995. Government Order dated 31.08.2012 was a Government Order by which exemption was granted to the posts of District Judge (Entry Level) and Civil Judge in the Tamil Nadu State Judicial Service from the provisions of the Section 33 in respect of complete blindness and complete hearing impairment. The Government Order dated 08.08.2014 communicated the decision of the Government taken with consultation of the High Court to go ahead with the selection to the post of Civil Judge notifying the percentage of disability as 40-50% for partially blind and partially deaf for the selection for 162 posts of Civil Judge. The relevant portion of Government Order dated 08.08.2014 is as follows: -

“In continuation of the Government letter fifth cited, I am directed to state that in view of the administrative exigencies and not to delay the selection, the High Court has considered the Tamil Nadu Public Service Commission's letter dated 04.08.2014 and accepts the proposal to go ahead with the selection for the posts of Civil Judge notifying the percentage of disability as 40- 50% for partially blind and partially deaf, for the

present selection alone. The Registrar General, High Court of Madras has therefore requested to go ahead with the issue of Notification immediately for the 162 posts of Civil Judge announcing 40-50% of disability for partially blind and partially deaf, for the present selection alone. A copy of the D.O. letter seventh is enclosed for your reference.

2. I am to request you to take the necessary steps to notify the 162 vacancies for recruitment to the post of Civil Judge immediately.

Yours faithfully
Sd/-

For Principal Secretary to Government"

14. The advertisement, thus, clearly provided that post of Civil Judge has been identified as suitable for partially deaf/partially blind/ortho categories of differently abled persons (40%-50% disability). In the online application submitted by petitioner in the column of percentage of disability, he has only mentioned "more than 40%". The certificate of disability, which was submitted by the appellant as required by Rules, 2007 as well as the advertisement dated 26.08.2014 mentioned in Column (3) "(3). Percentage of disability in his/her case is 70%". Thus, according to own case of the appellant, he was

suffering with disability of 70%, which made him ineligible for the post of Civil Judge advertised by notification dated 26.08.2014 since the disability required for the post was only 40%-50%. We, thus, conclude that as per the certificate submitted by the appellant that he suffers from 70% disability, he was ineligible for the post advertised vide notification dated 26.08.2014. The issue is answered accordingly.

15. The appellant in his writ petition filed in the Madras High Court although has noticed the notification dated 26.08.2014 calling for the recruitment to the 162 posts of Civil Judges issued by the Tamil Nadu Public Service Commission, but in the writ petition did not challenge the Clause F of the advertisement in so far it prescribed requirement of 40%-50% for partially blind and partially deaf. Only following prayer was made:

“For the aforesaid reasons, this Hon’ble Court may be pleased to issue any appropriate Writ, Order or Direction and in particular issue a Writ in the nature of Certiorarified Mandamus to call for the records and to quash the impugned Oral Test List dated 01.04.2015 for selection of

candidates for the Post of civil Judge(Junior Division) and consequently direct the 2nd Respondent to permit the petitioner to participate in the oral test and pass such other and further orders as may be deemed fit and to meet the ends of justice."

16. During the pendency of the writ petition an amendment application was filed by the appellant to quash the Government letter dated 08.08.2014 which amendment application was allowed by the High Court and even in the amendment application filed by the appellant the notification dated 26.08.2014 issued by the TNPC was not challenged. The appellant cannot be allowed to question the condition of eligibility with regard to partial blindness i.e. 40%-50% when he failed to challenge the advertisement dated 26.08.2014 providing for the said requirement. The appellant applied in pursuance of the above advertisement and participated in the written examination and when he was not called for oral test, he filed writ petition. It was under the interim order of the High Court that he was permitted to participate in oral test but the High Court by interim order had directed not to

declare the result of the appellant. The appellant having failed to challenge Clause 4(F) of the notification dated 26.08.2014, he cannot be allowed to challenge the condition of 40%-50% partial blindness. We are in full agreement with the submission of the learned counsel for the High Court that the writ petition was liable to be dismissed on this ground alone.

