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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

(ORIGINAL JURISDICTION)

W.P. NO. _____/2019

BETWEEN

Aravind Sajjanar

...PETITIONER

AND

Karnataka Power Transmission Corporation Limited & Ors.

...RESPONDENTS

SYNOPSIS

The present petition has been brought by the Petitioner who is a person with disability, under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and the Rights of Persons with Disabilities Act, 2016, challenging the recruitment process of the Respondent No. 1 for the post of Assistant Engineer (Civil). Vide Notification dated 08.09.2016, the Respondent No. 1 called for applications for the post of Assistant Engineer (Civil). Out of eight posts, one post was reserved for persons with locomotor disability (OA/OL) and hearing impairment (HH) under the BESCOM Zone. The Petitioner, who is a person with scoliosis, despite scoring higher marks, was denied the post and the same was instead offered to a person with hearing impairment who had secured a lower score than the Petitioner. The Petitioner filed a complaint before Respondent No. 3 who passed an order directing the Respondent No. 1 to appoint the Petitioner to the post of Assistant Engineer (Civil) as there was no reason to exclude persons with scoliosis. The Respondent No. 1 took no action despite the order. Aggrieved by the actions of the Respondents, the Petitioner has filed this petition.



LIST OF DATES

<u>DATE</u>	<u>PARTICULARS</u>
15.06.2015	Respondent No. 2 issued Notification No. WCD 13 PHP 2015 dated 15.06.2015 identifying Group A and B posts under the Energy Department which may be filled by persons with disabilities. In particular, the post of Assistant Engineer (Civil) was identified as a Group B post which could be filled by persons with locomotor disability (OA/OL) and hearing impairment.
08.09.2016	Respondent No. 1 issued a Notification No. KPTCL/B16/40360/2016-17 calling for applications for various posts including the post of Assistant Engineer (Civil) and reserved one post under the GM category for persons with disability. The said Notification also identified the post of Assistant Engineer (Civil) to be filled by persons with locomotor disability (OA/OL) and hearing impairment.
14.03.2017	<p>The Respondent No. 1 released the list of selected candidates for the post of Assistant Engineer (Civil) and the Petitioner's name did not appear on the said list. The Petitioner who is a person with scoliosis and therefore a person with disability under the RPD Act, had applied for the post of Assistant Engineer (Civil) under the GM category as he has all the necessary qualifications. He secured 19.25 marks in the online aptitude test, which was the highest among the candidates with disability who had applied for the post. However, he was not appointed to the post of Assistant Engineer (Civil) as he was not a person with locomotor disability (OA/OL) or hearing impairment.</p> <p>The Petitioner addressed a letter to the Respondent No. 3 informing of his non-selection under the locomotor disability category and requested that action be taken to direct the Respondent No. 1 to consider him for the said post.</p>

12.09.2018	Due to the failure of the Respondent No. 1 to appoint the Petitioner to the post of Assistant Engineer (Civil), the Petitioner filed a complaint before the Respondent No. 3 and the Respondent No. 3 passed an order directing the Respondent No. 1 to recruit the Petitioner to the post of Assistant Engineer (Civil). The Respondent No. 3 held that there was no reason to exclude persons with scoliosis from the list of persons with locomotor disabilities who can effectively fulfill the role of Assistant Engineer (Civil) in the Respondent No. 1.
05.11.2018	The Respondent No. 1 addressed a letter stating that the posts reserved for persons with disabilities has been done in accordance with the Notification dated 15.06.2015 and further that persons with hearing impairment should be given a preference in appointment as per the aforesaid Notification and the Notification dated 08.09.2016.
	Hence, aggrieved by the failure of the Respondent No. 1 to comply with the order of the Respondent No. 3 and appoint the Petitioner to the post of Assistant Engineer (Civil), the Petitioner has filed the present petition.

