**IN THE HIGH COURT OF KARNATAKA AT BANGALORE**

**(ORIGINAL JURISDICTION)**

**W.P. No. \_\_\_\_\_/ 2019**

**BETWEEN**

Anupama D.

 …. **PETITIONER**

**AND**

The Office of the Directorate of the Disabled

and Senior Citizens Empowerment and Ors **…RESPONDENTS**

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**SYNOPSIS**

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| --- | --- |
| **DATE** | **DESCRIPTION**  |
|  24.11.2011 | The Petitioner was selected and appointed as Assistant Teacher at Respondent No.6 school, the Blind Children’s Residential School in Malappanahatti, Chitradurga, in the pay scale of Rs. 6250 – 12000. |
|  22-08-2015 | The Petitioner then wrote a letter to the Respondent No. 4, Chief Executive Officer, Zilla Panchayat, Chitradurga stating that her salary was misappropriated by the Respondent No. 6 school management and requested the Zilla Panchayat to enquire into the matter and to take disciplinary action against the Respondent No. 6 school |
|  04.08.2017 | The Respondent No. 4 Commissioner for Disabilities passed an order dated 4.8.2017 instructing the Respondent No. 2, District Disabled Welfare Officer of Chitradurga District to appoint the Petitioner to work in the post of Assistant Teacher in the pay scale of Rs. 6250-12000 from the date of her appointment and also ordered the Respondent No. 1 school to repay the misused sum of Rs. 86,000/- in the name of the Petitioner to the Government immediately. |
|  29.08.2017 | The Petitioner made a representation to the Respondent No. 3, Government of Karnataka, Women and Child Department explaining that despite the Order passed by the Commissioner for Disabilities, she was not reinstated by the Respondent No. 6 school and requested the said authority to pass necessary directions for her reinstatement. |
| 29.08.2017 | Petitioner made a representation to the Respondent No. 5, State Commissioner for Disabilities stating that the Respondent No. 6 school management had not provided her with an opportunity of employment despite the orders passed.  |
| 07.06.2018 | Petitioner made a representation to Respondent No. 6 school management through its Administrative Officer requesting the said management to provide her an opportunity of employment and to pass necessary directions for reinstatement of Petitioner. |
| 04.09.2018 | The Petitioner made a representation to the Respondent No. 1, Director of the Disabled Welfare Department and requested the said authority to provide her with an opportunity of employment.  |
| 11.10.2018 | The Petitioner again approached the Respondent No. 3, Principal Secretary, Women and Child Development Department Office requesting the said authority to provide her an opportunity to work as an Assistant Teacher in the Respondent No. 1 school. |

**BRIEF FACTS**

The present petition has been brought by the Petitioner who is a person with blindness and is a person with benchmark disability as defined under Section 2 (r) of the Rights of Persons with Disabilities Act 2016 (“RPD Act”). The Petitioner had been selected for the post of Assistant Teacher in the Respondent no. 6 School. However, she was not appointed to the said post the Respondent No. 6 did not inform the Petitioner about her selection and instead opened a bank account in the name of the Petitioner and misappropriated her salary. The Petitioner therefore approached the Respondent No. 5, Commissioner for Disabilities who passed an order dated 4.8.2017 instructing the Respondent No. 2, District Disabled Welfare Officer of Chitradurga District to appoint the Petitioner to work in the post of Assistant Teacher in the pay scale of Rs. 6250-12000 from the date of her appointment and also ordered the Respondent No. 1 school to repay the misused sum of Rs. 86,000/- in the name of the Petitioner to the Government immediately. Despite the said Order and several representations, the Respondent No. 6 school has refused to provide employment to the Petitioner. Thus aggrieved by the inaction of the Respondents, the Petitioner has filed this petition.

PLACE:

DATE: ADVOCATE FOR PETITIONER

**IN THE HIGH COURT OF KARNATAKA AT BANGALORE**

**(ORIGINAL JURISDICTION)**

**W.P. No. \_\_\_\_\_/ 2019**

**BETWEEN**

Anupama D.