Issue Nos.2 and 3

17. Issue Nos. 2 and 3 being interconnected are taken together. The Government order dated 08.08.2014 as already extracted above, addressed to the Tamil Nadu Public Service Commission states that the High Court has considered the Tamil Nadu Public Service Commission's letter dated 04.08.2014 and accepts the proposal to go ahead with the selection for the posts of Civil Judge notifying the percentage of disability as 40- 50% for partially blind and partially deaf. Thus, the Government Order was issued after due consultation of the High Court, which had agreed with providing for percentage of disability as 40%-50% for

partially blind and partially deaf for the post of Civil Judge (Junior Division). Whether Condition of 40%-50% for partially blind and partially deaf is a valid condition or the said condition is in breach of provisions of the Act, 1995, are questions to be answered. It is relevant to look at certain provisions of the Act, 1995 in this regard. Section 2(b) defines "Blindness" in following manner: -

(b) "Blindness" refers to a condition where a person suffers from any of the following conditions, namely: -

- (i) Total absence of sight. or
- (ii) Visual acuity not exceeding 6/60 or 20/200 (Snellen) in the better eye with correcting lenses; or
- (iii) Limitation of the field of vision subtending an angle of 20 degree or worse;

18. Section 2(i) defines disability to the following effect: -

- (i) "disability" means-
- (i) blindness;
 - (ii) low vision;
 - (iii) leprosy-cured;
 - (iv) hearing impairment;
 - (v) loco motor disability;
 - (vi) mental retardation;
 - (vii) mental illness;

19. Section 2(t) of the Act, 1995 defines expression 'person with disability' in the following words:

Section 2(t): "person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority;

20. The above definition clearly means that person with disability is a person who is suffering from not less than 40% of any disability. Thus, benefit of reservation under the Act thus can be claimed only by a person who is suffering from 40% or more of any disability.

21. For the purposes of present case, we are not concerned with complete blindness, since by notification dated 31.08.2012, exemption has already been granted under proviso to Section 33 of the Act, 1995 in reference to the post of Civil Judge (Junior Division) exempting complete blindness and complete hearing impairment for the post. Thus, those candidates, who are completely blind are clearly not eligible for the post. Section 2(u) defines persons with low vision, which is as follows: -

(u) "person with low vision" means a person with impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device;

22. The reservation of posts under the Act, 1995 for disabled (differently challenged) persons is provided in Section 33, which is to the following effect:-

33. Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent. for persons or class of persons with disability of which one per cent. each shall be reserved for persons suffering from- (i) Blindness or low vision; (ii) Bearing impairment; (iii) Loco motor disability or cerebral palsy, in the posts identified for each disability: Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

23. As per the Act, 1995, "one per cent of vacancies were reserved for persons suffering from blindness or low vision". Clause 4(F) of the advertisement refers to Government order dated 11.04.2005, 31.08.2012 and 08.08.2014. By the Government order dated 11.04.2005

post of Civil Judge(Junior Division) had been identified at Item No.102. Item No.102 which has already been extracted above makes it clear that categories of disabled persons suitable for the job are PB/PD/ORTHO (partially blind/ partially deaf/ortho). As noticed above complete blindness being already exempted, the two posts of Civil Judges(Junior Division) have been reserved in the advertisement for partially blind, partially deaf and ortho. The blindness has been defined in Section 2(t) as quoted above. The post has been identified for partially blind and not for completely blind person. As per the definition under Section 2(t) of "person with disability", a partially blind person having more than 40% disability is contemplated to be person who is in the field of eligibility.

24. Partially blind is a word which is not defined in the Act. A disability may be partial or total, a temporary or permanent. We are concerned in this case with partial disability which is not total.

25. One of the submissions of learned counsel for the appellant in this context need to be considered. It is submitted that those who suffer from partial blindness of more than 50% are also partial blind hence how can they be excluded from consideration. The word "partial blind" may be a general concept but where a percentage has been fixed looking to nature of job, it cannot be said that all partially blind are eligible. There is a valid classification with a nexus to object sought to be achieved, when eligibility is fixed 40% to 50% of disability. In this context, it is relevant to notice that when the posts were identified as Item No.102 by Government order dated 11.04.2005 physical requirements were also mentioned by the Government order which requirements were to the following words:

"S/ST/W/SE/H/RW"

26. The Government order dated 11.04.2005 has explained the terms of physical requirements, which are to the following effect:

Sl.No.	Code	Physical Requirements
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1	S	Work performed by sitting
2	ST	Work performed by standing
3	RW	Work performed by Reading/Writing
4	W	Work performed by Walking
5	B	Work performed by Bending
6	SE	Word performed by seeing
7	H	Work performed by Hearing/Speaking

