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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

(ORIGINAL JURISDICTION)

W.P. No. _____/2015

BETWEEN

M. Raghavendra

...PETITIONER

AND

Karnataka State Consumer Disputes Redressal Commission &Ors ...RESPONDENTS

SYNOPSIS

This Petition is filed by the Petitioner challenging the actions of the Respondents of not providing reservation for persons with disability as mandated under the Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Protection) Act, 1995 (hereinafter referred to as the "PWD Act"), while filling up vacancies to the posts of President and Members of various District Consumer Disputes Redressal Fora in Karnataka and therefore, rejecting the Petitioner's application to the post of a Member. The Respondent No.1's Notification dated March 12, 2015 calling for applications from candidates to fill 17 posts in various District Consumer Disputes Redressal Fora in Karnataka has no provision of reservation for persons with disability, despite the posts of District Judges and Magistrates being identified by the Central and State Government as suitable to be reserved for persons with visual impairment. Despite this, no reservation was made, and the Petitioner who is fully qualified and eligible for the post, was not selected after an interview. Such non-selection would not have happened if there was reservation made for persons with disability as mandated under Section 32 and 33 of the PWD Act and amounts to denying the Petitioner of equal opportunity in public employment and discrimination. Hence, this petition.

LIST OF DATES

Date	Particulars
7-9-2012	The State Government issued Notification No. DPAR 179 SRR 2012 adopting the List of identified posts for persons with disability, published by the Central Government for posts in Groups A and B and all subsequent lists of identified posts.
10-6-2013	The Respondent No.3 issued a Government Order bearing No. Jestha 20, Shaka Varsha 1935 No.823 directing that that while recruiting directly for the State Civil Services Group A and B posts, including the physically handicapped provided 3% equivalent reservation and for implementing the other equivalent reservation implementation, General merit, Scheduled caste, Scheduled Tribe and for each backward classes separately available in every one hundred one group, every 4, 44 and 84

	roster points must be reserved to the physically handicapped and specifically, the 4 th point must be reserved for persons with blindness or low vision.
29-7-2013	The Central Government issued Notification No.16-15/2010-DD-III publishing the Lists of identified posts to be reserved for disabled persons in Groups A, B, C and D. In the List of Group A posts, the post of Judges and Magistrates in the Lower Judiciary are identified as being capable of being performed by persons with visual impairment.
13-2-2015	The Hon'ble High Court of Karnataka passed an Order in State of Karnataka and Anr v. Basanavagouda Patil and Ors. (R.P.No.516/2014 in W.P.No. 5086/2012 and W.P.No. 23015/2014) directing the Respondent No.1 to issue the notifications calling for applications from eligible candidates to all vacant posts within a period of one month from the date of receipt of the certified copy of this Order.
12-3-2015	The Respondent No.1 issued a Notification inviting applications from candidates to fill up 17 posts (both on a permanent and temporary basis) in various District Consumer Disputes Redressal Fora in Karnataka through an interview.
19-3-2015	The Petitioner submitted his duly filled Application Form on March 19, 2015 before the mandated deadline of May 5, 2015. The Petitioner had applied for the post of a Member in Consumer Disputes Redressal Fora of 8 districts.
13-5-2015	The Respondent No.1 sent a letter to the Petitioner informing him about the interview that was scheduled on May 27, 2015.
27-5-2015	The Petitioner appeared for the interview with all the necessary documents on the aforementioned date.
27-6-2015	The Respondent No.1 issued a Notification declaring the interview results with the list of the 17 selected applicants and the Petitioner was not selected. No applicants with disability were selected, as there was no reservation made for such persons in the Notification dated March 12, 2015, which first announced the call for applications. This action of the Respondent No.1 has violated the Petitioner's right to equal opportunity of employment under the PWD Act. Hence, this petition.

Place: Bangalore

Date:

ADVOCATE FOR PETITIONER

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

(ORIGINAL JURISDICTION)

W. P. No. _____ / 2015

BETWEEN

M. Raghavendra

S/o Late Mr. Manjegowda

Door No. 1233, Vakkaligara Beedi Kote,

H.N. Pura Taluk, Hassan District,

Bangalore – 573211

...PETITIONER

AND

1. Karnataka State Consumer Disputes Redressal Commission
Basava Bhavan, High Grounds, Basaveswara Circle, Bangalore - 560001
Represented by its Registrar

2. State Government of Karnataka
Department of Food, Civil Supplies & Consumer Affairs
No. 8, Cunningham Road, Bangalore – 560052
Represented by its Principal Secretary

