

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JULY, 2021

BEFORE

THE HON'BLE MR.JUSTICE P. B. BAJANTHRI

WRIT PETITION No.44037 OF 2016 (S - KSRTC)

BETWEEN:

1. THE MANAGING DIRECTOR,
KARNATAKA STATE ROAD
TRANSPORT CORPORATION,
SHANTHINAGARA,
BANGALORE - 560 027.
2. THE DIVISIONAL CONTROLLER,
K.S.R.T.C.,
CHIKMAGALUR DIVISION,
CHIKMAGALUR.

THE PETITIONERS ARE
REPRESENTED BY
THE CHIEF LAW OFFICER,
K.S.R.T.C., CENTRAL OFFICES,
K.H. ROAD, SHANTHI NAGAR,
BENGALURU - 560 027.

... PETITIONERS

(BY SRI.SANJEEV B.L.,
M/S. BLS LEGAL, ADVOCATES)

AND:

1. SRI. GANAPATHI M NAIKA,
S/O MAILYA NAIKA,
AGED ABOUT 43 YEARS,
OFFICE ASSISTANT,
BOOKING COUNTER,

KSRTC BUS STAND,
CHIKAMAGALUR - 577 101.

2. THE COMMISSIONER,
FOR THE PERSONS WITH DISABILITIES,
(EQUAL OPPORTUNITIES PROTECTION
OF RIGHTS AND FULL PARTICIPATION)
ACT, 1995,
NO.55, II FLOOR,
KARNATAKA SLUM DEVELOPMENT
BOARD BUILDING,
RESALDAR ROAD, (PLATFORM ROAD),
SESHADRIPURAM,
BANGALORE - 560 020.

... RESPONDENTS

(BY SRI.JAYNA KOTHARI, ADVOCATE FOR R1;
SRI.AMARESH, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR RECORDS OF THE PROCEEDINGS OF THE COMMISSIONER FOR PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995 THE R-2 HEREIN PERTAINING TO CASE NO.5/2015-16/1463 WHICH HAS CULMINATED IN THE ORDER DATED 26.02.2016 VIDE ANNEXURE - F; QUASH THE ORDER DATED 26.02.2016 PASSED BY THE COMMISSIONER FOR PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION ACT, 1995 IN CASE NO.5/2015-16/1463 VIDE ANNEXURE - F AND ETC.,

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

In the instant petition, petitioners have prayed for the following reliefs:-

“a) Call for records of the proceedings of the Commissioner for Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the 2nd respondent herein, pertaining to case No.05/2015-16/1463, which has culminated in the order dated 26.02.2016, vide Annexure-F.

b) Issue a writ in the nature of writ of certiorari or any other appropriate writ, order or direction, quashing the order dated 26.02.2016 passed by the Commissioner for Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 in case No.05/2015-16/1463, vide Annexure-F.

c) Grant such other reliefs that may be deemed fit by this Hon’ble Court, under the facts and circumstances of the case, in the interest of justice and equity.”

2. The respondent while working as a Driver cum Conductor met with an accident on 07.07.2007. From 08.07.2007 to 02.03.2011 for a period of 3 years 7 months 29 days he was treated as injury on duty. He was provided with an alternative post of Office Helper on 05.02.2011. Thereafter, respondent No.1 position was restored to his original post on 04.12.2015. As on this day, the respondent-workman has been provided with an alternative job of helper. Respondent No.1 was not satisfied in dropping his name to the post of Junior Assistant cum Data Entry Operator on promotion. Therefore, he was compelled to approach respondent No.2. Respondent No.2 issued certain directions on 14.12.2015. Thereafter, it was modified on 26.02.2016 (Annexure-F). The corrigendum order reads as under:

“ರಾಜ್ಯ ಆಯುಕ್ತರು ಅಂಗವಿಕಲ ವ್ಯಕ್ತಿಗಳ ಅಧಿನಿಯಮ 1995 ಇವರ ನ್ಯಾಯಾಲಯ ಅಂಗವಿಕಲ ವ್ಯಕ್ತಿಗಳ (ಸಮಾನ ಅವಕಾಶ, ಹಕ್ಕುಗಳ ಸಂರಕ್ಷಣೆ ಮತ್ತು ಪೂರ್ಣ ಬಾಗವಹಿಸುವಿಕೆ) ಅಧಿನಿಯಮ 1995

(ನಂ.55, 2ನೇ ಮಹಡಿ, ಕರ್ನಾಟಕ ಕೊಳಗೇರಿ ಅಭಿವೃದ್ಧಿ ಮಂಡಳಿ ಕಟ್ಟಡ, ರಿಸೆಲ್ಟಾರ್ ರಸ್ತೆ, (ಪ್ಲಾಟ್ ಫಾರಂ ರಸ್ತೆ), ಶೇಷಾದ್ರಿಪುರಂ, ಬೆಂಗಳೂರು - 560 020)

ಪ್ರಕರಣ ಸಂಖ್ಯೆ: 05/2015-16

ಫಿಯಾದುದಾರರು

ಶ್ರೀ ಗಣಪತಿ ಎಂ. ನಾಯ್ಕ
ಕಛೇರಿ ಸಹಾಯಕ
ಕರ್ನಾಟಕ ರಾಜ್ಯ ರಸ್ತೆ ಸಾರಿಗೆ ಸಂಸ್ಥೆ ಬಸ್ ನಿಲ್ದಾಣ
ಬುಕ್ಕಿಂಗ್ ಕೌಟರ್,
ಚಿಕ್ಕಮಗಳೂರು

ವಿರುದ್ಧ

1. ಸರ್ಕಾರದ ಪ್ರಧಾನ ಕಾರ್ಯದರ್ಶಿ
ಸಾರಿಗೆ ಇಲಾಖೆ
ಬಹುಮಹಡಿಗಳ ಕಟ್ಟಡ
ಬೆಂಗಳೂರು.
2. ವ್ಯವಸ್ಥಾಪಕ ನಿರ್ದೇಶಕರು
ಕರ್ನಾಟಕ ರಾಜ್ಯ ರಸ್ತೆ ಸಾರಿಗೆ ನಿಗಮ
ಶಾಂತಿನಗರ, ಬೆಂಗಳೂರು.
3. ವಿಭಾಗೀಯ ನಿಯಂತ್ರಣಾಧಿಕಾರಿಗಳು
ಕರ್ನಾಟಕ ರಾಜ್ಯ ರಸ್ತೆ ಸಾರಿಗೆ ನಿಗಮ ನಿಯಮಿತ
ಚಿಕ್ಕಮಗಳೂರು ವಿಭಾಗ
ಚಿಕ್ಕಮಗಳೂರು.

ಅಂಗವಿಕಲ ವ್ಯಕ್ತಿಗಳ (ಸಮಾನ ಅವಕಾಶ, ಹಕ್ಕುಗಳ ಸಂರಕ್ಷಣೆ ಮತ್ತು ಪೂರ್ಣ
ಭಾಗವಹಿಸುವಿಕೆ) ಅಧಿನಿಯಮ 1995ರ ನ್ಯಾಯಾಲಯದ ಪ್ರಕರಣ ಸಂಖ್ಯೆ 05/2015-16
ದಿನಾಂಕ 14-12-2015ರ ಆದೇಶವನ್ನು ತಿದ್ದುಪಡಿ ಮಾಡಲಾಗಿದ್ದು ಈ ಕೆಳಕಂಡಂತೆ
ಓದಿಕಳ್ಳತಕ್ಕದ್ದು.

ತಿದ್ದುಪಡಿ ಆದೇಶ

ವಿಕಲಚೇತನರಾದ ಶ್ರೀ ಗಣಪತಿ ಎಂ. ನಾಯ್ಕ, ರವರಿಗೆ ಕಛೇರಿ ಸಹಾಯಕ
ಹುದ್ದೆಯಲ್ಲಿ ಮುಂದುವರಿಸಿ ಹಾಗೂ ಅಧಿಸೂಚನೆ ಸಂ:ಕರಾಸಾ/ಚಿಮವಿ/ಸಿಬ್ಬಂದಿ/ಸಿ-
6/93/2014-15, ದಿನಾಂಕ 04-04-2014ರ ಕಛೇರಿ ಸಹಾಯಕರ ಜೇಷ್ಠತೆಯನುಸಾರ

ಅವರಿಗೆ ದೊರಕಬೇಕಾದ ಕಿರಿಯ ಸಹಾಯಕರ ಹುದ್ದೆಗೆ ಮುಂಬಡ್ತಿ ನೀಡಿ
ವಿಕಲಚೇತನರಾದ ಶ್ರೀ ಗಣಪತಿ ಎಂ. ನಾಯ್ಕ, ರವರು ನಿವೃತ್ತಿ ಹೊಂದುವವರೆಗೂ
ಅಂಗವಿಕಲ ವ್ಯಕ್ತಿಗಳ (ಸಮಾನ ಅವಕಾಶ, ಹಕ್ಕುಗಳ ಸಂರಕ್ಷಣೆ ಮತ್ತು ಪೂರ್ಣ
ಬಾಗವಹಿಸುವಿಕೆ) ಅಧಿನಿಯಮ 1995ರ ಕಲಂ 47ರ ರಕ್ಷಣೆ ಒದಗಿಸಿ ಸೇವೆಯಲ್ಲಿ
ಮುಂದುವರಿಸುವಂತೆ ಆದೇಶಿಸಿದೆ.

(ಈ ಮೇಲ್ಕಂಡ ಆದೇಶವನ್ನು ನಾನು ದಿನಾಂಕ 26--02--2016 ರಂದು ಉತ್ತರೇಖನ
ನೀಡಿರುತ್ತೇನೆ)

ದಿನಾಂಕ:26-02-2016
ಬೆಂಗಳೂರು.

(ಕೆ.ಎಸ್.ರಾಜಣ್ಣ)
ರಾಜ್ಯ ಆಯುಕ್ತರು."

3. The learned counsel for the petitioners have not apprised as to in what manner the corrigendum order is defective. His only contention is that respondent No.1 has not furnished medical certificate so as to consider his grievance. On the other hand, learned counsel for respondent No.1 pointed out from Annexure R2 - the medical certificate and further, she has pointed out Annexure-R5, wherein respondent No.1 name is reflected at Sl.No.19. On the other hand, juniors to the respondent No.1 were promoted on 13.03.2015 (Annexure-R7).

4. Learned counsel for the respondent No.2 adopted the statement of objections and arguments.

5. Heard learned counsel for the respective parties.

6. Question for consideration in the present petition is:

- 1) *Whether the petitioners have made out a case so as to interfere with the Annexure-F, corrigendum to the order dated 14.12.2015 dated 26.02.2016 or not?*

The corrigendum order speaks of providing promotion opportunity to the post of Junior Assistant pursuant to the concerned seniority list.

The one and only contention raised by the petitioners is that respondent No.1 has failed to furnish the medical certificate, so as to consider grievance of the respondent No.1 pursuant to the corrigendum order of the respondent No.2 dated 26.02.2016 whereas

respondent No.1 pointed out Annexure-R2 the medical certificate. In light of these facts and circumstances, the petitioners are hereby directed to take note of service particulars of the petitioners read with medical certificate so as to consider respondent No.1 name for promotion to the post of Junior Assistant / Data Entry Operator in terms of the relevant regulation. The petitioners are hereby directed to furnish medical certificate prescribed under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The aforesaid process shall be completed by petitioners within a period of four months from the date of receipt of medical certificate to be produced by the respondent No.1. Recently the Hon'ble Supreme Court noticed in one of promotion case and held that every institution, every government and authority are violating Disabilities Act, 1995. Persons with disabilities have right to reservation in promotions in the case of ***State of Kerala and Others***

V/s Leesamma Joseph reported in **2021 SCC OnLine SC 435**. Para Nos.13 to 19 of the aforesaid judgment reads as under:

13. A broad aspect sought to be submitted before us is that Sections 32 and 33 of the 1995 Act had to be interpreted in juxtaposition and consonance with Section 47 of that Act which reads as under:

“47. Non-discrimination in Government employment. —

(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.”

14. The legislative mandate has to be understood in the aforesaid context as it provides for equal opportunity for career progression, including promotion. Thus, it would be negation of the legislative mandate if promotion is denied to PwD and such reservation is confined to the initial stage of induction in service. This would in fact result in stagnation of the disabled in a consequential frustration.

15. The operation of reservation and the computation has to be made with reference to the total number of vacancies in the cadre strength and no distinction should be made between posts to be filled by direct recruitment and by promotion.

16. *The last aspect submitted in this behalf is that the reservation could be granted to PwD if : (i) the Rules provide for promotion from the feeder cadre to the promotional posts; and (ii) posts are identified in the promotional cadre, which are capable of being filled up with Persons with Disability.*

17. *On examination of the aforesaid plea we find that that there is merit in what the learned Amicus Curiae contends and we are of the view that really this issue is no more res integra in view of the judgment of this Court in Government of India v. Ravi Prakash Gupta and Union of India v. National Federation of the Blind (supra) opining that reservation has to be computed with reference to total number of vacancies in the cadre strength and no distinction can be made between the posts to be filled by direct recruitment and by promotion. Thus, total number of vacancies in the cadre strength would include the vacancies to be filled in by nomination as well as by promotion. In fact, this was the view adopted by the Bombay High Court discussed aforesaid in National Confederation for Development of*

Disabled v. Union of India (supra) with the challenge raised to the same in a SLP being rejected in *Union of India v. National Confederation for Development of Disabled*. We may note the observations in *Rajeev Kumar Gupta v. Union of India (supra)* in paragraph 24 to the effect:

“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” and a direction was issued to the Government to extend 3% reservation to PwD in all identified posts in Group A and Group B “irrespective of the mode of filling up of such posts”.

18. Learned Amicus Curiae has rightly pointed out the two preliminaries for operationalising the said provision, i.e. there has to be rules providing for promotion from the feeder cadre to the provisional post as there cannot be promotions even for the PwD de hors the rules as a singular benefit. The requirement under Section 32 of the 1995 Act has also to be completed for identifying the posts in the promotional cadre.

19. *In our view, the aforesaid should put at rest the controversy insofar as the mandate of 1995 Act qua promotion is concerned.*

In view of the above narrated factual aspects, petitioners have not made out case to interfere with the impugned corrigendum dated 26.06.2016 (Annexure-F). Accordingly, petitioners are hereby directed to take note of the aforesaid decision of the Apex Court and redress the grievance of the respondent No.1. Writ petition stands disposed off.

In view of the disposal of main matter, I.A.No.1/2017 stands disposed off.

**Sd/-
JUDGE**

ssb