IN THE HIGH COURT OF KARNATAKA AT BANGALORE

(ORIGINAL JURISDICTION)
SIRES
W.P. No. 8474 / 2021 (PIL)

BETWEEN

The National Federation for the Blind

...PETITIONER

AND

The Registrar General & Secretary

High Court of Karnataka & Others

.... RESPONDENTS

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Place: Bangalore

Date: 21.04.21

COUNSEL FOR THE PETITIONER



IN THE HIGH COURT OF KARNATAKA AT BANGALORE (ORIGINAL JURISDICTION)

W.P. No. ______ / 2021 (PIL)

BETWEEN

The National Federation for the Blind

...PETITIONER

AND

The Registrar General & Secretary

High Court of Karnataka & Others

.... RESPONDENTS

SYNOPSIS

This petition is filed as a public interest litigation under Article 226 of the Constitution by the Petitioner Association on behalf of all the visually impaired persons under the Rights of Persons with Disabilities Act 2016 seeking reservation in the posts of Civil Judge. In the recent impugned Notification dated 26.3.2021 issued by the Respondent No.1 there are no posts reserved for persons with blindness and low vision and only posts reserved for persons with locomotor disability. Further there are reservations only in the 20 backlog vacancies and no posts reserved in the 74 current vacancies. The requirements of Section 34 of the RPD Act which mandates that 4% of posts must be reserved for persons with disabilities has not been complied with. The posts of Civil Judges in the Subordinate Judiciary have been identified as being suitable for persons with blindness and low vision by the Central government. Further, as held by the Hon'ble



Supreme Court in *Vikash Kumar v. UPSC & Others, 2021 SCCOnline SC 84,* the Hon'ble Supreme Court held that the judgement rendered in *V Surendra Mohan v. State of Tamil Nadu (2019) 4 SCC 237,* where the requirements for a Civil Judge should not be more than 50% visual or hearing impairment, would not be binding. The court held, "In light of the fact that the view of this court in Mohan was rendered in a case under the 1995 Act which has now been replaced by the RPD Act 2016 and in light of the absence of a reasonable accommodation analysis by this Court, the Mohan judgment stands on a legally vulnerable footing. It would not be a binding precedent, after enforcement of the RPD Act 2016." Despite this judgement, in the present case, there are no reservations for persons with blindness or hearing impairment for the post of civil judge. Aggrieved by this, the Petitioner Association has filed this petition in public interest.

LIST OF DATES

DATE	PARTICULARS
7.09.2012	The Respondent State Government, declared that the State
	Government would mutatis mutandis adopt the Government of
	India notification of identification of posts for Group A and Group
	B posts identified for persons with disabilities and the same
	would be identified and reserved for persons with disabilities by
	the State Government of Karnataka.
2016	Rights of Persons with Disabilities Act, 2016 was passed which provides
	for reservation of4% of posts for persons with disabilities. Out of this 1 %
	has to be reserved for persons with blindness and low vision, 1% for



	hearing impairment, 1% for locomotor disability and 1% for multiple
	disabilities.
25.9.2020	The Respondents No.2 and 3 have provided for reservation of
	4% posts under Group A and B for persons with disabilities. Out
2	of these 4% of posts, the roster points given for persons with
	blindness and low vision is the 4 th roster point, 24 th point for
	locomotor disability, 44 th point for hearing impairment and 84 th
	point for multiple disabilities.
4.01.2021	The Central Government vide its Notification dated 4.1.2021 has
	identified the Group A post of a Civil Judge as being suitable for
	persons with blindness and low vision. This list of identified posts
	states that the duties of a Civil Judge / Magistrate in the
	subordinate judiciary are dealing with civil and criminal cases,
	recording evidence and pass necessary orders and judgements.
	This post has been identified as being suitable for persons with
	blindness and low vision along with persons with orthopedic or
	locomotor disabilities.
11.02.2021	The eligibility of persons with visual impairment to be appointed
	as judges has even been upheld by the Hon'ble Supreme Court
	in its recent judgement in Vikash Kumar v. UPSC & Others,
	2021 SCCOnline SC 84, In this judgement, the Hon'ble
	Supreme Court set aside the application of a prior judgement of
	a 2-judge bench of the Supreme Court in <i>V. Surendra Mohan</i>
	v. State of Tamil Nadu and Others, (2019) 4 SCC 237, which
	upheld the Tamil Nadu regulations which required that for the
	post of a civil judge a person could not have more than 50%