Thus, partially blind and partially deaf having physical requirements, as noticed above, were identified for the post of Civil Judge(Junior Division). The physical requirements were specified looking to the nature of the job of Civil Judge(Junior Division). Partially blind and partially deaf disability of 40%-50% has been pegged to achieve the object of appointing such partially blind and partially deaf physically disabled persons who are able to perform the duties of Civil Judge(Junior Division). As noticed above Government order dated 08.08.2014 was issued by the State Government after consultation with the High Court and the TNPC specifying the partially blind and partially deaf as 40%-50% taking into account all relevant considerations. In this context, it is relevant to notice that the physical requirements which were

identified by the Government by order dated 11.04.2005 for the post of Civil Judge (Junior Division) ultimately has been incorporated into the statutory Rules. The Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007 have been amended by the Government Order dated 03.04.2018. Amended Rule 10 is as follows:

*10. Reservation of appointments:-

Section 27 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (Tamil Nadu Act 14 of 2016) relating to reservation of appointment and Section 34 of the Rights of Persons with Disabilities Act, 2016 (Central Act 49 of 2016) shall apply for appointment to the cadres of District Judge (Entry Level) and Civil Judge, by direct recruitment.

Provided that four percent of vacancies shall be reserved for the following persons with "benchmark disabilities", namely:-

(i).One percent for the persons in the following category of disabilities under the category of 'Locomotor disability' (as defined in the Schedule appended to the Rights of Persons with Disabilities Act, 2016):-

- (a) Locomotor disability of One Arm, One Leg and Both Legs;
- (b) Leprosy cured person;
- (c) Dwarfism;
- (d) Acid attack victims;

(ii) One percent for the persons with 'Low vision' under the category of 'Visual Impairment' (as defined in the Schedule appended to the Rights of Persons with Disabilities Act 2016);

(iii) One percent for the persons with 'hard of hearing' under the category of "Hearing Impairment" (as defined in the Schedule appended to the Rights of Persons with Disabilities Act, 2016);

(iv). Remaining One percent for the persons mentioned in the above clauses (i), (ii) & (iii), above, on rotation basis.

Explanation:- The roster points meant for the candidates with benchmark disabilities mentioned in clauses (d) and (e) of sub section (1) of Section 34 of the said Central Act, shall be allotted to the candidates in categories (i) to (iii) mentioned above, in the same order:

Provided further that the candidates who perform the following physical activities alone are Eligible:-

- (a) - Work Performed by Sitting - S
- (b) - Work Performed by Standing - ST
- (c) - Work Performed by Writing - W
- (d) - Work Performed by Seeing - SE
- (e) - Work Performed by Hearing - H
- (f) - Work Performed by Reading and Writing - RW
- (g) - Communicating (Communicating would also include verbal or non-verbal communication) – C.

27. The explanation of the Rule 10 contains the physical requirements which were earlier noticed in

the Government order dated 11.04.2005. It is true that the amendment made in Rule 10 by the Government order dated 03.04.2018 has no application and not relevant for determining the issue in the present case but incorporation of a proviso into the explanation of Rule 10 manifests the intention of Rule making authority which was earlier manifested in the executive order dated 11.04.2005.

28. There is another important aspect of the matter, which needs to be dealt with. Under Constitution of India, control over judicial services is vested with the respective High Court. Articles 233, 234 and 235 of the Constitution of India may be referred in this context. The present case is a case of recruitment to the post of Civil Judge (Junior Division), which recruitment is undertaken in accordance with Rules, 2007 framed in exercise of the powers conferred by Articles 233, 233A, 234, 235 and proviso to Article 309 of the Constitution of India by the Governor of Tamil Nadu in consultation with the High Court of Madras and Tamil Nadu Public Service Commission, which

is clear from the opening words of the Rules as given below:-

“In exercise of the powers conferred by Article 233, 233A, 234, 235 and the proviso to Article 309 of the Constitution of India, the Governor of Tamil Nadu in consultation with the High Court, Madras and Tamil Nadu Public Service Commission, wherever necessary, hereby makes the following Rules:”

29. The Judicial service being public service is included in Entry 41 List II of the Seventh Schedule of the Constitution. The State having competence to legislate on Entry 41, i.e. State public Services; State Public Service Commission, it has also executive power under Article 154 of the Constitution of India. Thus, the State Government was fully competent to take any executive decision with regard to recruitment on the post of Civil Judge (Junior Division), supplementing the Statutory Rules, 2007.