3. State Government of Karnataka
Department of Personnel and Administrative Reforms
1st Floor, 5th Stage M.S. Building Bangalore - 560001
Represented by its Principal Secretary

...RESPONDENTS

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

The Petitioner above-named most respectfully submits as follows:

1. This Petition is filed by the Petitioner challenging the actions of the Respondents of not providing reservation for persons with disability as mandated under the Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Protection) Act, 1995 (hereinafter referred to as the "PWD Act"), while filling up vacancies to the

posts of President and Members of various District Consumer Disputes Redressal Fora in Karnataka and therefore, rejecting the Petitioner's application to the post of a Member. The Respondent No.1's Notification dated March 12, 2015 calling for applications from candidates to fill 17 posts in various District Consumer Disputes Redressal Fora in Karnataka has no provision of reservation for persons with disability, despite the posts of District Judges and Magistrates being identified by the Central and State Government as suitable to be reserved for persons with visual impairment. Despite this, no reservation was made, and the Petitioner who is fully qualified and eligible for the post, was not selected after an interview. Such non-selection would not have happened if there was reservation made for persons with disability as mandated under Section 32 and 33 of the PWD Act and amounts to denying the Petitioner of equal opportunity in public employment and discrimination. Hence, this petition.

ARRAY OF PARTIES

2. The Petitioner is the s/o of Late Mr. Manjegowda, aged 36 years and is visually impaired with low vision. The Petitioner has a post-graduate degree of M.A. in Political Science from the Karnataka State Open University.
3. The Respondent No.1 is the Karnataka State Consumer Disputes Redressal Commission. Respondent No.1 is the nodal agency in charge of providing inexpensive, speedy and summary redressal of consumer disputes in the State of Karnataka. Further, the Respondent No.1 is in charge of administration of the District Consumer Disputes Fora under its jurisdiction. The Respondent No.1 is represented by the Registrar.
4. Respondent No.2 is the Department of Food, Civil Supplies & Consumer Affairs, Government of Karnataka. Respondent No.2 enforces the Essential Commodities Act, 1955 and laws relating to consumer affairs and protection. Respondent No.2 is represented by its Principal Secretary.



5. Respondent No.3 is the Department of Personnel and Administrative Reforms, Government of Karnataka. Respondent No.3 is the nodal agency in the State for administrative reforms as well as formulation of personnel policies on matters relating to recruitment, promotion, conditions of services and reservation of SC/ST and other backward classes in the Civil Services. Respondent No.3 is represented by its Principal Secretary.

BRIEF FACTS

6. The Petitioner is a person with disability, being visually impaired with low vision. The Petitioner has a post-graduate degree of an M.A. in Political Science from the Karnataka State Open University, Mysore. The Petitioner has worked in the past with various organisations, including with the Office of the Commissioner for Disabilities and other departments of the Government of Karnataka.

(A copy of the Petitioner's Disability Certificate is annexed herein and is marked as **ANNEXURE – A**)

(A copy of the Petitioner's M.A. Degree Certificate from the Karnataka State Open University is annexed herein and is marked as **ANNEXURE – B**)

7. It is submitted that the Respondent No.1 Commission issued a Notification dated March 12, 2015 inviting applications from candidates to fill up 17 posts (both on a permanent and temporary basis) in various District Consumer Disputes Redressal Forums in Karnataka through an interview. It is pertinent to note that the said Notification specified the required eligibility requirements which were as follows:

- (i) Age – minimum 35 years
- (ii) Education – Graduate from a Government recognised university
- (iii) Work experience – Minimum 10 years of work experience in various fields.

The Petitioner had all the above mentioned eligibility qualifications and was eligible to apply for these posts.

(A copy of the Notification dated March 12, 2015 issued by the Respondent No.1 is annexed herein and is marked as **ANNEXURE - C**)

8. The said Notification also described the procedure for submitting the Application Form and the fees that was required to be deposited by the applicants. However, it did not contain any provision that provided reservation for persons with disability within those 17 posts. As per the provisions of Section 33 of the PWD Act, the Respondents are required to reserve vacancies of not less than 3% for persons with disability out of which, 1% should be reserved for persons with blindness and low vision. Section 33 is produced in verbatim below:

“Section 33: Reservation of posts — 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) Hearing impairment;***
- (iii) Locomotor 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.”

9. The deadline for submission of duly filled Applications Forms was May 5, 2015. The Petitioner submitted his duly filled Application Form and other required documents on March 19, 2015 before the mandated deadline. The Petitioner had applied for the post of a Member in Consumer Disputes Redressal Fora of 8 districts.

