

IN THE HIGH COURT OF JHARKHAND AT RANCHI  
W.P.(PIL) No. 7525 of 2013

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Arun Kumar Singh, Son of Sri Arjun Singh, President of Jharkhand  
Viklang Manch, Office Cum resident at Road No. 1, Jhargrubagan, PO  
& PS-Telco, Jamshedpur, Jharkhand-831004

...Petitioner

Versus

1. State of Jharkhand, through its Secretary, Department of  
Personnel, Administrative Reforms & Rajbhasa, Project Building, PO  
& PS-Dhurwa, Ranchi, Jharkhand-834004
2. Jharkhand Public Service Commission, through its Secretary,  
Circular Road, Ranchi-834020

... Respondents

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For the Petitioner : Mr. Indrajit Sinha, Advocate  
: Ms. Suchitra Pandey, Advocate  
For the Respondent-State : Mr. Ajit Kumar, A.A.G.  
For the Respondent-J.P.S.C. : Mr. Sanjay Piprawall, Advocate

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CORAM : HON'BLE MR. JUSTICE VIRENDER SINGH, CHIEF JUSTICE  
HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR  
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13/Dated: 9<sup>th</sup> March, 2016

The petitioner is President of Jharkhand Viklang Manch (JVM), which has organized various awareness programmes for differently-abled persons. The issue projected in the writ petition is, "whether reservation under Section 33 of the Disability Act, 1995 has to be implemented considering the total number of posts advertised only or the number of posts advertised viz-a-viz cadre strength?". The stand taken by the Government of Jharkhand in the counter-affidavit has prompted us to deal with the issue in detail.

2. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is an outcome of the Disability Rights movement which gained momentum in the Beijing Meet of the Economic and Social Commission for Asian and Pacific Region held in December, 1992 where "The Asian and Pacific Decade of Disabled Persons 1993-2002" was launched. The Government of India, to discharge its obligation under "Proclamation on the full participation and equality of people with disabilities in the

Asian and the Pacific region”, introduced a Bill on the subject in the Lok Sabha on 26.08.1995 which is the present 1995 Disabilities Act. The statement of objects and reasons “for enacting 1995 Act” makes it apparent that it is the responsibility of the State to remove discrimination against persons with disabilities, to counteract any situation of the abuse and exploitation of persons with disabilities and to lay down a strategy for equalization of opportunities for persons with disabilities. The Disabilities Act, 1995 has been made applicable to establishments financed wholly or substantially by the Central Government or the State Government or any local authority. The definition of “establishment” under Section 2(k) includes a corporation or an authority or a body owned or aided by the government or a local authority or a government company. Section 32 mandates that the Appropriate Government shall identify posts in the establishments, which can be reserved for the persons with disabilities and shall review the list of posts so identified, in periodical intervals however, within 3 years.

3. Section 33 makes reservation of not less than 3% for persons or class of persons with disability of (i) blindness or low vision, (ii) hearing impairment and, (iii) locomotor disability or cerebral palsy in the vacancies to be filled up, mandatory. Section 36 provides that the vacancies which remained unfilled in any recruitment year due to non-availability of suitable persons with disability or, for any other sufficient reason, shall be carried forward in the succeeding recruitment year. The commitment of the government to provide reservation not less than 3% to the persons with disabilities is further reflected in Section 36 which provides that if in the succeeding recruitment year also suitable person with disability is not available, the post may first be filled by interchange among the three categories and only when “there is no person with disability available” for the post in that year, the employer shall fill up the vacancies by appointment of persons, other than the persons with disability. Section 36 further provides that “if the nature of the

vacancies in an establishment are such that a given category of person cannot be employed, the vacancies may be interchanged among the three categories with prior approval of the Appropriate Government”.

4. The Disabilities Act is a special legislation dealing with persons with disabilities to provide equal opportunities, protection of rights and full participation to them, is not in dispute. Section 72 of the Act provides that the provisions of this Act, or the rules made thereunder shall be in addition to, and not in derogation of any other law for the time being in force or any rules, order or any instructions issued thereunder, enacted or issued for the “benefit of persons with disabilities”.

5. It would not be out of context to notice that the right of visually handicapped persons to get equal opportunities to compete for government posts was recognized even before the enactment of 1995 Act. In “*National Federation of Blind Vs. Union Public Service Commission & Ors.*”, (1993) 2 SCC 411, the Hon’ble Supreme Court issued direction to the Government of India and the Union Public Service Commission to permit eligible blind and partial blind candidates to write Civil Services Examination in Braille script or with the help of scribe.

