



NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 3303 OF 2015

Union of India

... Appellant

versus

Pankaj Kumar Srivastava & Anr.

... Respondents

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. The respondent no.1 is 100 per cent visually impaired. He appeared in the Civil Services Examination, 2008 (CSE-2008). Respondent no.1 gave four preferences for services in the following order: Indian Administrative Services (IAS), Indian Revenue Services-Income Tax (IRS (IT)), Indian Railway Personnel Service (IRPS) and Indian Revenue Service (Customs and Excise) (IRS (C&E)). After having undergone the written test and interview, he was denied an appointment.

2. Therefore, the respondent no.1 filed the Original Application no.2402 of 2009 before the Central Administrative Tribunal, New Delhi (for short, 'the CAT'). The argument before the CAT, *inter alia*, was that the backlog

vacancies in accordance with the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, 'the PWD Act, 1995') were not filled in. By the judgment dated 8th October 2010 of the CAT, the Union Public Service Commission (UPSC) and the Department of Personnel and Training (DoPT) were directed to calculate the backlog vacancies following the mandate of the PWD Act, 1995. A time of six months was granted to do the exercise. A direction was issued to the appellant-Union of India, to inform respondent no.1, if service could be allocated to him. Pursuant to the said order, on 9th September 2011, the UPSC informed respondent no.1 that his name did not figure in the merit list of CSE-2008 within the number of available vacancies for the PH-2 (Visually Impaired-VI) category. That led to respondent no.1 filing another Original Application no.3493 of 2011 before the CAT. By the judgment dated 30th May 2012, the CAT issued a direction to the UPSC that the candidates selected on their own merits must be adjusted in the unreserved/general category in accordance with the Office Memorandum dated 29th December 2005. A direction was issued that the candidates belonging to the VI category must be selected against the reserved category and be given an appointment. Unfortunately, on 30th August 2012, the UPSC informed respondent no.1 that he was not qualified for appointment in the PH-2 (VI) quota. The appellant-Union of India, challenged the judgment dated 30th May 2012 by filing

a writ petition before the Delhi High Court. By the impugned judgment dated 11th October 2013, the writ petition was dismissed, and that is how the appellant-Union of India is in appeal.

3. As noted earlier, the UPSC, by the communication dated 30th August 2012, informed respondent no.1 that he could not be selected against the PH-2 (VI) quota. He filed a review application before the CAT by pointing out that many vacancies available for VI category candidates remained unfilled, against which he was entitled to the appointment. As the review application was rejected, respondent no.1 has filed a writ petition, which is pending before the High Court of Delhi.

4. It must be noted that the connected appeals/petitions were filed along with this appeal, in which several orders were passed by this Court from time to time, from 1st February 2022. Based on the same principles adopted in the impugned judgment, some other candidates belonging to the PWD category were granted appointments, and therefore, companion appeals/petitions were disposed of.

5. Now, coming to the case of respondent no.1, a detailed order was passed by this Court on 31st August 2023, which reads thus:

“As far as the challenge on merits is concerned, it is academic in the sense that the matter has travelled further and in fact an attempt has been made by the Union of

India to place on record material to show that the direction of the Administrative Tribunal which was subject matter of challenge before the High Court has been complied with.

This is a case where admittedly the Union of India did not give effect to the reservations under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, "the 1995 Act") in the civil services right from 1996 till 2009. Therefore, there were many litigations filed by the persons with disabilities. We are concerned with persons who are Visually Impaired (VI). In the additional affidavit filed by the Union of India dated 29.04.2022, it is contended that there were 41 backlog vacancies of the period from 1996 to 2009 out of which 20 were of the category LDCP, 5 of VI and 16 of HI. The contention of the Union of India is that categories of IRS (C&CE) and IRS (IT) were excluded from the reservation under Section 33 of the 1995 Act for the category of VI. However, we find that a notification excluding these two categories for VI category in terms of proviso to Section 33 of the 1995 Act has not been placed on record. Therefore, in absence of a notification under proviso to Section 33, the reservation will have to be provided to VIs in these two categories as well.

The submission of the learned counsel appearing for the first respondent on the basis of documents on record is that if the reservation against these two posts (IRS [C&CE]) and (IRS [IT]) for category of VI is provided, the total backlog will be at least 17. Therefore, his contention is that the

first respondent who belongs to VI category and 10 others in the same category who are above him in the order of merit can be accommodated in terms of the order of the Tribunal.