30. At this stage, we may deal with one of the submissions, which has been raised by the learned counsel for the appellants. Learned counsel for the appellant submits that High Court has relied on

proposed amendments to Rules, 2007, which was undertaken by the State Government with the High Court on its administrative side in pursuance of a Division Bench judgment of Madras High Court in Writ Petition No. 27089 of 2008. The High Court in Paragraph No. 22(xii) has noticed the Government Order dated 14.03.2013 by which the Government of Tamil Nadu has sent a letter dated 06.02.2013 to the High Court seeking approval for an amendment to the Recruitment Rules especially Rule 10. A draft of the amendment proposed to the Rules 5 and 10 was also extracted in Paragraph No. 22(xii).

31. Learned counsel submits that the proposed amendment was under consideration of the High Court and several correspondences took place between the High Court and the State of Tamil Nadu but amendments could not be finalised till the completion of selection hence reliance by the High Court on the proposed amendments was wholly uncalled for. High Court has also noticed that by resolution of the Full Court dated 05.07.2014, the matter was referred to the

Rule Committee but before the Rule Committee could take a decision, the process of selection of 162 posts had begun. High Court after noticing the aforesaid fact has further noticed the letter dated 04.08.2014 sent by the Public Service Commission to the Government seeking consent of the Government to issue a Notification for recruitment, fixing 40%-50% disability for partially blind and partially deaf candidates. Relevant facts in this context have been noticed in Paragraph No. 22(xviii), which is to the following effect:-

“(xviii) Therefore, the Public Service Commission sent a letter dated 4.8.2014 to the Government seeking the consent of the Government to issue a Notification for recruitment, fixing 40-50% disability for partially blind and partially deaf candidates. The Government sought the opinion of the High Court and the High Court gave no objections. Thereafter, the Government issued the impugned communication dated 8.8.2014 directing the Service Commission to initiate the process of selection of 162 Civil Judges, by notifying the percentage of disability as 40-50% for partially blind and partially deaf, for the present selection alone. This is why paragraph 4.F was incorporated in the Notification bearing No. 15/2014 dated 26.8.2014 issued by the Public Service Commission.”

32. High Court, thus, was well aware that the notification dated 26.08.2014 issued by the Public Service Commission was initiated on the basis of the Government Order dated 04.08.2014 and the amendment of the Rules as proposed had nothing to do with the advertisement issued by the Public Service Commission. The advertisement dated 26.08.2014 also has specifically referred to the G.O. of the Government dated 08.08.2014. Thus, in the recruitment in question the proposed amendment in the Rules neither played any role nor had any relevance. High Court has noticed the aforesaid facts, for the completion of facts. It is clear that the proposed amendments had no relevance with regard to recruitment in question. The submission of the learned counsel for the appellants that High Court has relied on the proposed amendments, thus, has no substance.

33. We now again revert back to the Constitutional Scheme with regard to subordinate judiciary. Section 33 of the Act, 1995 provides that reservation for persons or class of persons with classes of disability, which is referable to Article 16(1) of the

Constitution of India. This Court had occasion to consider a State Legislation referable to Article 16(4) of the Constitution of India in **State of Bihar and Another Vs. Bal Mukund Sah and Others, (2000) 4 SCC 640**. A Constitution Bench in the above case had occasion to consider a question of recruitment of District Judge and other judicial officers in the State of Bihar in context of a State Legislation namely Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1991. By the aforesaid Act, 1991 reservation for direct recruitment to the posts in the judiciary of the State were provided for. Advertisement was issued reserving posts as per the Act, 1991, which was challenged in the High Court. High Court has struck down the terms of advertisement holding it ultra vires to the provision of Article 233 of the Constitution. The State of Bihar took the matter to this Court. A Constitution Bench of this Court in the above case came to examine the issue of recruitment to the judicial service in context of the reservation as provided by the State Act. After

noticing the Constitutional Scheme under Articles 233, 234, 235 and 309 and the Rules framed by the Governor for recruiting judicial officers, this Court laid down following in Paragraph No. 29:-

"29.But so far as the entry points are concerned, namely, recruitment and appointment to the posts of Presiding Officers of the courts subordinate to the High Courts, only Articles 233 and 234 would govern the field. Article 234 lays down the procedure and the method of recruiting judicial officers at grass-root level being Subordinate Judges and Munsifs as laid down by the 1955 Rules. These Rules are also framed by the Governor of Bihar in exercise of his powers under Article 234 obviously after the consultation of the High Court and the Public Service Commission. Rules regarding the procedure of selection to be followed by the State Public Service Commission as found in Rules 4 to 17 deal with the method to be adopted by the Public Service Commission while selecting candidates who offer their candidature for the posts advertised to be filled in. These Rules obviously require consultation with the Commission on the procedural aspect of selection process. But so far as the High Court is concerned, its consultation becomes pivotal and relevant by the thrust of Article 233 itself as it is the High Court which has to control the candidates, who ultimately on getting selected, have to act as Judges at the lowest level of the Judiciary and whose posting, promotion and grant of leave and other judicial control would vest only in the High Court, as per Article 235 first part, once they enter the Judicial Service

at grass-root level. Thus consultation of the Governor with the High Court under Article 234 is entirely of a different type as compared to his consultation with the Public Service Commission about the procedural aspect of selection....."