6. In “*Government of India through Secretary & Anr. Vs. Ravi Prakash Gupta & Anr.*”, (2010) 7 SCC 626, the Hon’ble Supreme Court examined the issue “whether the reservation under Section 33 is dependent on identification”, in relation to the intention of the legislation and to ensure that the object of the Disabilities Act, 1995 is fulfilled, held that,

25. “.....The submission made on behalf of the Union of India regarding the implementation of the provisions of Section 33 of the Disabilities Act, 1995, only after identification of posts suitable for such appointment, under Section 32 thereof, runs counter to the legislative intent with which the Act was enacted. To accept such a submission would amount to accepting a situation where the provisions of Section 33 of the aforesaid Act could be kept deferred

indefinitely by bureaucratic inaction. Such a stand taken by the petitioners before the High Court was rightly rejected. ....”

7. The Government of Jharkhand has issued Circular dated 07.11.2007 whereunder, one post from roster point 1 to 33, one post from roster point 34 to 67 and one post from roster point 68 to 100 are reserved for candidates suffering from (i) blindness or low vision, (ii) hearing impairment and (iii) locomotor disability or cerebral disability respectively. The relevant portion of the Circular is extracted below:

“कार्मिक, प्रशासनिक सुधार तथा राजभाषा विभाग, झारखण्ड, रांची द्वारा निर्गत राज्य एवं जिला स्तर पर निर्धारित रोस्टर में विकलांगों का बिन्दु निर्धारित नहीं किया गया है। अतः कार्मिक, प्रशुण तथा राजभाषा विभाग, झारखण्ड, रांची द्वारा निर्गत संकल्प सं० 6329 दिनांक 20.11.2003 (राज्य स्तर का रोस्टर) एवं 6704 दिनांक 10.12.2003 (जिला स्तर का रोस्टर) द्वारा निर्गत रोस्टर के आलाोक में उक्त विकलांगों को निम्नांकित श्रृंखला के अंतर्गत आरक्षण देय होगा: -

- क) दृष्टि निःशक्तता - रोस्टर बिन्दु 01 से 33 तक = 01 पद  
 ख) मूक बधिर निःशक्तता - रोस्टर बिन्दु 34 से 67 तक = 01 पद  
 ग) चलन निःशक्तता - रोस्टर बिन्दु 68 से 100 तक = 01 पद

9. निःशक्त व्यक्ति (समान अवसर, अधिकार, संरक्षण एवं पूर्ण भागीदारी) अधिनियम, 1995 की धारा 36 जो निम्नवत है, के अनुरूप न भरी गई रिक्तियों को अग्रणीत किए जाने के संबंध में कार्रवाई की जा सकेगी।

जहाँ किसी भर्ती वर्ष में धारा 33 के अधीन किसी रिक्ति के किसी उपर्युक्त निःशक्त व्यक्ति की अनुपलब्धता के कारण या किन्हीं अन्य प्रवर्तित कारण से भरा नहीं जा सकता है, वहाँ ऐसी रिक्ति अगली वर्ष में अग्रणीत की जायेगी और यदि अगले भर्ती वर्ष में भी उपर्युक्त निःशक्त व्यक्ति उपलब्ध नहीं है, तो इसे पहले तीनों प्रवर्तों के बीच परस्पर परिवर्तन द्वारा भरा जा सकेगा और केवल तभी जब उस वर्ष में पद के लिए कोई निःशक्त व्यक्ति उपलब्ध नहीं है, नियोजक निःशक्त व्यक्ति से भिन्न किसी अन्य व्यक्ति की टैनियुक्ति करके रिक्ति को भरेगा।

परन्तु यदि किसी स्थापना में रिक्तियों की प्रकृति ऐसी हो कि किसी निश्चित प्रवर्त के व्यक्ति को नियोजित नहीं किया जा सकता है, तो रिक्तियां सरकार के पूर्वानुमोदन से तीनों प्रवर्तों के बीच परस्पर परिवर्तित की जा सकेगी।”

8. The respondent-State of Jharkhand has however, taken a stand that the reservation under Section 33 is to be computed on the basis of vacancies which have to be filled up.

9. Mr. Ajit Kumar, the learned Additional Advocate-General submits that one post shall be reserved for granting benefit under

Section 33 only in cases where at least 33 vacancies have been advertised and, if total number of vacancies advertised is less than 33, no reservation shall be extended to persons suffering from disabilities. Further elaborating this contention, the learned Additional Advocate-General submits that reservation in posts advertised shall be at roster point number 33, 67 and 100 for different class of persons mentioned under Section 33 and not at any other roster point.

10. The plea raised on behalf of the respondent-State of Jharkhand is mis-conceived. In the counter-affidavit the respondent-State of Jharkhand has taken a stand that Circular dated 07.11.2007 has been issued following Office Memorandum dated 29.12.2005 issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training Government of India. Clause 15 of Office Memorandum dated 29.12.2005 provides that all establishments shall maintain separate 100 point Reservation Roster Register and each register shall have cycle of 100 points. It further provides that each cycle of 100 points shall have equally divided three blocks.