Place: Bangalore

Counsel for the Petitioners

Date:

ROHAN KOTHARI

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

(ORIGINAL JURISDICTION)

W.P. NO. _____/2019

BETWEEN

Aravind Sajjanar

S/o Murughendra Sajjanar

A-109, Deepicas Residency

Nagavarpalya, C.V Raman Nagara

Bengaluru – 560 093

...PETITIONER

AND

1. Karnataka Power Transmission Corporation Limited

Kaveri Bhavan, K.G Road

Bengaluru – 560 009

Represented by its Managing Director

2. State Government of Karnataka

Department of Women and Child Development and

Empowerment of Differently Abled and Senior Citizens

M.S. Building, Dr. B. R. Ambedkar Road,

Bengaluru – 560 001

Represented by its Principal Secretary

3. Office of the State Commissioner for Persons

with Disabilities

2nd Floor, Karnataka Slum Development Board

No. 55, Risaldar Street (Platform Road)

Sheshadripuram

Bengaluru - 560 020

4. Usha M.R.

Assistant engineer (Civil),
BESCOM O&M Division,
BB Road, Opposite Head Post Office,
Chikkaballapur – 562101

...RESPONDENTS

**MEMORANDUM OF PETITION UNDER ARTICLES 226 OF THE CONSTITUTION OF
INDIA, 1950**

The Petitioner submits as follows:

1. The present petition has been brought by the Petitioner who is a person with disability, under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and the Rights of Persons with Disabilities Act, 2016, challenging the recruitment process of the Respondent No. 1 for the post of Assistant Engineer (Civil). Vide Notification dated 08.09.2016, the Respondent No. 1 called for applications for the post of Assistant Engineer (Civil). Out of eight posts, one post was reserved for persons with locomotor disability (OA/VOL) and hearing impairment (HH) under the BESCOM Zone. The Petitioner, who is a person with scoliosis, despite scoring higher marks, was denied the post and the same was instead offered to a person with hearing impairment who had secured a lower score than the Petitioner. The Petitioner filed a complaint before Respondent No. 3 who passed an order directing the Respondent No. 1 to appoint the Petitioner to the post of Assistant Engineer (Civil) as there was no reason to exclude persons with scoliosis. The Respondent No. 1 took no action despite the order. Aggrieved by the actions of the Respondents, the Petitioner has filed this petition.

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BRIEF FACTS

1. The Petitioner is a person with scoliosis, which is a musculoskeletal disability and falls within muscular dystrophy or locomotor disability. The Petitioner has 60% locomotor disability and is thus a person with disability as defined under Section 2(t) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PwD Act) and a person with benchmark disability under Section 2(r) of the Rights of Persons with Disabilities Act, 2016 (RPD Act).

(A Copy of the Petitioner's disability certificate is annexed hereto and marked as

ANNEXURE – A)

2. It is submitted that the Respondent No. 2 had vide Notification No. WCD 13 PHP 2015 dated 15.06.2015, had identified certain Group A and B posts under the Energy Department which may be filled by persons with disabilities. Of these, the Respondent No. 2 had identified the post of Assistant Engineer (Civil) as a Group B post that may be reserved for persons with locomotor disability under the category of OL & OA or 'one leg' and 'one arm' and Hearing Impairment (HH).

(A Copy of the Notification dated 15.06.2015 is annexed hereto and marked as

ANNEXURE – B)

3. It is submitted that the Respondent No. 1 Karnataka Power Transmission Corporation Limited ("KPTCL") issued Notification No. KPTCL/B16/40360/2016-17 dated 08.09.2016 calling for applications for various posts, including the post of Group – B Assistant Engineer (Civil). Out of the eight posts for Assistant Engineer (Civil), one post under the GM category was reserved for persons with disability.

(Copy of the Notification dated 08.09.2016 is annexed hereto and marked as

ANNEXURE – C)

4. The Petitioner, being a person with locomotor disability, and having all the requisite qualifications prescribed under the Notification dated 08.09.2016 applied for the post of Assistant Engineer (Civil). However, the application form only permitted selection of locomotor disability as OL/OA. Hence the Petitioner who has



a locomotor disability of 60% but is not having only one arm or one leg (since he has a muscular disability), was not able to apply under the category of 'physically handicapped' due to the nature of the online application form. For this reason, his application form states that he is not physically handicapped and his application was therefore in the General Merit category.