We, therefore, direct the Union of India to redo the exercise of ascertaining the backlog vacancies for visually impaired.

There is one more aspect of the matter. If there are 17 backlog vacancies as claimed by learned counsel appearing for the first respondent, the issue of first respondent can get resolved. We find from the affidavit referred above that out of 41 backlog vacancies, only 22 were filled in. Therefore, 19 vacancies remain. Therefore, we direct the Union of India to also consider of allowing interchange as contemplated by Section 36 of the 1995 Act.

We are conscious of the fact that the first respondent has already approached the High Court. However, we are dealing with a very peculiar situation arising due to the failure of the Union of India to give effect to the reservation under Section 33 of the 1995 Act for such a long time.

We direct the Union of India to undertake the aforesaid exercise on both counts by the end of October, 2023. After completing the aforesaid exercise, an affidavit shall be filed by the Union of India giving all particulars and necessary documents.

If the Union of India finds that by doing exercise of interchange, if the first respondent and the candidates above him could be accommodated, the Union of India is free to do that.

.....”

6. The appellant, the Union of India, filed an additional affidavit dated 9th January 2024 reporting compliance with the said order.

SUBMISSIONS

7. The submission of the learned counsel appearing for the appellant is that even after undertaking exercise in terms of the order dated 31st August 2023, respondent no.1 cannot be accommodated for the reasons set out in the affidavit dated 9th January 2024 filed by Mr Sanjay Kumar Chaurasia, Under Secretary to the Government of India in the DoPT.

8. The submission of the learned counsel representing respondent no.1 is that for accommodating respondent no.1, the backlog of vacancies must be calculated for the period of 1996 to 2008. No exemption under Section 33 of the PWD Act, 1995 was granted to All India Civil Services/Central Services for which recruitment is conducted by the UPSC. It is pointed out that there are a large number of backlog vacancies. It is also pointed out that in 2008, at least 42 vacancies were available for VI category candidates. Therefore, respondent no.1 should have been appointed against the available vacancies in services. It was submitted that availing the facility of a scribe for taking the Civil Services Examination does not take away a candidate’s right to compete in an unreserved category. It is pointed out that

that is the finding recorded by the CAT and the High Court in the impugned judgments. The learned counsel appearing for the first respondent submitted that enough vacancies are available to accommodate the first respondent.

CONSIDERATION

9. We are conscious of the fact that a writ petition filed by respondent no.1 is pending before the High Court of Delhi. In this case, the affidavits filed by the appellant-Union of India bring a sorry state of affairs on record. The appellant failed to implement the provisions of the PWD Act, 1995. That is the specific finding recorded in paragraph 17 of the impugned judgment of the High Court. Respondent no.1 has been made to run from pillar to post to get an appointment, though there is a large backlog of vacancies in various PWD categories. Therefore, relegating respondent no.1 to the High Court will be unjust. He has been fighting for justice from the year 2009.

10. In the order dated 31st August 2023, we have referred to the additional affidavit dated 29th April 2022 filed by the appellant-Union of India, in which it was stated that there were 41 backlog vacancies for the period from 1996 to 2009, out of which, 20 were of the category of Locomotor Disability or Cerebral Palsy (LD/CP), 5 of Visual Impairment (VI) and 16 of Hearing Impairment (HI). This Court has noted that the appellant took a stand that the IRS (C&E) and IRS (IT) posts were excluded from the reservation under Section 33 of the

PWD Act, 1995, for the VI category. There is already a finding recorded by this Court that a notification excluding these two categories for VI category candidates has not been issued in terms of the proviso to Section 33 of the PWD Act, 1995. Therefore, this Court held in the said order that in absence of such a notification, the reservation will have to be provided to the VI category candidates in these two categories as well. This Court also recorded in the order dated 31st August 2023 that if there were 17 backlog vacancies, the issue of respondent no.1 could be resolved. This Court noted that, as stated in the appellant's affidavit of 29th April 2022, 19 backlog vacancies remained. Therefore, a direction was issued by this Court to the appellant-Union of India, to consider allowing interchange as contemplated by Section 36 of the PWD Act, 1995.