	visual or hearing impairment. The Supreme Court held that the	
	said judgement would not be binding as a precedent.	
26.03.2021	The Respondent No.1 has recently issued a notification dated	
	26.3.2021, calling for applicants to apply through direct	
	recruitment to fill up 94 posts of civil judges in Karnataka. The	
	said Notification has announced a total of 94 posts, out of which	
	74 posts are current posts and 20 posts are backlog vacancies	
	to be filled up. The details of the said Notification are as follows:	
	i. Upper age limit is 35 years with relaxation upto 38 years	
	given to SC/ST and ex-servicemen. No relaxation in upper	
	age limit is provided to persons with disabilities.	
	ii. It states that only 1% reservation hasp been provided for	
	Orthopedic disabled persons (persons having disability with	
	one arm (OA/One leg (OL / Both Legs (BL) subject to	
	prescribed qualifications.	
	iii. Further, it only reserves 3 posts out of the 20 backlog posts	
	for persons with disabilities, and in the new recruitment of	
	74 posts, not a single post has been reserved for persons	
	with disabilities.	
	Aggrieved by this Notification which does not provide for any	
	reservations for persons with blindness or low vision for the post	
	of a Civil judge, the Petitioner has filed this petition.	

PLACE: Bangalore

DATE:

Counsel for Petitioner



IN THE HIGH COURT OF KARNATAKA AT BANGALORE

(ORIGINAL JURISDICTION)

W. P NO...../2021 (PIL)

BETWEEN:

National Federation of the Blind,
Having its registered office at
Plot P.21, Sector 6,
M.B. Road, Pushpavihar, New Delhi - 110017
Having its Karnataka Branch Office at:
S-372, Bharat Nagar
2nd Phase Near Karnataka Bank
Magadi Main Road,
Bangalore- 560091
Represented by its General Secretary,
Mr. Gautam Prakash Agarwal

.....PETITIONER

AND

- The Registrar General and Secretary Civil Judges Recruitment Committee High Court of Karnataka Bangalore 560 001
- State Government of Karnataka
 Department for the Empowerment
 of the Differently Abled and Senior Citizens
 Dr. Ambedkar Veedhi
 Bangalore 560 001



Represented by its Principal Secretary

3. The Department of Personnel and Administrative Reforms Government of Karnataka M.S.Building, Near K.R.Circle Dr. Ambedkar Veedhi Bangalore-560 001 Represented by its Principal SecretaryRESPONDENTS

MEMORANDUM OF WRIT PETITION UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA

The Petitioner most respectfully submits as follows:

1. This petition is filed as a public interest litigation under Article 226 of the Constitution by the Petitioner Association on behalf of all the visually impaired persons in the State of Karnataka to protect their rights for equal opportunity in public employment and to ensure effective implementation of their employment guarantees by the State Government of Karnataka under the Rights of Persons with Disabilities Act 2016 seeking reservation in the posts of Civil Judge. In the recent impugned Notification dated 26.3.2021 issued by the Respondents, there are no posts reserved for persons with blindness and low vision and only posts reserved for persons with locomotor disability. Further there are reservations only in the 20 backlog vacancies and no



posts reserved in the 74 current vacancies. The requirements of Section 34 of the RPD Act which mandates that 4% of posts must be reserved for persons with disabilities has not been complied with. The posts of Civil Judges in the Subordinate Judiciary have been identified as being suitable for persons with blindness and low vision by the Central government. Further, as held by the Hon'ble Supreme Court in Vikash Kumar v. UPSC & Others, 2021 SCCOnline SC 84, the Hon'ble Supreme Court held that the judgement rendered in V Surendra Mohan v. State of Tamil Nadu (2019) 4 SCC 237, where the requirements for a Civil Judge should not be more than 50% visual or hearing impairment, would not be binding. The court held, "In light of the fact that the view of this court in Mohan was rendered in a case under the 1995 Act which has now been replaced by the RPD Act 2016 and in light of the absence of a reasonable accommodation analysis by this Court, the Mohan judgment stands on a legally vulnerable footing. It would not be a binding precedent, after enforcement of the RPD Act 2016." Despite this judgement, in the present case, there are no reservations for persons with blindness or hearing impairment for the post of civil judge. Aggrieved by this arbitrariness and discrimination, the Petitioner Association has filed this petition in public interest.