(A copy of the Petitioner's Application Form dated March 19, 2015 is annexed herein and is marked as **ANNEXURE - D**)

10. Thereafter, the Respondent No.1 sent a letter dated May 13, 2015 to the Petitioner informing him about the interview that was scheduled on May 27, 2015. The Petitioner appeared for the interview with all the necessary documents on the aforementioned date. During the interview, the interview panel specifically asked the Petitioner as to how he would be able to carry out his duties as a Member if

selected, considering his visual impairment. The Petitioner replied in detail that he would be able to handle his duties effectively. He mentioned that suitable aids and appliances for reading could be made available to him. For dictating the orders, he could do so and if some assistance was provided, he could get the case documents read to him, and there was no difficulty for him to preside over the hearings of the District Forum. He clearly outlined how he would be fully able to carry out his duties if selected.

(A copy of the letter dated May 13, 2015 sent by Respondent No.1 is annexed herein and is marked as ANNEXURE - E)

11. However, the Petitioner was not selected and vide the Notification dated June 27, 2015, Respondent No.1 declared the interview results with the list of 17 selected applicants. It is pertinent to note that no applicants with disability were selected, as there was no reservation made for such persons in the Notification dated March 12, 2015, which first announced the call for applications.

(A copy of the Notification dated June 27, 2015 is annexed herein and is marked as ANNEXURE -F)

12. It is submitted that on August 2, 2012, this Hon'ble Court in ***National Federation of the Blind v. State of Karnataka (Writ Petition No. 17942/2010 (GM-RES))*** passed an interim order which directed the State Government to adopt the Central Government List of identified posts for persons with disability. Thereafter, the State Government issued Notification No. DPAR 179 SRR 2012 dated September 7, 2012, adopting the List of identified posts published by the Central Government for posts in Groups A and B and all subsequent lists of identified posts. The Central Government vide Notification No.16-15/2010-DD-III dated July 29, 2013, has identified the List of posts suitable to be performed by persons with disabilities which includes at Item No.466, the post of Judges and Magistrates in Lower Judiciaries dealing with Civil and Criminal cases by adopting established procedure both under Civil and Criminal Codes. These posts of judges have been identified as suitable of being performed by persons with blindness and low vision. Hence, it is submitted that persons with

visual impairment have been found capable and suitable for performing the duties that are required of a Judge in the Lower Judiciary.

13. Further, the Respondent No.3 had issued a Government Order bearing No. Jestha 20, Shaka Varsha 1935 No.823 dated June 10, 2013 which directed that while recruiting directly for the State Civil Services Group A and B posts, including the physically handicapped provided 3% equivalent reservation and for implementing the other equivalent reservation implementation, General merit, Scheduled caste, Scheduled Tribe and for each backward classes separately available in every one hundred one group, every 4, 44 and 84 roster points must be reserved to the physically handicapped and specifically, the 4th point must be reserved for persons with blindness or low vision. Hence, out of the 17 posts called for filling up by the Respondent No.1, every 4th post ought to have been reserved as per the mandate of this Government Order.

(A Copy of the Order Jestha 20, Shaka Varsha 1935 No.823 dated June 10, 2013 issued by Respondent No.3 is annexed herein and is marked as **ANNEXURE - G**)

14. Hence, the Respondents ought to have identified and reserved the 4th post in the 17 posts that were notified by the Respondent No.1, for persons with visual impairment as Members of the Consumer Disputes Redressal Fora also perform functions similar to that of Judges and Magistrates in the Lower Judiciary..

(A Copy of the Notification No. DPAR 179 SRR 2012 dated September 7, 2012 is annexed herein and is marked as **ANNEXURE - H**)

(A Copy of the Notification No.16-15/2010-DD-III dated July 29, 2013 is annexed herein and is marked as **ANNEXURE - J**)

15. While the Respondent No.1 has gone ahead and made the selection list of the 17 persons to be appointed for the posts of Presidents and Members, presently there are more than 50 vacancies in the various Consumer Forums across the State. As on May 31, 2015, the Vacancy List published in the website of the Respondent No.1 on June 22, 2015 states that there are 52 posts of President and Members vacant in

the various District Consumer Disputes Redressal Fora. Further, vide order dated February 13, 2015, this Hon'ble Court in *State of Karnataka and Anr v. Basanavagouda Patil and Ors. (R.P.No.516/2014 in W.P.No. 5086/2012 and W.P.No. 23015/2014)* directed that, "The State Commission shall issue the notifications calling for applications from eligible candidates to all vacant posts within a period of one month from the date of receipt of the certified copy of this order and also comply with Rule 2E of the Rules." Hence, in order to ensure that the Petitioner is not denied equal opportunity in employment and his rights under the PWD Act, either a supernumerary post may be created to consider his appointment, or adequate reservation for persons with visual impairment can be made by the Respondents in the above-mentioned vacant posts of Members and he be considered for the same.