11. Therefore, the appellant's response to the order dated 31st August 2023, in the form of an affidavit dated 9th January 2024, will have to be carefully examined. While we examine the said response, we must note that the UPSC, vide its letter dated 29th April 2022, has accepted that respondent no.1 was ranked 11 after the last recommended candidate of the PH-2 (VI) category. In the background of this position, we analyse the stand taken by the appellant in the affidavit dated 9th January 2024. A stand has been taken that in the meeting held on 23rd November 2017, a recommendation was made that the vacancies cannot be reserved for the VI category in IRS (IT) and IRS (C&E).

12. Section 33 of the PWD Act, 1995 reads thus:

“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.”

(emphasis added)

13. Even in this affidavit, the appellant-Union of India, has not come up with the stand that an exemption notification was issued in terms of the proviso to Section 33 of the PWD Act, 1995. A stand has been taken based on a subsequent Office Memorandum dated 6th November 2023 that the exemption notification is required to be issued only when none of the categories of persons with disability have been found suitable for a post/service. Therefore, it is pointed out that in the case of IRS (IT) and IRS (C&E), a notification of exemption was not required as the reservation was provided

to persons with locomotor and hearing disabilities. The appellant-Union of India has expressed its inability to pass an order of exchange under Section 36 of the PWD Act, 1995. A stand has been taken that there was no non-merit candidate in the VI category from CSE-2006 to 2008.

14. In the said affidavit, the vacancy statement for CSE-1996 to CSE-2017 has been incorporated, which reads thus:

“.. .. .

The details of vacancies for CSE-1996 to CSE-2017 in respect of IRS(IT) and IRS(C&CE) as provided by the CCA concerned and as already submitted before this Hon'ble Court are as under:

**Indian Revenue Service (Income Tax)-
IRS(IT)**

Total vacancy from 1996 to 2017:- 2469

Total Vacancy of PwD:- 75

Division of PwD:

LD (Locomotor Disability):-35

HI (Hearing Impairment):-33

VI (Visual Impairment):-7

The Visually Impaired candidates were held to be not suitable for this service up to CSE-2013 according to the decision taken in the Meeting of 23.11.2007. Therefore, the IRS (IT) started taking VI candidates from CSE-2014 onwards.

**Indian Revenue Service (Customs &
Central Excise)**

Total vacancy from 1996 to 2017- 2048

Total Vacancy of PwD- 56

Division of PwD:

LDCP (Locomotor Disability & Cerebral

Palsy)-27
HI (Hearing Impairment)-29
VI (Visual Impairment)-Exempted

The Visually Impaired candidates were held to be not suitable for this service according to decision taken in the Meeting of 23.11.2007.

.....”

Thus, several backlog vacancies exist for VI categories in IRS (IT). It is accepted that from CSE-2014, VI category candidates are being selected for IRS (IT). Thus, the total vacancies of PWD posts for IRS (IT) are 75. By applying the principles governing Section 36 of the PWD Act, 1995, the cases of respondent no.1 and the other 10 candidates who are above him in merit could have been considered, especially when there is a gross default on the part of the appellant-Union of India in promptly implementing the provisions of the PWD Act, 1995. Unfortunately, in this case, at all stages, the appellant has taken a stand which defeats the very object of enacting laws for the benefit of persons with disability. If the appellant had implemented the PWD Act, 1995, in its true letter and spirit, respondent no.1 would not have been forced to run from pillar to post to get justice.

15. Therefore, this is a fit case to exercise the jurisdiction of this Court under Article 142 of the Constitution of India by issuing the following directions:

- a.** The cases of respondent no.1 and the other 10 candidates belonging to the VI category who are

above him in the merit list of CSE-2008 shall be considered for appointment against the backlog vacancies of PWD candidates either in IRS (IT) or in other service/branch;

- b.** Necessary action of giving appointments shall be taken within a period of three months from today. The appointments will be made prospectively. The appointees will not be entitled to the arrears of salary and the benefit of seniority, etc.;
- c.** Only for the purposes of retirement benefits, their services shall be counted from the date on which the last candidate of the VI category in CSE-2008 was given an appointment;
- d.** We make it clear that these directions have been issued as a one-time measure in the exercise of the jurisdiction of this Court under Article 142 of the Constitution of India, and the same shall not be treated as a precedent and
- e.** The appeal is disposed of with the above directions.

.....J.
(Abhay S. Oka)

.....J.
(Pankaj Mithal)

**New Delhi;
July 08, 2024**