ARRAY OF PARTIES:

- 2. The Petitioner is an apolitical federation of visually impaired and low vision people formed in 1970 with the philosophy of "Let the Blind Lead the Blind". The Petitioner Federation strives for equality of opportunity for the Blind in the field of Education, Training and Employment etc. The Federation is serving the blind community through its various welfare programmes in the state. The Petitioner Federation presently has around 900 members all over the State. The Petitioner is represented by its President.
 - The Respondent No.1 is the Committee under this Hon'ble Court making recruitment of civil judges.
 - 4. The Respondent No. 2 is department of the State Government of Karnataka, which deals with the welfare of persons with disabilities and has the duty and responsibility to enforce laws, policy and programs for the benefit of the disabled.
 - 5. The Respondent No. 3 is the Department of Personnel and Administrative Reforms whose function is to formulate personnel policies on matters relating to recruitment, promotion and conditions of service, reservation of SC/ST and other backward



classes in the civil services and conducting research in personnel administration and cadre management among other functions.

BRIEF FACTS:

6. The Rights of Persons with Disabilities Act 2016 ("RPD Act") came into force in 2017. One of the most important chapters in the RPD Act is Chapter VI which relates to equal opportunities in employment. Section 33 provides for identification of jobs for persons with disabilities and Section 34 mandates that not less than 4% of jobs shall be reserved for persons with disabilities by the government out of which 1% each shall be reserved for persons with blindness and low vision, 1% for persons with hearing impairment, 1% for person with locomotor disability and the remaining 1% for persons with other benchmark disabilities. Sections 33 and 34 state as follows:

33. Identification of posts for reservation.—The appropriate Government shall—

(i) identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34;

(ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and

(iii) undertake periodic review of the identified posts at an interval not exceeding three years.

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 clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (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

dvstrophy;

(d) autism, intellectual disability, specific learning disability and mental illness; (e) multiple disabilities from amongst persons under clauses (a) to (d) including deafblindness 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 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:

nature of vacancies Provided that if the 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.

7. It is submitted that the post of a Civil judge is a Group A post. The Respondent State Government, vide Notification dated 7.9.2012 declared that the State Government would mutatis mutandis adopt the Government of India notification of identification of posts for Group A and Group B posts identified for persons with disabilities and the same would be identified and reserved for persons with disabilities by the State Government of Karnataka.

(A copy of the Notification dated 7.9.2012 is annexed herein and is marked as $\underline{\mathbf{ANNEXURE}} - \underline{\mathbf{A}}$)

8. Under the RPD Act, the Respondents No.2 and 3 have reserved 4% posts under Group A and B for persons with disabilities. Out of these 4% of posts, the roster points given for persons with blindness and low vision is the 4th roster point, 24th point for locomotor disability, 44th point for hearing impairment and 84th point for multiple disabilities.

(A copy of the notification dated 25.9.2020 is annexed herein and is marked as $\underbrace{\textbf{ANNEXURE} - \textbf{B}}$)

It is submitted that presently the Central Government, after setting up an Expert Committee for identifying posts, has come

(13)

up with a list of posts reserved for the persons with disabilities which has been reviewing all identified posts periodically. It is submitted that the Central Government vide its Notification dated 4.1.2021 has identified the Group A post of a Civil Judge as being suitable for persons with blindness and low vision. This list of identified posts states that the duties of a Civil Judge / Magistrate in the subordinate judiciary are dealing with civil and criminal cases, recording evidence and pass necessary orders and judgements. This post has been identified as being suitable for persons with blindness and low vision along with persons with orthopedic or locomotor disabilities.