34. This Court has laid down that both Articles 309 and 245 will have to be read subject to Articles 233 and 234. In Paragraph No. 32, following has been laid down:-

"32. It is true, as submitted by learned Senior Counsel, Shri Dwivedi for the appellant State that under Article 16(4) the State is enabled to provide for reservations in services. But so far as "Judicial Service" is concerned, such reservation can be made by the Governor, in exercise of his rule-making power only after consultation with the High Court. The enactment of any statutory provision de hors consultation with the High Court for regulating the recruitment to the District Judiciary and to the Subordinate Judiciary will clearly fly in the face of the complete scheme of recruitment and appointment to the Subordinate Judiciary and the exclusive field earmarked in connection with such appointments by Articles 233 and 234. It is not as if that the High Courts being constitutional functionaries may be oblivious of the need for a scheme of reservation if necessary in appropriate cases by resorting to the enabling provision under Article 16(4). The High Courts can get consulted by the Governor for framing appropriate rules regarding reservation for governing

recruitment under Articles 233 and 234. But so long as it is not done, the Legislature cannot, by an indirect method, completely bypassing the High Court and exercising its legislative power, circumvent and cut across the very scheme of recruitment and appointment to the District Judiciary as envisaged by the makers of the Constitution. Such an exercise, apart from being totally forbidden by the constitutional scheme, will also fall foul on the concept relating to "separation of powers between the Legislature, the Executive and the Judiciary" as well as the fundamental concept of an "independent Judiciary". Both these concepts are now elevated to the level of basic structure of the Constitution and are the very heart of the constitutional scheme."

35. From the facts as noticed above, the State Government has consulted both the Public Service Commission as well as the High Court in reference to appointment of disabled persons on the post of Civil Judge (Junior Division). There is consensus in the view of State Government, Public Service Commission and the High Court that partially blind and partially deaf persons suffering with disability be allowed to participate in the recruitment, who has disability of 40%-50%. The High Court being well aware about the requirements for the appointment in the judicial

service and it being guardian of subordinate judiciary, has a say in the eligibility of a person, who seeks appointment on the post of Civil Judge (Junior Division). Judicial service being part of Public Service, the State in consultation with the High court is fully empowered to lay down the eligibilities for selection on the post of Civil Judge (Junior Division). The Government Order dated 08.08.2014 supplements the Rules, 2007 and in no manner contravene any of the provisions of the Rules. The condition of having 40%-50% disability was prescribed by the Public Service Commission as per the Government Order issued by the State of Tamil Nadu after consultation with the High Court. The above condition in no manner can be said to be invalid. Learned counsel for the appellant has submitted that restricting the disability to 40%-50% in reference to persons having partial blindness is clearly denying the of reservation as provided under Section 33 of the Act, 1995 and is not in accord with Section 33 of the Act.

36. Section 33 of the Act, 1995 requires that every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering from Blindness or low vision. This Court in **Government of India Vs. Ravi Prakash Gupta and Another, (2010) 7 SCC 626**, in Paragraph No. 29 laid down that 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. Following was observed in Paragraph No.29:-

"29.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....."

37. This Court in **Union of India and Another Vs. National Federation of the Blind and Others, (2013) 10**

SCC 772 has elaborately examined the objects and reasons of the Act, 1995 and laid down following in Paragraph No. 24:-

"24. Although, the Disability Rights Movement in India commenced way back in 1977, of which Respondent 1 herein was an active participant, it acquired the requisite sanction only at the launch of the Asian and Pacific Decade of Disabled Persons in 1993-2002, which gave a definite boost to the movement. The main need that emerged from the meet was for a comprehensive legislation to protect the rights of persons with disabilities. In this light, the crucial legislation was enacted in 1995 viz. the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which empowers persons with disabilities and ensures protection of their rights. The Act, in addition to its other prospects, also seeks for better employment opportunities to persons with disabilities by way of reservation of posts and establishment of a special employment exchange for them. For the same, Section 32 of the Act stipulates for identification of posts which can be reserved for persons with disabilities. Section 33 provides for reservation of posts and Section 36 thereof provides that in case a vacancy is not filled up due to non-availability of a suitable person with disability, in any recruitment year such vacancy is to be carried forward in the succeeding recruitment year. The difference of opinion between the appellants and the respondents arises on the point of interpretation of these sections."