W/o. S.N. Muddanagoudar

Aged 31 years

Residing at: S.N. Muddanagoudra

3rd Stage, 1st Cross, Davalger Badavane,

Chittradurga - 577501

 …. **PETITIONER**

**AND**

1. The Office of the Directorate of the Disabled

and Senior Citizens Empowerment,

Podium Block, VV Centre

Dr. Ambedkar Veedhi

Bangalore -01

Represented by its Director

1. District Disabled Welfare Officer

Office of the Deputy Director

Women and Child Department

District Office,

Chitradurga District

1. Government of Karnataka

Women and Child Department

 Bangalore

Represented by its Principal Secretary

1. Chief Executive Officer,

 Zilla Panchayat

 Chitradurga

1. State Commissioner for Persons with Disabilities

**Office of the State Commissioner for**

No.55, Abhaya Sankeerna, 2nd Floor,
Karnataka Slum Development Board Building,
Risaldar Street (Plat Form Road),
Sheshadripuram,

Bangalore-560 020.

1. Blind Children’s Residential School,

Blind Rehabilitation Society,

Malappanahatti,

Bheemasandra Road,

Chitradurga

Represented by its Secretary .…**RESPONDENTS**

**­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­MEMORANDUM OF WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA**

The Petitioner most respectfully submits as follows:

1. The present petition has been brought by the Petitioner who is a person with blindness and is a person with benchmark disability as defined under Section 2 (r) of the Rights of Persons with Disabilities Act 2016 (“RPD Act”). The Petitioner had been selected for the post of Assistant Teacher in the Respondent no. 6 School. However, she was not appointed to the said post the Respondent No. 6 did not inform the Petitioner about her selection and instead opened a bank account in the name of the Petitioner and misappropriated her salary. The Petitioner therefore approached the Respondent No. 5, Commissioner for Disabilities who passed an order dated 4.8.2017 instructing the Respondent No. 2, District Disabled Welfare Officer of Chitradurga District to appoint the Petitioner to work in the post of Assistant Teacher in the pay scale of Rs. 6250-12000 from the date of her appointment and also ordered the Respondent No. 1 school to repay the misused sum of Rs. 86,000/- in the name of the Petitioner to the Government immediately. Despite the said Order and several representations, the Respondent No. 6 school has refused to provide employment to the Petitioner. Thus aggrieved by the inaction of the Respondents, the Petitioner has filed this petition.

**BRIEF FACTS:**

1. The present petition has been filed by the Petitioner who is a person with blindness and is thus a person with disability as defined under Section 2(t) of the PWD Act, 1995 and a person with benchmark disability as defined under Section 2(r) of Rights of Persons with Disability Act, 2016. The Petitioner holds a diploma in education (D.Ed).

(A copy of the Petitioner’s disability certificate dated 06.08.2001 is annexed herein and is marked as **ANNEXURE – A**)

(A copy of the Petitioner’s D.Ed certificate is annexed herein and is marked as **ANNEXURE – B**)

1. The Respondent No. 6 school is a grant-in-aid school. It is a residential school for the totally blind in Chitradurga. The Respondent No. 6 school receives funds from the State Government.
2. The Petitioner used to previously work in the Respondent No. 6 school as a teacher in June 2011. She thereafter left the job as she was not paid. Thereafter when there was a call for appointment of staff, the Petitioner applied for the post of an Assistant Teacher at the Respondent No. 1 School. Thereafter vide Order No. VAKE/C 8/50/Visharaha/ 10-11-12/3126 dated 24.11.2011 issued by the Respondent No. 1, the Petitioner was selected and appointed as Assistant Teacher at the Blind Children’s Residential School in Malappanahatti, Chitradurga, in the pay scale of Rs. 6250 – 12000.