(A copy of the notification dated 4.1.2021 with the relevant extract of Group A posts is annexed herein and is marked as ANNEXURE - C)

- 10. In this background, the Respondent No.1 has recently issued a notification dated 26.3.2021, calling for applicants to apply through direct recruitment to fill up 94 posts of civil judges in Karnataka. The said Notification has announced a total of 94 posts, out of which 74 posts are current posts and 20 posts are backlog vacancies to be filled up. The details of the said Notification are as follows:
 - Upper age limit is 35 years with relaxation upto 38 years given to SC/ST and ex-servicemen. No

relaxation in upper age limit is provided to persons with disabilities.

- ii. It states that only 1% reservation has been provided for Orthopedic disabled persons (persons having disability with one arm (OA/One leg (OL / Both Legs (BL) subject to prescribed qualifications.
- iii. Further, it only reserves 3 posts out of the 20 backlog posts for persons with disabilities, and in the new recruitment of 74 posts, not a single post has been reserved for persons with disabilities.

(A copy of the Notification bearing No. HCRB/CJR 1/2021 dated 26.3.3021 is annexed herein and is marked as **ANNEXURE - D**)

only persons with orthopedic disability and not for persons with blindness and low vision is completely arbitrary and in violation of the provisions of the RPD Act. The eligibility of persons with visual impairment to be appointed as judges has even been upheld by the Hon'ble Supreme Court in its recent judgement in Vikash Kumar v. UPSC & Others, 2021 SCCOnline SC 84, In this judgement, the Hon'ble Supreme Court set aside the application of a prior judgement of a 2-judge bench of the Supreme Court in V. Surendra Mohan v. State of Tamil Nadu and Others, (2019) 4 SCC 237, which upheld the Tamil Nadu



regulations which required that for the post of a civil judge a person could not have more than 50% visual or hearing impairment. The Supreme Court held that the said judgement would not be binding as a precedent.

- identified by the Central government as being capable of being carried out by persons with blindness and low vision. Keeping in mind the reasonable accommodation and advancement in technology with adequate software and technology, all materials and records can easily be accessed by persons with blindness and low vision and they can easily carry out their duties as civil judges to record evidence, adjudicate the cases and pass judgements and orders. There is thus no reason why the impugned notification calling to fill up posts for civil judges in Karnataka does not provide reservation for persons with blindness and low vision.
 - 13. It is submitted that both in India and abroad, the judiciary has appointed judges having complete or partial visual impairment and the same has not hindered the delivery of justice in any manner. There are several real examples of judges at all levels of the judiciary in the UK, US, South Africa, Pakistan and India, who are completely blind as well. Being completely blind,



or with low vision, they have been fully able to carry out their judicial duties. The following are some examples:

- (i) Sir John Wall: In 1990 Sir John Wall, one of England's first blind judges was appointed to England's High Court of Justice, the highest civil court in England. He retired in 2002.
- (ii) Judge John Laferty, who is blind, was appointed as a Judge in Snaresbrook Crown Court in 2007 and currently serves on the bench.
- appointments in the US. He was one of the earliest appointments in the US. He was completely blind, and was appointed to sit on the Fourth Circuit in Duval County, Florida in 1972. Judge Laferty has sat on cases which included evidence in the form of video footage and tried dozens of cases with visual evidence. He has written of his advantages of being a blind judge and being able to avoid being distracted by appearances or attempts to influence or impress him.
 - (iv) Judge Nicholas T. Pomara: He was appointed as Associate Circuit Judge on Cook County in Illinois, US in 1976. He served on the bench for thirty four years and even tried murder trials with video taped evidence.
 - (v) Judge Tony Cothren: He was appointed to the tenth Circuit in Jefferson County, Alabama in 1996.