11. During the course of hearing Mr. Indrajit Sinha, the learned counsel for the petitioner emphasized on Clause 15 (c) whereas, Mr. Ajit Kumar, the learned Additional Advocate-General referred to Clause 15 (d) to Clause 15 (i). Clause 15 of Office Memorandum dated 29.12.2005 reads as under:

**"15. EFFECTING RESERVATION - MAINTENANCE OF ROSTERS:**

(a) All establishments shall maintain separate 100 point reservation roster registers in the format given in Annexure II for determining/effecting reservation for the disabled-one each for Group 'A' posts filled by direct recruitment, Group 'B' posts filled by direct recruitment, Group 'C' posts filled by direct recruitment, Group 'C' posts filled by promotion, Group 'D' posts filled by direct recruitment and Group 'D' posts filled by promotion.

(b) Each register shall have cycles of 100 points and each cycle of 100 points shall be divided into three blocks comprising the following points;

1<sup>st</sup> Block-point No. 1 to point No. 33

2<sup>nd</sup> Block-point No. 34 to point No. 66

3<sup>rd</sup> Block-point No. 67 to point No. 100

(c) Points 1, 34 and 67 of the roster shall be earmarked reserved for persons with disabilities-one point for each of the three categories of disabilities. The head of the establishment shall decide the categories of disabilities for which the points 1, 34 and 67 will be reserved keeping in view all relevant facts.

(d) All the vacancies in Group C posts falling in direct recruitment quota arising in the establishment shall be entered in the relevant roster register. If the post falling at point no. 1 is not identified for the disabled or the head of the establishment considers it desirable not to fill it up by a disabled person or it is not possible to fill up that post by the disabled for any other reason, one of the vacancies falling at any of the points from 2 to 33 shall be treated as reserved for the disabled and filled as such. Likewise a vacancy falling at any of the points from 34 to 66 or from 67 to 100 shall be filled by the disabled. The purpose of keeping points 1, 34 and 67 as reserved is to fill up the first available suitable vacancy from 1 to 33, first available suitable vacancy from 34 to 66 and first available suitable vacancy from 67 to 100 by persons with disabilities.

(e) There is a possibility that none of the vacancies from 1 to 33 is suitable for any category of the disabled. In that case two vacancies from 34 to 66 shall be filled as reserved for persons with disabilities. If the vacancies from 34 to 66 are also not suitable for any category, three vacancies shall be filled as reserved from the third block containing points from 67 to 100. This means that if no vacancy can be reserved in a particular block, it shall be carried into the next block.

(f) After all the 100 points of the roster are covered, a fresh cycle of 100 points shall start.

(g) If the number of vacancies in a year is such as to cover only one block or two, discretion as to which category of the disabled should be accommodated first shall vest in the head of the establishment, who shall decide on the basis of the nature of the post, the level of representation of the specific disabled category in the concerned grade/post etc.

(h) A separate roster shall be maintained for group C posts filled by promotion and procedure as explained above shall be followed for giving reservation to persons with disabilities. Likewise two separate rosters shall be maintained for Group D posts, one for the posts filled by

direct recruitment and another for posts filled by promotion.

(i) Reservation in group A and group B posts is determined on the basis of vacancies in the identified posts only. Separate rosters for Group A posts and Group B posts in the establishment shall be maintained. In the rosters maintained for Group A and Group B posts, all vacancies of direct recruitment arising in identified posts shall be entered and reservation shall be effected the same way as explained above."

12. Much stress was laid by the learned counsel appearing for the parties to contend whether reservation for persons with disabilities can be made on the posts available from roster point no. 1 to 33, 34 to 67 and 68 to 100 or only on roster points 1 or 33, 67 and 100. Clause 15 (c) of Office Memorandum dated 29.12.2005 provides that roster point nos. 1, 34 and 67 of the roster shall be earmarked for persons with disabilities and the Head of the Establishment has been vested with the power to decide categories of disabilities for which roster point nos. 1, 34 and 67 shall be reserved. Clause 15(d) however, carves out an exception to the obligation under Clause 15 (c). A plain reading of Clause 15 (d) discloses that if the post falling at roster point no. 1 is not identified for the disabled persons or if it is not desirable to filling up post at roster point no. 1 by a disabled person, one of the vacancies falling at any of the roster points from 2 to 33 shall be treated as reserved for the disabled persons. In our opinion, keeping one vacancy reserved from roster point nos. 2 to 33 makes it abundantly clear that the person/persons with disabilities must be appointed on any one of the posts falling between roster point numbers 1 to 33 and it is not that one post at roster point number 33 alone can be kept reserved. If such an interpretation to Section 33 of the Disability Act, 1995, as canvassed on behalf of the respondent-State of Jharkhand, is given while implementing the mandate under the Disability Act, 1995, the very object for which Disability Act, 1995 has been enacted, would stand frustrated. In "*Union of India and Another Vs. National*