38. In the above case, this Court has occasion to consider Section 33 of the Act, 1995. This Court dealt with the manner of computing 3% reservation for the persons with the disabilities as per Section 33 of the Act. Another issue which was considered as to whether post-based reservation must be adhered to or vacancy-based reservation. Learned counsel for the appellant has relied on the above judgment in support of his submission that objective of the Act, 1995 as noticed by this Court have to be fulfilled and restricting the disability to 40%-50% for purpose of eligibility for the post of Civil Judge (Junior Division) shall frustrate the provisions of Section 33 as well as the object of the Act.

39. The legal position with regard to reservation of posts for persons with disability is now well established that every appropriate Government is obliged to reserve posts for persons or class of persons with disability. In the present case, we are concerned with partial disability. The present is not a case where the respondent has not reserved the post

for partial disability as required by Section 33 of the Act, 1995. Thus, requirement of reservation as mandated by Section 33 is clearly fulfilled. The issue is regarding eligibility of appellant to participate in the selection and as to whether the requirement in the advertisement that only those, who suffer from disability of 40%-50% are eligible, is contrary to the Act, 1995 or is in breach of any statutory provision. The State, which is appointing authority of Public Service in consultation with the High Court with reference to post of Civil Judge (Junior Division) can very well lay down the essential eligibilities and requirement for the post. When the State, High Court and Public Service Commission are of the view that disability, which is suitable for appointment on the post of Civil Judge should be between 40%-50%, the said prescription does not violate any statutory provision nor contravene any of the provisions of the Act, 1995. It is well within the power of appointing authority to prescribe eligibility looking to the nature of the job, which is to be performed by holder of a post.

40. A judicial officer in a State has to possess reasonable limit of the faculties of hearing, sight and speech in order to hear cases and write judgments and, therefore, stipulating a limit of 50% disability in hearing impairment or visual impairment as a condition to be eligible for the post is a legitimate restriction i.e. fair, logical and reasonable. The High Court in its additional statement has incapsulated the functions and duties of Civil Judge in following words:-

"7. That in so far as the area of discharge of functions and duties of the judicial officers viz., Civil Judges is concerned this involves performances of strenuous duties:- they have to read documents, pleadings and ascertain facts and issues; monitor proceedings to ensure that all applicable rules and procedures are strictly followed without any violation; advise advocates, litigants and Court personnel regarding conduct, issues, and proceedings; participate in judicial proceedings to help in resolving disputes; preside over hearings and hear allegations made by plaintiffs and defendants to determine whether the evidence supports the charges or the averments made; write decisions on cases independently after reading and analysing evidence and documents; while recording evidence observe

the demeanour of witnesses etc. Impaired vision can only make it extremely difficult, even impossible, to perform any of these functions at all. All these apart, he/she has to perform duties such as conducting inquiries, recording dying declarations, going through identification parades, record statements of victims, conduct in-camera proceedings, passing orders on remand and extension and other administrative functions. In so far as District judges are concerned, apart from performing their usual judicial duties, they have to perform a myriad administrative duties also. Therefore, creating any reservation in appointment for those with disabilities beyond the 50% level is far from advisable as it may create practical and seemingly other avoidable complications. Moreover, given the need to prepare judgments based on the case papers and other material records in a confidential manner, the assistance of a scribe or the like completely takes away the secrecy and discreetness that come with the demands of the post."

41. The reasons as given above by the respondent No.3 fully justified the requirement of disability to the extent of 50% which is reasonable, just and fair. High Court did not commit any error in dismissing the writ petition filed by the appellant. In view of the foregoing discussions, we, thus, came to the conclusion that prescription of disability to the

extent of 40%-50% for recruitment for the post of Civil Judge (Junior Division) was valid and does not contravene any of the provisions of the Act, 1995 or any other statutory provision. Issue Nos. 2 and 3 are answered accordingly. We, thus, do not find any merit in this appeal and the same is accordingly dismissed.

.....J.
(ASHOK BHUSHAN)

.....J.
(K.M. JOSEPH)

**NEW DELHI,
JANUARY 22, 2019.**