- (vi) Judge Peter J.O'Donoghue: he was appointed to the Civil Court of the City of New York in 1996 and in 2002 he was promoted to the New York State Supreme Court.
- (vii) Judge Richard B. Tietelman: He was appointed to sit on the Supreme Court of Missouri from 2002 until 2016, after serving as a judge in the lower court from 1998.
- (viii) Judge David Tatel: In 1994 he was appointed to the US Court of Appeals for the District of Columbia Circuit. He is completely blind.
- (ix) Judge Richard C. Casey: He is also blind. He was appointed to the Federal Court for the Southern District of New York in 1997.
- (x) Judge Craig D. Alston: He was a District Judge, at Bay County, Michigan, USA, and is legally blind. Not only did he carry out his judicial duties, he also took an interest in court administration. He redesigned the financial portion of the District Court's case management system. He was also a faculty member at the Michigan Judicial Institute.
- Justice Zakeria Mohammad Yacoob (South Africa) –

 Justice Yacoob who is completely blind, was appointed to
 the Constitutional Court of South Africa, its apex court, and
 served successfully from 1998-2013. Justice Yacoob was
 assisted by a full-time reader and had assistive devices
 including a braille printer and a talking computer.



- Nadu State Government has in fact already appointed a completely blind judicial officer, Justice Chakkaravarthy in 2009 as a District Munsif in Coimbatore district. Justice Chakkaravarthy did not require any special arrangements during his judicial training and induction programme and he carries out his judicial duties completely, including listening to cross examinations and dictating judgements. He is currently serving as a District Munsif.
 - (xiii) Justice Brahmananda Sharma (Rajasthan) In 2016, Justice Sharma, who is completely blind, was appointed to the post of Civil Judge and Judicial Magistrate in Ajmer district and is serving as a Judge presently.

(A copy of the article titled "Interview with Justice Zak Mohammad Yacoob" in the IDIA Law blog dated 22.07.2016 is annexed herewith and marked as **ANNEXURE - E**)

(A copy of the news article titled "TN gets its first blind judicial officer" in Times of India dated 2.06.2009 is annexed herewith and marked as **ANNEXURE - F**)

(A copy of the news article titled "Meet the first visually impaired judge of Rajasthan" in Times of India dated 15.04.2018 is annexed herewith and marked as **ANNEXURE - G**)



- 14. It is submitted that persons who have low vision and with blindness can fully carry out their judicial duties if provided reasonable accommodation as required under the law. Some of the examples in which accommodation is currently being carried out for judges who are blind is as follows:
 - (i) Talking software on laptops and other gadgets
 - (ii) The petitions, applications, written statements, replications/rejoinders, affidavits and other documents filed in e-format so that they can be read on the computer with the speaking software.
 - (iii) All evidential documents/ photocopies, can be submitted in typed in double spacing and e-format. This is already being done in High Courts and Supreme Court.
 - (iv) All documents in regional languages can also be either translated in English or Hindi and placed before the judge in print and E-format - as is done in High Courts already.
 - (v) Assistance provided to judges for other kinds of evidence materials and visual evidence.
 - (vi) Case laws, digests, AIR etc. are now available in CDs and can be made available to the judges.
 - 15. Further, the reservation provided in the impugned Notification only provides for reservation of 1% posts in the 20 backlog posts. There is no reservation provided for persons with



disabilities for any category of disabilities in the 74 current posts to be filled up. If 4% of posts are to be reserved from the current 74 posts, then it would amount to atleast 3 posts being reserved out of the said 74 posts in addition to the posts reserved in the 20 backlog vacancies. This has not been done.

16. Thus, aggrieved by the action of the Respondents in not identifying the post of civil judges for persons with blindness and low vision and not providing adequate reservation, the Petitioner has filed this petition, having no alternative and equally efficacious remedy. The Petitioner has not filed any other petition before this Hon'ble Court or any other court or forum on a similar cause of action.

GROUNDS:

17. **THAT** the impugned Notification calling for the filling up of 94 posts of civil judges is in complete violation of the provisions of the RPD Act which mandates that 4% of posts should be reserved for persons with benchmark disabilities, out of which 1% should be for persons with blindness and low vision, and hence deserves the intervention of this Hon'ble Court.