(A copy of the said Appointment Order dated 24.11.2011 is annexed herein and marked as **ANNEXURE – C**)

1. The Petitioner however was not aware of this order, as the same was not informed to her nor was she sent notice of the same. Neither the Respondent no. 1 authority nor did Respondent No. 6 school management furnished her with a copy of the said appointment order. During this time the Petitioner was working as a Teacher in a blind children’s school in Humnabad, Bidar
2. It is submitted that the Petitioner was not at all aware of such appointment made in her name. The Respondent No. 6 school however fraudulently opened a bank account in the name of the Petitioner fraudulently and started depositing salary in the said account and used to misappropriate the same. The school management also appointed one non-disabled woman by the name Kavya and asked her to come and teach the students when the officers from the Grant-in-aid department would come for inspection of the school. The said Kavya was asked to operate the bank account and withdraw money and hand it over to the school management. The said Kavya wrote a letter dated 15.7.2015 narrating all of this to the Respondent No.4, Chief Executive Officer, Zilla Panchayat, including stating that she was made to withdraw Rs. 56,000/- from the account in the name of the Petitioner opened in Corporation Bank, Chitradurga and hand it over to the then Secretary of Respondent No.1 school.

(A copy of the letter dated 15.07.2015 to the Chief Executive Officer, Zilla Panchayat is annexed herein and marked as **ANNEXURE –D**)

1. Thereafter the said Kavya informed the Petitioner about these developments as well. The Petitioner then wrote a letter to the Respondent No. 4 Chief Executive Officer, Zilla Panchayat, Chitradurga on 22-08-2015 stating that her salary was misappropriated by the Respondent No. 6 school management and requested the Zilla Panchayat to enquire into the matter and to take disciplinary action against the Respondent No. 6 school and allow the Petitioner to work as an Assistant Teacher at the said school.

(A copy of the letter dated 22.08.2015 written by the Petitioner to the Chief Executive Officer, Zilla Panchayat is annexed herein and marked as **ANNEXURE –E**)

1. The Petitioner submits that the Respondent No. 6 school was also marking her attendance in the staff attendance register as ‘present’ while the Petitioner was not working there and was misappropriating her salary.
2. The Petitioner, then filed a complaint with the Respondent No. 5 Commissioner for Disabilities being Case No. 19 / 2016 – 17 / 447. In the said complaint, after hearing all the parties and after conducting a detailed enquiry, the Respondent No. 4 Commissioner for Disabilities passed an order dated 04.08.2017. In this Order it directed the Respondent No. 2, District Disabled Welfare Officer to take necessary action to provide the Petitioner with the opportunity to work as Assistant teacher in the Respondent No. 6 school in the pay scale of Rs. 6250 – 12000 applicable from the date of the issue of the said order, i.e. from 24.11.2011. The Respondent No. 6 school was also directed to pay the misused amount of Rs. 86000 that was used in the name of the Petitioner, back to the State government immediately.

(A copy of the Order dated 4.8.2017 passed in Case No. 19 / 2016 – 17 / 447 is annexed herein and marked as **ANNEXURE – F**)

1. It is submitted that despite the said Order, no action has been taken by the Respondents to allow the Petitioner to work in the Respondent No. 6 School as Assistant Teacher based on the appointment order nor has the Petitioner been paid for such appointment from 24.11.2011.
2. Thereafter the Petitioner made a representation to the Respondent No. 3 on 29.08.2017 explaining that despite the Order passed by the Commissioner for Disabilities, she was not reinstated by the Respondent No. 6 school and requested the said authority to pass necessary directions for her reinstatement.

(A copy of the letter dated 29.8.2017 is annexed herein and marked as **ANNEXURE** –**G**)

1. On the same day i.e. on 29-08-2017, the Petitioner made a representation to the Respondent No. 5 State Commissioner for Disabilities stating that the Respondent No. 6 school management had not provided her with an opportunity of employment despite the orders passed.

(A copy of the letter dated 29.8.2017 is annexed herein and marked as **ANNEXURE** –**H**)

1. It is submitted that the Petitioner also approached the Respondent No. 6 school management through its Administrative Officer and made a representation on 07-06-2018 requesting the said management to provide her an opportunity of employment and to pass necessary directions for reinstatement of Petitioner.