(A copy of the Petitioner's SSLC Certificate is annexed hereto and marked as **ANNEXURE – D**)

(A copy of the Petitioner's Bachelor of Engineering Certificate from Visvesvaraya Technological University is annexed hereto and marked as **ANNEXURE – E**)

(A copy of the application form of the Petitioner is annexed hereto and marked as **ANNEXURE – F**)

5. Thereafter an online competitive examination was conducted for selection of candidates for the post of Assistant Engineer (Civil). The Petitioner also took the online aptitude test and scored 19.25 in the same.

(A screenshot of the result of the online aptitude test is annexed hereto and marked as **ANNEXURE – G**)

6. Following this, the Respondent No. 1 released a list of 8 selected candidates. Among this list, it could be seen that the candidate who was selected for the PH reserved post, being the Respondent No. 4 herein, had scored less marks than the Petitioner, scoring only 18.75 marks whereas the Petitioner had scored 19.25.

(Copy of the list of selected candidates released by the Respondent No. 1 is annexed hereto and marked as **ANNEXURE – H**)

7. Thereafter, the Petitioner addressed a letter dated 14.03.2017 to the Respondent No. 3 informing them the Petitioner could not apply for the post of Assistant Engineer (Civil) under the locomotor disability category and requested the Respondent No. 3 to direct the Respondent No. 1 to consider him for the said post.

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(Copy of the letter dated 14.03.2017 is annexed hereto and marked as ANNEXURE - J)

8. Aggrieved by the failure of the Respondent No. 1 to appoint the Petitioner to the post of Assistant Engineer (Civil), the Petitioner filed a complaint with the Respondent No. 3 on the ground that the Respondent No. 1 had not selected the Petitioner for the post of Assistant Engineer (Civil) despite the fact that he was a person with locomotor disability and despite having secured more marks than the person selected. Vide order dated 12.09.2018, the Respondent No. 3 held that had scoliosis been included under physical disability, the Petitioner could have applied under the PH category. Further, it held that the decision of the Respondent No. 1 that there was no suitable candidate with locomotor disability was incorrect as the Petitioner had secured the highest marks among persons with disabilities and despite this, the Respondent No. 1 had selected another candidate with hearing impairment. Therefore, the Respondent No. 3 directed the Respondent No. 1 as follows:

"Without causing disturbance to any of the candidates already selected and on duty as per the Recruitment Notification No. K.P.T.C.L./B.16/40360/2016-17 dated 08-09-2016 called for filling up vacant post of Assistant Engineer (Civil) under Group-B in Bengaluru Electricity Supply Company Limited (BESCOM), this order is issued to recruit Sri. Aravinda Sajjanara...under Group-B as Assistant Engineer (Civil) post effective from the date of issue of Appointment Letter to general candidates, intimating the Managing Director, Karnataka Power Transmission Corporation Limited...to take suitable action within 3 (three) months from the date of issue of this order. The case is hereby closed."

(A copy of the order dated 12.09.2018 of Respondent No. 3 is annexed hereto and marked as ANNEXURE - K)

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9. Thereafter the Respondent No. 1, vide letter dated 05.11.2018, stated that the posts reserved for persons with disabilities has been done entirely in accordance with the Notification dated 15.06.2015 of the Respondent No. 2 and as such, posts were reserved only for persons with locomotor disability (OA/OL) and hearing impairment (HH). The Respondent No. 1 stated that they have not neglected scoliosis and have only considered the disabilities as notified in the Notifications dated 15.06.2015 and 08.09.2016 and failed to provide any relief to the Petitioner or consider him for appointment.

(Copy of the letter dated 05.11.2018 is annexed hereto and marked as ANNEXURE – L)

10. Being aggrieved by the outright refusal of the Respondent No. 1 in granting employment to the Petitioner despite the order of the Respondent No. 3 directing that the Petitioner be appointed to the post of Assistant Engineer (Civil) and having no other alternative and equally 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 this course of action.

GROUND

11. **THAT** due to the manner in which the application forms were issued by the Respondent No.1 to only allow locomotor disability details to be filled in if a person was OA / OL, denied the Petitioner the opportunity to submit his application as a person with disability under the PH category although he is a person with benchmark disability under the RPD Act and has a disability certificate, having 60% locomotor disability, and hence he deserves to be considered in the physically handicapped category and be appointed to the said post.