- THAT the action of the Respondent No.1 in reserving only 18. 1% of posts for civil judge only for orthopedic disability and not for persons with Blindness and low vision when the same post has been identified as being suitable for them by the Central arbitrary Government Expert Committee clearly is unreasonable. This identification of posts by the Expert Committee of the Central Government shows that all the requirements of the duties of a Civil judge have been taken into consideration and after keeping in mind all the reasonable accommodation measures, it has been scientifically ascertained that persons with blindness and low vision can carry out these duties and hence this post has been identified for them. Despite such identification by the central government, and the clear directions in the Notification dated 7.9.2012 issued by the Respondents that it will follow mutatis mutandis all the identification and reservation of posts as done by the central government, the non-inclusion and non-reservation of these posts of civil judge for visually impaired eligible candidates is in in clear violation of Section 33 and 34 of the RPD Act and deserves the intervention of this Hon'ble Court.
 - 19. THAT the Respondents have failed to recognize that with the support of the new technology, persons with blindness and low vision can also perform various tasks on an equal basis with



others. Under Section 20 of the RPD Act it mandates that No government establishment shall discriminate against persons with disabilities in any matter relating to employment and government also provides every that (2)20 Section establishment shall provide reasonable accommodation to employees with disabilities. Hence with the provision of reasonable accommodation as mandated under the law, the nonreservation of posts of civil judges for persons with blindness and low vision is in violation of the provisions of the RPD Act and amounts to discrimination and deserves the intervention of this Hon'ble Court.

- 20. THAT the reserving of only 1% of posts only in the backlog vacancies of 20 posts and not reserving any posts in the current 74 vacancies of civil judges, and not reserving 4% of all the vacancies amounts to a clear violation of the provision of Section 34 of the RPD Act.
- India v. National Federation of the Blind (2013) 10 SCC 772, which was a judgement rendered in respect of the previous Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1996 the Hon'ble Court held that "computation of reservation for persons with disabilities has to be computed in case of Group A, B, C and D posts in an



number of vacancies in the cadre strength" which is the intention of the legislature." In the instant case, the reservation of 4% which is provided under the RPD Act also has to be computed and provided based on the total number of vacancies in the cadre strength, which has not been done in the instant case and only 1% reservation is provided in the backlog vacancies instead of 4% to be reserved for persons with disabilities based on the total vacancies and hence the impugned Notification deserves to be set aside.

appointed to the post of civil judges, the Hon'ble Supreme Court

Vikash Kumar v. UPSC & Others, 2021 SCCOnline SC 84,
held that the 2-judge Bench decision of the Supreme Court in V

Surendra Mohan v. State of Tamil Nadu (2019) 4 SCC 237,
would not be binding. At is the Surendra Mohan case was the
decision of the Tamil Nadu Public Service Commission to impose
a ceiling of 40-50% visual/hearing impairment to be eligible to
be appointed as a Civil Judge (Junior Division) and persons
whose visual/hearing impairment exceeded 50% was disqualified
from being eligible for the said post. A two judge Bench of the
Hon'ble Supreme Court held that a judicial officer in a State has



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. In Vikash Kumar, a 3-judge Bench held that the Court made no reference to whether the appellant would have been able to discharge the duties of a Civil Judge (Junior Division), after being provided the reasonable accommodations necessitated by his disability. It held further, "

"As we have noted previously, the cornerstone of the reasonable accommodation principle is making adjustments that enable a disabled person to effectively counter the barriers posed by their disability. Conspicuous by its absence is any reasonable accommodation analysis whatsoever by this Court in Mohan. Such an analysis would have required a consideration of the specific accommodations needed, the cost of providing them, reference to the efficacy with which other judges with more than 40-50% visual/hearing impairment in India and abroad can discharge judicial duties after being provided the necessary accommodations, amongst other factors. In holding that the ceiling was reasonable on the application of the principle of reasonable accommodation, the ratio as expounded fails as "distinct exhortatory dimension that must always be kept in mind while determining whether an adjustment to assist a disabled person to overcome the disadvantage that she or he has in comparison to an able-bodied person is reasonable." In light of the fact that the view of this court in Mohan was rendered in a case under the 1995 Act which has now been replaced by the RPD Act 2016 and in light of the absence of a reasonable accommodation analysis by this Court, the Mohan judgment stands on a legally vulnerable footing. It would not be a binding precedent, after enforcement of the RPD Act 2016."

Hence, with this judgement it is clear that even persons having more than 50% visual impairment and even with complete



blindness would be eligible to be appointed to the post of a Civil Judge, and would be able to discharge their duties, with reasonable accommodation being provided to them.