(A copy of the said letter dated 7.6.2018 is annexed herein and marked as **ANNEXURE** –**J**)

1. When, despite all these representations the Respondent No. 6 school did not allow the Petitioner to work as an Assistant Teacher, the Petitioner made a representation dated 4.9.2018 to the Respondent No. 1 Director of the Disabled Welfare Department and requested the said authority to provide her with an opportunity of employment.

(A copy of the said letter dated 04.09.2018 is annexed herein and marked as **ANNEXURE** – **K**)

1. It is submitted that the Petitioner again approached the Respondent No. 3 Principal Secretary, Women and Child Development Department Office on 11-10-2018 requesting the said authority to provide her an opportunity to work as an Assistant Teacher in the Respondent No. 1 school.

(A copy of the said letter dated 11-10-2018 is annexed herein and marked as **ANNEXURE** – **L**)

1. Despite submitting the said requisition letters to various authorities several times, the Respondent no. 1 school refused to reinstate the Petitioner.
2. Being aggrieved by the inaction of the Respondents in not reinstating the employment of the Petitioner despite her numerous representations, and having no other alternative and efficacious remedy, the Petitioner has filed the present writ petition before this Hon’ble Court. The Petitioner has not filed any other Petition either before this Hon’ble Court or any other Court in respect of the present case. The Petition is filed on the following, among other grounds:

**GROUNDS:**

1. **THAT** the action of the Respondents in not complying with the order of the Commissioner for Disabilities and in not appointing the Petitioner in the Respondent No. 6 School as per her appointment order is illegal and deserves the intervention of this Hon’ble Court.
2. **That** as per Section 80 of the Rights of Persons with Disabilities Act, 2016, the State Commissioner for Disabilities has the power to enquire into any matter of deprivation of rights of persons with disabilities and under section 82, for every proceeding before the Chief Commissioner shall be a judicial proceeding and the Chief Commissioner shall be deemed to be a civil court. Despite obtaining a favourable order from the Chief Commissioner for persons with disability, the order is not being implemented and therefore this deserves the intervention of this Hon’ble Court.
3. **THAT** in ***Geetaben Ratilal Patel vs. District Primary Education Officer*** (2013) 7 SCC 182, the Supreme Court upheld the principle that under section 62 of the Persons with Disabilities (Equal Opportunities, Protection of Rights, and Full Participation) Act, 1995 which is similar to Section 95 of the RPD Act 2016, the Commissioner for Disabilities can pass orders relating to dismissal of service of the complainant and take up the matter with authorities. It held that;

“*The provisions of Sections 47 and 62 of the Act, when read together, empower the Commissioner, to look into the complaint with respect to the matters relating to deprivation of rights of persons with disabilities and non-implementation of laws, rules, bye- laws, regulations, executive orders, guidelines or instructions issued by the appropriate Government or local authorities and to take up the matter with the appropriate authorities for the welfare and protection of rights of persons with disabilities including matter relating to dispensation with service or reduction in rank. The power of the Commissioner "to look into the complaints with respect to the matters relating to deprivation of rights" as provided under Section 62 of the Act is not an empty formality and the Commissioner is required to apply his mind on the question raised by the complainant to find out the truth behind the complaint. If so necessary, the Commissioner may suo motu inquire into the matter and/or after giving notice, hearing the concerned parties and going through the records may decide the complaint. If it comes to the notice of the Commissioner that a person with disability has been deprived of his rights or that the authorities have flouted any law, rule, guideline, instruction etc. issued by the appropriate Government or local authorities, the Commissioner is required to take up the matter with the appropriate authority to ensure restoration of rights of such disabled person and/or to implement the law, rule, guideline, instruction if not followed.”*

Hence, in view of the above, the order dated 04.08.2017 passed by the Commissioner for Disabilities directing that the Petitioner be appointed in the Respondent no. 6 school ought to be complied with and deserves the intervention of this Hon’ble Court.