12. **THAT** Section 33 of the RPD Act mandates the identification of posts in establishments which can be held by respective category of persons with benchmark disabilities and Section 34 mandates that every appropriate

Government shall appoint not less than 4% of the total number of vacancies for a post as persons with disabilities including persons with locomotor disability. However, in the instant case, the Respondent Nos. 1 and 2 have not created an application form as a result of which persons with scoliosis, who are persons with locomotor disability under the RPD Act, are not able to apply for the Assistant Engineer (Civil) as persons with disabilities due to which the Petitioner was not appointed for the said post despite scoring high marks in the written examination and having all the necessary qualifications and deserves to be selected for the said post.

13. **THAT** further as per Section 2(zc) of the RPD Act, the Schedule attached describes specific disabilities. Under 1.A of the Schedule, the RPD Act defines physical disability as locomotor disability which is a person's inability to execute distinctive activities associated with movement of self and objects resulting from affliction of musculoskeletal or nervous system or both. Further, Section 34 of the RPD Act which provides for reservation of 4% in public employment states that the State shall reserve posts for persons with benchmark disabilities which includes locomotor disability. The fact that the Petitioner has scoliosis and therefore falls within the category of locomotor disability is evident from his Disability Certificate. However, without any scientific analysis or reasoning for why reservations have been restricted to persons with OA/OL and without offering any reasons or rationale for why persons with scoliosis have been excluded, the Respondent Nos. 1 and 2 have conducted the recruitment process for the post of Assistant Engineer (Civil) whereby persons with scoliosis, such as the Petitioner, have not been able to apply for the said post under the 'physically handicapped' category. This is in violation of the definition of 'locomotor disability' as well as Section 34 of the RPD Act and hence deserves the intervention of this Hon'ble Court.

14. **THAT** as per Section 3 of the RPD Act, every appropriate government is under a legal mandate to ensure that persons with disabilities are able to enjoy the right to equality and the appropriate Government shall take steps to utilize the capacity of

persons with disabilities by providing appropriate environment. However, by excluding persons with scoliosis from the categories of candidates who are eligible to apply for the post of Assistant Engineer (Civil), without any rational basis, the Respondent Nos. 1 and 2 have acted against the letter, spirit and intent of the RPD Act. The Respondent Nos. 1 and 2 have not come to any clear finding on why persons with scoliosis are not capable of performing the role of Assistant Engineer (Civil) when compared to persons with OA/OL under the category of locomotor disability.

15. **THAT** there is no basis on which the Respondent Nos. 1 and 2 have excluded persons with scoliosis from applying for the post of Assistant Engineer (Civil) when persons with OA/OL are able to apply. In the absence of any evidence of any inability of persons with scoliosis to perform the functions of the role, the Respondent Nos. 1 and 2 ought not to have excluded them from the recruitment process. The actions of the Respondent Nos. 1 and 2 are arbitrary and unreasonable, and in violation of Article 14 of the Constitution of India, 1950.

16. **THAT** further, the action of the Respondent Nos. 1 and 2 in excluding scoliosis from the category of locomotor disability for the purposes of reservations is arbitrary and without any rational basis, and violates Article 14 of the Constitution of India, 1950. The Respondent Nos. 1 and 2 have not conducted any scientific evaluation or study before excluding persons with scoliosis, who are persons with locomotor disability, from applying for the post of Assistant Engineer (Civil). In fact, the Respondent No. 3 has also noted in the order that persons with scoliosis are capable of performing the role of Assistant Engineer (Civil) similar to persons with OL/OA and as such, there is no reason to exclude persons with scoliosis from the application process.

17. **THAT** due to the arbitrariness of the application form for the post of Assistant Engineer (Civil) where the Petitioner was unable to apply under the physically handicapped category as the form was restricted to persons with OA / OL, the Respondent No. 4 was selected instead of the Petitioner to the said reserved post

under the PH category despite the fact that the Petitioner scored higher marks than the Respondent No. 4, which is unfair and violates the right to equal opportunity under Article 16 of the Constitution of India, 1950.

18. **THAT** the Respondent No. 1 has incorrectly stated in letter dated 05.11.2018 that as per law, the post of Assistant Engineer (Civil) was to first be filled by candidates with hearing impairment and only if such candidates were not available, by other candidates with disabilities. Neither Notification dated 15.06.2015 nor Notification dated 08.09.2016 established any kind of priority among candidates with disabilities and only states that persons with locomotor disability and hearing impairment are eligible to apply for the post of Assistant Engineer (Civil). Therefore, this justification offered by the Respondent No. 1 is clearly an eyewash and deserves the intervention of this Hon'ble Court.