(A Copy of the Vacancy List as on May 31, 2015 published by the Respondent No.1 on June 22, 2015 is annexed herein and is marked as **ANNEXURE - K**)

(A Copy of this Hon'ble Court's order dated February 13, 2015 in *State of Karnataka and Anr v. Basanavagouda Patil and Ors.* is annexed herein and is marked as **ANNEXURE - L**)

16. Thus, being aggrieved by the Respondent No.1's actions and having no other alternative and equally efficacious remedy, the Petitioner has filed this petition before this Hon'ble High Court. The Petitioner has not filed any other petition on the same cause of action before this Court or any other Court. This petition is filed on the following grounds, among others:

GROUND

17. **THAT** the actions of Respondent No.1 in not reserving posts for persons with disability and specifically for persons with visual impairment within the 17 posts called for in the Notification dated March 12, 2015, is in direct contravention of Section 33 of the PWD Act and denies equal opportunity of employment to the Petitioner as a visually impaired person who is eligible for reservation under the PWD Act.

18. THAT when the Central Government vide Notification No.16-15/2010-DD-III dated July 29, 2013 has identified the posts of District Judges and Magistrates of the Lower Judiciary as being capable of being carried out by persons with blindness and low vision and this list has been adopted by the Respondent State Government, it is clear that posts of a Member / President in the Consumer Disputes Redressal Fora can also be performed and carried out effectively by persons with disability especially persons with visual impairment, and hence there ought to have been a reservation of 1% of the said posts under section 33 of the PWD Act, and the failure on part of the Respondent No.1 to follow the mandate of the PWD Act and the List of identified posts issued under the PWD Act, is illegal and violates the Petitioner's rights under section 33 of the PWD Act.
19. THAT the Supreme Court of India has clearly held that it is not necessary for posts to be identified in order to provide reservation. In **Government of India v. Ravi Prakash Gupta ((2010) 7 SCC 626)**, while observing on the identification of posts under Section 32 vis-a-vis reservation of vacancies for persons with disabilities under Section 33 of the PWD Act, the Supreme Court held: *"It is only logical that, as provided in Section 32 of the Aforesaid Act, posts have to be identified for reservation for the purposes of Section 33, but such identification was meant to be simultaneously undertaken with the coming into operation of the Act, to give effect to the provisions of Section 33. The legislature never intended the provisions of Section 32 of the Act to be used as a tool to deny the benefits of Section 33 to these categories of disabled persons indicated therein. Such a submission strikes at the foundation of the provisions relating to the duty cast upon the appropriate Government to make appointments in every establishment...reservation under Section 33 of the Act is not dependant 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."* Therefore, in

the present case, merely because the posts have not be specifically identified, it cannot exempt the Respondents from their duty to reserve such posts for the visually impaired persons with low vision when such persons are capable of effectively performing the duties required by such posts.

20. **THAT** the Supreme Court in *Union of India and Anr v. National Federation of the Blind and Ors ((2013) 10 SCC 772)* held: "Apart from the reasoning of this Court in *Ravi Prakash Gupta (supra)*, even a reading of section 33, at the outset, establishes vividly the intention of the legislature viz., reservation of 3% for differently abled persons should have to be computed on the basis of total vacancies in the strength of a cadre and not just on the basis of the vacancies available in the identified posts. There is no ambiguity in the language of Section 33 and from the construction of the said statutory provision only one meaning is possible."
21. **THAT** there is no reason why there should not be reservation for the Petitioner for these posts, despite the fact that the Petitioner is fully capable to perform all the tasks that would form part of the job. It is submitted that non-reservation of posts for persons with visual impairment is unreasonable and is therefore, a violation of Article 14 of the Constitution. In *Amita v. Union Of India & Anr ((2005) 13 SCC 721)*, the Supreme Court held: "Article 14 of the Constitution of India guarantees to every citizen of India the right to equality before the law or the equal protection of law....Article 14 of the Constitution of India is both negative and positive right. Negative in the sense that no one can be discriminated against anybody and everyone should be treated as equals. The latter is the core and essence of right to equality and state has obligation to take necessary steps so that every individual is given equal respect and concern which he is entitled as a human being. Therefore, Art.14 contemplates reasonableness in the state action, the absence of which would entail the violation of Art.14 of the Constitution."