1. **THAT** is evident as per the Order No. VAKE/C 8/50/Visharaha/ 10-11-12/3126, dated 24.11.2011 that the nature of job and working conditions mentioned therein are capable of being performed by a person with visual impairment due to which the Petitioner was appointed. However, the failure of Respondent No.6 school to appoint the Petitioner despite her being appointed to the said post, smacks of arbitrariness and is in violation of Article 14 of the Constitution of India, 1950 and deserves the intervention of this Hon’ble Court.
2. THAT the non-compliance with the order dated 24.11.2011 and the order of the respondent No. 5 Commissioner for Disabilities dated 04.08.2017 directing that the Petitioner be appointed in the Respondent No. 6 School as Assistant Teacher and the violation of the appointment order for so long violates the Petitioner’s right to life which includes the right to livelihood under Article 21 of the constitution as held by the Hon’ble Supreme Court in ***Amita v. Union of India*** (2005) 133 SCC 721, in the case of persons with disabilities who are deprived of employment, and hence deserves the intervention of this Hon’ble Court.
3. THAT in ***Jeeja Ghosh v. UOI***, (2016) 7 SCC 761, the Supreme Court held that the rights that are guaranteed to differently abled persons under the PWD Act are founded on the sound principle of human dignity which is the core value of human right and is treated as a significant facet of right to life and liberty. Such a right now treated as human right of the persons with disability has it roots in Article 21 of the Constitution. The manner in which the Petitioner has been treated, in not being appointed in the Respondent No.1 school despite orders of appointment being issued and the State Commissioner for Disabilities directing that she be appointed and paid with effect from 24.11.2011, is in complete violation of the Petitioner’s right to life and dignity as she is being compelled to run from pillar to post to seek implementation of appointment orders in her favour only because she is disabled and hence deprived of her rights.
4. **THAT** in ***Union of India v. National Federation of the Blind & Ors,*** (2013) 10 SCC 772, the Hon’ble Supreme Court stated that the PWD Act is a social legislation enacted for the benefit of persons with disabilities and its provisions must be interpreted in order to fulfil its objective. Hence it is submitted that the Respondents have not adhered to the mandate of the RPD Act, which replaces the PWD Act, and failure to reinstate the Petitioner is arbitrary and unfair and deserves the intervention of this Hon’ble Court.
5. **THAT** under Article 41 of the constitution, there is a duty on the State to make effective provisions for securing the right to work, to education and to public assistance in cases of disablement. In the instant case, despite the Petitioner having been appointed as Assistant teacher and the Respondent No. 5 Commissioner passing an order confirming her appointment and directing that she be appointed, the same is not implemented and the Respondent authorities have taken no steps to protect the rights of the Petitioner and hence deserves the intervention of this Hon’ble Court.
6. It is submitted that the Respondents’ inaction has led to infringement of Petitioner’s fundamental right to life guaranteed under article 21, right to equality under article 14 and right to equality of opportunity encapsulated under article 16 of the Constitution.

**PRAYER**

WHEREFORE, in light of the above facts and circumstances, the Petitioner most respectfully prays that this Hon’ble Court be pleased to:

1. Issue a writ of mandamus directing the Respondent authorities to appoint the Peititoner as Assistant teacher in the Respondent No. 6 school, in terms of the order passed by the Respondent No. 5 Commissioner for Disabilities dated 04.08.2017 in Case No. 19 / 2016 – 17 / 447, produced herein as **ANNEXURE - F**, at the pay scale of Rs. 6250-12000/- with effect from 24.11.2011 and make payment of the arrears of salary to the Petitioner; and
2. Grant any other relief, which the Hon’ble Court deems fit in the circumstances of the case in the interests of justice and equity.

Place: Bangalore Counsel for the Petitioner

Date: Nithya Rajshekhar

Address for Service:

D6, Dona Cynthia Apartments,

35 Primrose Road

Bangalore – 560025