19. **THAT** the Hon'ble Supreme Court, while deciding a petition praying for the implementation of the Persons with Disabilities Act, 1995 in letter and spirit in ***Justice Sunanda Bhandare Foundation vs. Union of India***, (2014) 14 SCC 383 has observed:

"9.Be that as it may, the beneficial provisions of the 1995 Act cannot be allowed to remain only on paper for years and thereby defeating the very purpose of such law and legislative policy. The Union, States, Union Territories and all those upon whom obligation has been cast under the 1995 Act have to effectively implement it. As a matter of fact, the role of the governments in the matter such as this has to be proactive. In the matters of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief-oriented and not obstructive or lethargic. A little concern for this class who are differently abled can do wonders in their life and help them stand on their own and not remain on mercy of others. A welfare State, that India is, must accord its best and special attention to a section of our society which comprises of differently abled citizens. This is true equality and effective conferment of equal opportunity."

20. THAT the Hon'ble Supreme Court held in *Jeeja Ghosh & Anr. v. Union of India*, (2016) 7 SCC 761 that:

"43. The subject of the rights of persons with disabilities should be approached from a human rights perspective, which recognised that persons with disabilities were entitled to enjoy the full range of internationally guaranteed rights and freedoms without discrimination on the ground of disability. This creates an obligation on the part of the State to take positive measures to ensure that in reality persons with disabilities get enabled to exercise those rights...There should be full recognition of the fact that persons with disability are integral part of the community, equal in dignity and entitled to enjoy the same human rights and freedoms as others."

21. Further, in *Kumara Swamy v. Government of Karnataka & Ors* (W.P. 42834 of 2002), this Hon'ble Court has held that the State has a statutory duty to provide for reservations for different classes of persons with disabilities under the relevant laws. With regard to appointment, this Hon'ble Court further held that:

"Accordingly, the writ petition is allowed. The impugned order of the Tribunal is quashed. The State Government is directed to identify a suitable post for accommodating the petitioner under reserved category as provided under Section 33 of the Act and forward the same to KPSC to select him to the said post. If there are no vacancy or suitable posts available, a supernumerary post shall be created and he shall be accommodated to the petitioner and he should be appointed within eight weeks from the date of receipt of the copy of this order."

Therefore, the Hon'ble Court held in the above case that even if all the posts are filled up, a supernumerary post should be created and filled. It is submitted that even in the present Petition, a supernumerary post may be created to accommodate the Petitioner in the event there are no suitable vacant positions.

GROUND FOR INTERIM RELIEF

22. The Petitioner submits that the Respondent No. 1 has appointed 8 candidates for the post of Assistant Engineer (Civil) (produced at ANNEXURE – H herein) of whom one candidate is a person with disability, who has been appointed against the post reserved under the "physically handicapped" category. However, the said appointment does not take into consideration that the Petitioner herein is the candidate with disability who has secured the highest marks and ought to have been appointed to the said post.

23. This Petition has been filed seeking that the Respondent No. 1 appoint the Petitioner to the post of Assistant Engineer (Civil) which is reserved under the "physically handicapped" category in compliance with the order of the Respondent No. 3. The Petitioner submits that if the appointment of the Respondent No. 4 as made by the Respondent No. 1 is not stayed and made subject to the outcome of the above Petition, the Petitioner will suffer grave inconvenience. However, on the other hand, the Respondent No. 4 having already been appointed and executing her tasks as an Assistant Engineer (Civil) will not suffer any inconvenience if such interim relief is granted as she can continue to discharge her duties pending the outcome in the present proceedings. Therefore, the balance of convenience is in favour of the Petitioner in the present case.

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 of mandamus directing the Respondent No. 1 to consider the application of the Petitioner under the "physically handicapped" category as a person with locomotor disability, and appoint him for the post of Assistant Engineer (Civil) in BESCO which is reserved for persons with disability, having obtained the highest marks, including by creating a supernumerary post if necessary; and