*Federation of the Blind*" (2013) 10 SCC 772, the plea taken by Union of India that computation of reservation has to be against the identified posts only, has been rejected by the Hon'ble Supreme Court. In paragraph no. 52 of "*National Federation of the Blind*" (supra) case, the Hon'ble Supreme Court has held as under;

52. "Thus, after thoughtful consideration, we are of the view that the computation of reservation for persons with disabilities has to be computed in case of Group A, B, C and D posts in an identical manner viz. "computing 3% reservation on total number of vacancies in the cadre strength" which is the intention of the legislature. Accordingly, certain clauses in the OM dated 29-12-2005, which are contrary to the above reasoning are struck down and we direct the appropriate Government to issue new office memorandum(s) consistent with the decision rendered by this Court."

13. Considering the provisions under the Disabilities Act, 1995 and the judgment in "*National Federation of the Blind*" (supra), it is hereby declared that reservation for differently-abled persons shall be decided on the basis of total cadre strength and, it would be implemented to total number of vacancies advertised. For example, if only 20 vacancies against total cadre strength of 100 posts have been advertised, one post may be kept reserved for any one of the three categories of disabilities mentioned in Section 33, if a post can be identified for extending benefit of reservation to such category of persons. In the event no post from roster point number 1 to 20 can be identified, one vacancy from roster point number 1 to 33 must be kept reserved for any one of the three categories of disabilities in tune with Section 33. However, at this point also if no post is identifiable for any one of the three categories of disabilities, from roster point number 33 to 67 two posts shall be kept reserved, and similarly, again reservation in roster point number 34 to 67 and roster point number 68 to 100 has to be implemented. The reservation under Section 33 is distinct from the scheme of reservation for SC/ST/OBC etc. in as much as, reservation in favour



of persons with disabilities is horizontal and that precisely is the reason why vacancy occurring in the roster at roster point nos. 1 to 33, 34 to 37, 68 to 100 are available for appointment of suitable persons with disabilities. In any event all Establishments have to ensure reservation of minimum 3% for differently-abled persons as indicated in Section 33 of the Disabilities Act, 1995.

14. We however, clarify that once any one of the posts from roster point number 1 to 33 is kept reserved, another vacancy shall be reserved only from roster point number 34 to 67. The number of vacancies advertised shall not be a disability for not extending benefit under Section 33 to the person/persons belonging to any one of the three categories mentioned in Section 33. In view of the aforesaid discussions, we find ourselves unable to accept the contention raised on behalf of the respondent-State of Jharkhand that vacancies at roster point number 33, 67 and 100 alone are available for appointment for differently-abled persons.

15. In the counter-affidavit the respondent-State of the Jharkhand has admitted that the total number of posts under different departments have not been identified as mandated by the Hon'ble Supreme Court in "*National Federation of the Blind*" case. It is also important to re-emphasize that reservation of 3% posts in all establishments has to be effected from 15.12.2000, when the State of Jharkhand was established under Bihar Reorganization Act, 2000. Issuing a direction to the Centre and the State Governments, in "*Justice Sunanda Bhandare Foundation Vs. U.O.I and Another*" AIR 2014 SC 2869, the Hon'ble Supreme Court has observed as under;

10. *"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."

11. "More than 18 years have passed since the 1995 Act came to be passed and yet we are confronted with the problem of implementation of the 1995 Act in its letter and spirit by the Union, States, Union Territories and other establishments to which it is made applicable.  
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13. "In our view, the 1995 Act has to be implemented in the letter and spirit by the Central Government, State Governments and Union Territories without any delay, if not implemented so far."

14. "We, accordingly, direct the Central Government, State Governments and Union Territories to implement the provisions of the 1995 Act immediately and positively by the end of 2014."

16. Accordingly, we hereby issue the following directions:

- (i) the respondent-State of Jharkhand shall issue circular modifying/clarifying circular dated 07.11.2007 in the light of order of this Court,
- (ii) the respondent-State of Jharkhand shall direct all establishments to compute the number of vacancies available and to identify the posts for disabled persons within a period of three months and all such data shall be made available in public domain and,
- (iii) the respondent-State of Jharkhand shall issue instructions to all Establishments making Head of the Establishment personally responsible for non-implementation of scheme of reservation for persons with disabilities and vacancies which, after creation of

the State of Jharkhand, remained unfilled, shall be filled by adopting a method similar to distribution of vacancies indicated under Clause 15 (c) and 15 (d) of Office Memorandum dated 29.12.2005.

17. The instant writ petition stands disposed of accordingly.

(Virender Singh, C.J.)

(Shree Chandrashekhar, J.)

R.K/Amit