THAT by not reserving any posts for persons with 23. blindness and low vision and only reserving 1% of posts for persons with orthopaedic / locomotor disability, the impugned Notification ignores that blind / low vision persons can carry out the duties of a Civil Judge. The impugned Notification fails to take into account that what is required of a civil judge is to judicially hear cases and write judgements. For doing the same one does not need to necessarily have the physical faculties of hearing, sight and speech. A person can "see" and ascertain the demeanour of a witness even without sight and can read documents with the help of software and other appliances even without physical sight or vision. A person can listen to a witness and hear arguments of counsel even if one is visually impaired. There are sitting judges in India who are completely blind. There are sitting judges at all levels of the judiciary the world over with low vision and blindness and they have been able to carry out their judicial duties of reading, writing, seeing and hearing without any compromise on their work. Even visual



evidence, documents, video evidence has been presented and examined and analysed by judges having visual impairment. The requirements of the job of a civil judge are that a person should be able to understand the facts and submissions, discern, evaluate the evidence and make a decision for which a keen judicial mind is needed and not the physical faculties of sight. Therefore, the impugned Notification which excludes persons with blindness and low vision and does not provide any reservation for them, is illegal and arbitrary and in violation of Article 14 of the constitution and deserves to be set aside to that extent.

and low vision and not reserving posts for persons with blindness and low vision within the Civil Judges posts, amounts to a denial of equal opportunity to them and a violation of Article 16 (1) of the Constitution of India provides equality of opportunity in Public employment to all the citizens of India and prohibits any kind of discrimination in public employment. As held by the Hon'ble Supreme Court in *Rajeev Kumar Gupta v. Union of India*, (2016) 6 SCALE 417 that denial of reservation for persons with disability would amount to a violation of Article 16 (1) of the constitution. It further held that the objective behind



the 1995 Act was to integrate PWD into the society and to ensure their economic progress and to turn persons with disabilities into 'agents of their own destiny'. The court held that it is disheartening to note that (admittedly) low numbers of (much below three per cent) are in government employment long years after the 1995 Act. Barriers to their entry must, therefore, be scrutinized by rigorous standards within the legal framework of the 1995 Act. It held that Once a post is identified, it means that a person with disability is fully capable of discharging the functions associated with the identified post. Once found to be so capable, reservation under Section 33 to an extent of not less than three per cent must follow. Once the post is identified, it must be reserved for PWD irrespective of the mode of recruitment adopted by the State for filling up of the said post. This is not done in the instant case and hence deserves the intervention of this Hon'ble Court.

persons with visual impairment despite the central government identifying the same as being suitable, and not providing reservation, the impugned Notification discriminates against persons with visual impairment by making stereotypical assumptions as to what visually impaired persons are capable of. This is based on the assumption of the characteristics of



impairment and of an individual's ability without any consideration of what the person is actually capable of. When persons with visual impairment have been sitting judges in India and all over the world at various levels at the trial court and even upto the level of the constitutional courts, the denial of consideration of persons with visual impairment for the post of civil judges in Karnataka amounts to a denial of their rights to equal respect and dignity and their right to equality under Article 14 of the constitution and hence deserves the intervention of this Hon'ble Court.

SCC 721, the Hon'le Supreme Court relying on Article 16 held that it guarantees equal opportunity to all persons and that all applicants must be given an equal opportunity with others who qualify for the same post. The Court held that the only restriction on visually impaired persons from being appointed to posts in Government employment that can be spelled out from National Federation of Blind case is whether the post in respect whereof the petitioner sought consideration is liable to be considered as totally unsuitable for a visually handicapped person having regard to the nature of duties attached to the office/post. Therefore, keeping these guidelines in mind, blind and low vision persons cannot arbitrarily be excluded from being considered



and being provided reservation for the post of a Civil Judge which has been identified as being suitable of being carried out by them, and hence deserves the intervention of this Hon'ble Court.

THAT as held by the Hon'ble Supreme Court in Vikash 27. Kumar v. UPSC & Others, 2021 SCCOnline SC 84, the fundamental postulate upon which the RPD Act 2016 is based is the principle of equality and non-discrimination. Section 3 casts an affirmative obligation on the government to ensure that persons with disabilities enjoy (i) the right to equality; (ii) a life with dignity; and (iii) respect for their integrity equally PART G 31 with others. Section 3 is an affirmative declaration of the intent of the legislature that the fundamental postulate of equality and non-discrimination is made available to persons with disabilities without constraining it with the notion of a benchmark 3 is a statutory recognition of Section disability. constitutional rights embodied in Articles 14, 19 and 21 among other provisions of Part III of the Constitution. By recognizing a statutory right and entitlement on the part of persons who are disabled, Section 3 seeks to implement and facilitate the fulfillment of the constitutional rights of persons with disabilities. The impugned Notification by not providing for reservation for persons with blindness and low vision amounts to a violation of



the RPD Act and also Articles 14, 19 and 21 of the constitution of persons with disabilities.

- Kumar v. UPSC & Others, 2021 SCCOnline SC 84, the principle of reasonable accommodation acknowledges that if disability as a social construct has to be remedied, conditions have to be affirmatively created for facilitating the development of the disabled. Reasonable accommodation is founded in the norm of inclusion. Exclusion results in the negation of individual dignity and worth or they can choose the route of reasonable accommodation, where each individuals' dignity and worth is respected. Under this route, the "powerful and the majority adapt their own rules and practices, within the limits of reason and short of undue hardship, to permit realization of these ends."
 - Public Service Commission, held that in exercising its powers under Section 32 and 33 of the PWD Act, the Government could not expressly bring about an exclusion of physically handicapped persons from being considered for a post in public service, if otherwise they are not considered to be unsuitable for the post. The High Court agreed with such contention and held that a



disabled person cannot be put in a situation where he/she is disabled from competing with persons with no disability. The Court stated, "Do not treat the handicap as an albatross around his neck, so that he is not considered, even if he is otherwise suitable for the post." In light of these observations, it is imperative that the Respondent No.1 be directed to review and update the post of Civil Judge to ensure that persons with visual impairments are not excluded for being considered for the same and are entitled to reservation.

GROUNDS FOR INTERIM RELIEF

30. That the last date for the submission of applications for the post of civil judge is the 27th of April 2021, and is fast approaching. If the interim relief of atleast keeping the 4% of the posts amounting to 3 posts within the 74 posts of the current recruitment are not kept vacant, then they will be filled up. If this happens, then even if this Hon'ble Court finds that persons with blindness and low vision are to be provided reservation, the said posts would have been filled up and this petition would be rendered infructuous. Further, the required 4% of posts are not reserved in the 74 current vacancies and only reserved in the 20 backlog vacancies. Hence the interim relief of keeping the 4% posts vacant is crucial, to protect the rights of persons with disabilities to seek equal opportunity in this recruitment.



PRAYER

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

- A. Issue a writ or order setting aside the Notification issued by Respondent No.1, bearing No. HCRB/CJR 1/2021 dated 26.3.3021 produced herein as **ANNEXURE D** to the extent that it does not identify and reserve the posts of Civil Judge for persons with blindness and low vision;
- B. Issue a Writ of Mandamus directing the Respondents to issue a Corrigendum to the Notification issued by Respondent No.1, bearing No. HCRB/CJR 1/2021 dated 26.3.3021 and provide reservation in the post of Civil Judge for persons with blindness and low vision and extend the last date to enable them to submit applications;
 - C. Issue a Writ of Mandamus directing the Respondents to provide for 4% reservation in the current vacancies of 74 posts in the present recruitment of Civil Judges as notified in the Notification issued by Respondent No.1, bearing No. HCRB/CJR 1/2021 dated 26.3.3021; and

(39)

D. Grant any other relief, which this Hon'ble Court deems, fit under circumstances of the case in the interests of justice and equity.

INTERIM PRAYER

It is prayed that during the pendency of this petition, this Hon'ble Court may be pleased to not fill up 3 posts of Civil Judges (being the 4% of 74 posts) as announced under the impugned Notification issued by Respondent No.1, bearing No. HCRB/CJR 1/2021 dated 26.3.3021 produced herein as **ANNEXURE – D** and pass such further orders as this Hon'ble Court may deem fit in the interest of justice and equity.

Place: Bangalore

Date:

Counsel for the Petitioner

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