22. **THAT** the failure of Respondent No.1 in not reserving 1% out of the 17 posts for visually impaired candidates as per Section 33 of the PWD Act, despite the fact that the Petitioner would be fully capable of meeting the requirements of the post, amounts to denying the Petitioner's right to equal opportunity in public employment under the PWD Act.
23. **THAT** the Respondent No.1's failure to reserve 1% of the posts for visually impaired candidates including the Petitioner as per Section 33 of the PWD Act amounts to denying the Petitioner equal opportunity in public employment as guaranteed under Article 16. In *Amita(supra)*, the Supreme Court held: "*At the risk of repetition, it may be reiterated that writ Petitioner fulfilled all the conditions mentioned in the advertisement for the post. The primary object which is guaranteed by Art. 16(1) is equality of opportunity and that was violated by the Board by debarring the writ Petitioner from appearing in the examination on the mere fact of disability which was not mentioned in the advertisement and which according to the writ Petitioner is not an impediment for the post. We are therefore of the view that the action of the Board was arbitrary, baseless and was in violation of the right of the writ Petitioner under Art. 16(1) of the Constitution.*"
24. **THAT** the exclusion of the Petitioner who is visually impaired, by not providing reservation is arbitrary and unreasonable as there is no legitimate reason for not providing reservation, despite the Petitioner being fully capable to do all the tasks that would form part of the job. This failure on part of the Respondent No.1 to recognise the capabilities of visually disabled and qualified persons violates the right to equality and right to life of the Petitioner guaranteed under Article 14 and Article 21 of the Constitution.
25. **THAT** as the Petitioner herein has been deprived of his legitimate right for selection and appointment to the post of Member in the District Consumer Redressal Fora in Karnataka because of the completion of selection process to the 17 posts called for, the Respondent No.1 must create a supernumerary post

of a Member in accordance with the quota of reservation mentioned in Section 33 for the appointment of the Petitioner. In *Perambaduru Murali Krishna and Ors v. State of Andhra Pradesh and Ors (2003 (1) ALD 597)*, the Hon'ble High Court of Andhra Pradesh had held that since the Petitioner has been deprived of his legitimate right for such selection and appointment, the respondents must create a supernumerary post and accordingly appoint the Petitioner as a Secondary Grade Teacher. Therefore, as the Petitioner herein has been deprived of his legitimate right for selection and appointment to the post of a Member in the District Consumer Redressal Fora in Karnataka because of the completion of selection process to the 17 posts called for, the Respondent No.1 must create a supernumerary post of a Member in accordance with the quota of reservation mentioned in Section 33 for the appointment of the Petitioner.

PRAYER

WHEREFORE in light of the above facts and circumstances, it is prayed that this Hon'ble Court be pleased to:

- A. Issue a writ of Mandamus or any other appropriate Writ directing the Respondents to provide reservation of 3% for persons with disability out of which 1% should be reserved for persons with blindness and low vision for the posts of President and Members in various District Consumer Redressal Fora in Karnataka and create a supernumerary post for a person with visual impairment;
- B. Direct the Respondent No.1. to consider the Petitioner in the reserved posts for persons with visual impairment for the post of a Member of the District Consumer Disputes Redressal Fora to which he had applied and appoint him; and

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C. Pass any order as this Hon'ble Court deems fit in the facts and circumstances of this case in the interest of justice and equity.

Place: Bangalore

Date:

ADVOCATE FOR PETITIONER

JAYNA KOTHARI

Address for Service:

D6, Dona Cynthia

35 Primrose Road

Bangalore-560025

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

W. P. No. _____ / 2015

BETWEEN:

M. Raghavendra

...PETITIONER

AND

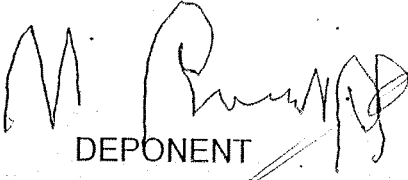
Karnataka State Consumer Disputes Redressal Commission & Ors ...RESPONDENTS

VERIFYING AFFIDAVIT

I, M.Raghavendra, son of Late Manjegowda, aged about 36 years, residing at Door No.1233; Vakkaligara Beedi Kote, H.N.Pura Taluk, Hassan District, Bangalore – 573211, do hereby solemnly affirm and state as follows:

1. I am the Petitioner in the above petition and I am well aware of the facts and circumstances of the case.
2. I state that the contents of the submissions made in Paras 1 to ___ are true and correct to the best of my knowledge, belief, and information.
3. I state that Annexures A to _____ are true copies of the originals.

Identified by me


DEPONENT

ADVOCATE

Place: Bangalore

Date: