

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM &
ARUNACHAL PRADESH)

ITANAGAR BENCH

WRIT PETITION(C) NO. 187 (AP)/ 2012

**Shri Ranvir Kumar,
S/o Ramanand Rai,
Resident of Village-Jethuli,
PO-Kachchdargah, PS-Fatuha,
Patna, Bihar.**

....Petitioner

-Versus-

- 1. The Rajiv Gandhi University represented by the Registrar, RGU, Rono Hills, Doimukh, Itanagar, Arunachal Pradesh.**
- 2. The Secretary, University Grant Commission, Bahadur Shah Zafar Marg, New Delhi-110002.**
- 3. The Union of India represented by Secretary to the Ministry of Human resources Department, Govt. of India, New Delhi.**
- 4. The Chief Commissioner, for person with disability, Ministry of Social Justice and Empowerment, Govt. of India, Sarojini House, 6-Bhagwan Das Road, New Delhi.**

...Respondents

- B E F O R E -

HON'BLE DR. (MRS.) JUSTICE INDIRA SHAH

For the petitioner : Mr. T. Tagum, Advocate.

For the respondents : Mr. TT Tara, S/C, R.G.U.

Date of hearing : 23-04-2015

Date of judgment : 28-04-2015

JUDGMENT & ORDER (CAV)

By filing this writ petition under Article 226 of the Constitution of India, the petitioner has sought for direction to the respondents No. 1, i.e. Rajiv Gandhi University represented by the Registrar, RGU, Rono Hills, Doimukh, Itanagar, Arunachal Pradesh, to implement 3% reservation for person with disability in accordance with the provision of Sections 33 and 39 of the Person with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 in respect of the appointment of the post of Assistant Professor in the Department of Hindi.

2]. I have heard Mr. T. Tagum, learned counsel appearing for the petitioner and Mr. T.T. Tara, learned Standing Counsel appearing on behalf of the Rajiv Gandhi University.

3]. The brief fact leading to filing of the writ petition is that the Rajiv Gandhi University issued an advertisement No. 1/142 dated 18-24th July, 2009 for 21 (twenty one) posts of Assistant Professor. Out of which 02 (two) posts

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were meant for Hindi Department. Later on, a corrigendum was up-loaded on the website of the Rajiv Gandhi University on 21-07-2009 whereby the reservation of two posts for person with disability was mentioned. Out of two posts reserved, one post was meant for low-vision and other was meant for orthopedically handicapped person.

4]. The petitioner being orthopedically handicapped and eligible for appointment for the said post applied for the post in the Department of Hindi. Accordingly, a call letter was issued to the petitioner for interview and the petitioner participated in the said interview but the result of the interview was not published. Thereafter, the petitioner through RTI obtained information that the result of the interview cannot be disclosed to the candidate concerned as per the University ordinance. It was also informed that the provision of 3% reservation for the person with disability has not been kept for disable person in absence of any instruction from the UGC.

5]. Thereafter, the petitioner lodged a complaint to the Chief Commissioner for the Person with Disability, Ministry of Social Justice and Empowerment, Govt. of India, New Delhi against the respondent No.1. The Deputy Chief Commissioner for the Person Disability, New Delhi directed the Registrar of the Rajiv Gandhi University to ensure at least 3% reservation for the person with disability in all identified post and to submit reply on the matter.

6]. In response, the Registrar of Rajiv Gandhi University intimated the Deputy Chief Commissioner, New Delhi that due to non-receipt of letter purported to have been issued by the UGC, the provision of 3% reservation for person with disability could not be kept. However, the Registrar of Rajiv Gandhi University intimated the Deputy Chief Commissioner, New Delhi that the

provision of 3% reservation for person with disability will be kept and maintained for appointment of various faculties in the University in near future.

7]. Thereafter, the Deputy Chief Commissioner, for the Person with Disability, Ministry of Social Justice and Empowerment, New Delhi issued a direction to the Registrar of Rajiv Gandhi University to fill-up the reserved vacancies for physically handicapped person and to consider the appointment of the petitioner to the applied post, if he is entitled for the benefit under the provision of person with disability Act. In spite of the aforesaid direction, the Rajiv Gandhi University denied to implement the provision of Sections 33 and 39 of the Act violating the fundamental right of the petitioner.

8]. The respondent Nos. 1 to 3, in their affidavit-in-opposition, have averred that the Executive Counsel of the Rajiv Gandhi University has decided to keep the reservation quota of persons with disability on rotation basis on the basis of alphabetic arrangements and as per advertisement dated 25-05-2011, they have kept reserved the quota for persons with disabilities/handicapped in the subject of Physics. The petitioner applied for the post of Assistant Profession in the Department of Hindi. Since the reservation quota for person with disability has not been kept in Hindi subject, the petitioner has no right on the basis of his physically handicapped to seek appointment against the said post, which is reserved in the Department of Physics.

9]. The Respondent/ Rajiv Gandhi University has admitted that an advertisement in the month of July, 2009 was up-loaded in the website of Rajiv Gandhi University for different posts including the post of Assistant Professor Hindi. Altogether 21(twenty one) posts were advertised and out of which two posts were reserved for persons with disability, one post was reserved for low-vision and another one for orthopedically handicapped person.

10]. It is the contention of the respondents that there was no earmarked/identified as to in which subject the quota of physically disabled persons were to be applied and as such, the Executive Council of Rajiv Gandhi University decided to fix the quota on alphabetical arrangements and accordingly, the alphabetical arrangement was done for subject-wise in the reserved quota of physically handicapped persons to identify the post. The modalities to fix the quota in particular subject is up to the authority concerned and the petitioner cannot compel the authority to fix the quota of physically handicapped person to the post of Hindi subject. Therefore, the petitioner has no right to claim for his appointment as Assistant Professor in the subject of Hindi on the basis of physically handicapped quota. By the advertisement dated 21-07-2009, 21(twenty one) posts of Assistant Professor of various departments were advertised, wherein, 2(two) posts of Assistant Professor were reserved for persons with disability i.e. one post for low-vision and another post of orthopedically handicapped person.

11]. In the said advertisement, no post for Assistant Professor in Physics department was advertised. It is admitted by the respondent authorities that the petitioner is an orthopedic handicapped and had applied for the post of Assistant Professor in the Department of Hindi against handicapped reserved quota. It is not disputed that the petitioner participated the interview and was the only candidate, who attended the interview against the reserved handicapped quota but the result of the said interview has not been published/disclosed by the authorities of the University concerned.

12]. The petitioner's grievance is against the advertisement dated 21-07-2009 up-loaded in the website and not against the advertisement dated 25-05-2011. According to Respondent- Rajiv Gandhi University, the advertisement for *WP(C) 187(AP)/2012*

21(twenty one) posts of Assistant Professor up-loaded in the website of the University vide advertisement dated 21-07-2009 has been cancelled. The petitioner, in his rejoinder affidavit, has alleged that on the basis of the the advertisement dated 21-07-2009 and the interview held on 12-02-2010, one Jumuni Bini, was appointed to the post of Assistant Professor in the Hindi department against unreserved post some time in the month of March, 2010. Therefore, the question of canceling the advertisement and interview thereof does not arise.

13]. It is contended that as per advertisement dated 21-07-2009, there were two posts in the Department of Hindi, one post for unreserved candidate and another post for OBC. Since Jumuni Bini has been appointed against unreserved post, vacancy of another post for OBC is still available. The petitioner is OBC orthopedically handicapped candidate, who had applied for the said post under the Department of Hindi.

14]. In para 7 of the affidavit-in-opposition, the Respondent/ Rajiv Gandhi University has admitted that total 21(twenty one) posts were advertised and out of 21 posts, 02(two) posts were reserved for persons with disabled i.e. one post for low-vision and another post for orthopedically handicapped person. According to Respondent/Rajiv Gandhi University, the reservation was not earmarked subject-wise and therefore, the post was not identified for appointment under reserved quota of physically handicapped person.

15]. In the case of In the case of **Government of India through Secretary and another Vs Ravi Prakash Gupta and Another**, reported in **(2010) 7 SCC 626**, wherein, in para 25, 26, & 27, the Apex Court has observed, as follows:-

"25. Although the Delhi High Court has dealt with the aforesaid questions, we wish to add a few observations of our own in regard to the subjects which the legislature intended to achieve by enacting the aforesaid Act. 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 legislature 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. Accordingly, the submission made on behalf of the Union of India that identification of Group A and B posts in the IAS was undertaken after the year 2005 is not of much substance.

26. A has been pointed out by the High Court, neither Section 32 nor Section 33 of the aforesaid Act makes any distinction with regard to Groups A, B, C and D posts. They only speak of identification and reservation of posts for the people with disabilities, though the proviso to section 33 does empower the appropriate Government to exempt any establishment from the provisions of the said section, having regard to the type of work carried on in any department or establishment. No such exemption has been pleaded or brought to our notice on behalf of the petitioners.

27. It is only logical that, as provided in section 32 of the aforesaid Act, posts have to be identified for reservation for the purpose of section 33, but coming into operation of the act, to give effect to the provisions of section 33. The legislature never intended the provisions of section 32 if 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 (emphasis added)."

16]. In the case of **Union of India and another Vs National Federation of the Blind and others**, reported in **(2013) 10 SCC 772** wherein, in para 31, 32, & 33, it has been observed as follows:-

"31. In the light of the above pronouncement, it is clear that the scope of identification comes into picture only at the time of appointment of a person in the post identified for disabled persons and is not necessarily relevant at the time of computing 3 % reservation under section 33 of the Act. In succinct, it was held in Ravi Prakash gupta³ that Section 32 of the Act is not a precondition for computation of reservation of 3 % under section 33 of the Act rather Section 32 is the following effect of section 33.

32. Apart from the reasoning of this Court in Ravi Prakash Gupta³, even a reading of section 33, at the outset, established 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.

33. A perusal of Section 33 of the Act reveals that this section has been divided into three parts:

33.1 The first part is:

"33. Reservation of posts: - Every appropriate Government shall appoint in every establishment such percentage of vacancies both less than 3 % for persons or class of persons with disability"

It is evident from this part that it mandates every appropriate Government shall appoint a minimum of 3 % vacancies in its establishments for persons with disabilities. In this light, the contention of the Union of India that reservation in terms of Section 33 has to be computed against identified posts only is not tenable by any method of interpretation of this part of the section.

33.2. The second part of this section starts as follows:

"..... of which one per cent each shall be reserved for persons suffering from-

- (i) Blindness or low vision;**
 - (ii) Hearing impairment; and**
 - (iii) Locomotor disability or cerebral palsy,**
- in the posts identified for each disability:"**

From the above, it is clear that it deals with distribution of 3 % posts in every establishment among 3 categories of disabilities. It starts from the word "of which". The word "of which" has to relate to appointing not less than 3% vacancies in an establishment and, in any way, it does not refer to the identified posts. In fact, the contention of the Union of India is sought to be justified by bringing the last portion of the second part of the section viz. "... identified posts: in this very first part which deals with the statutory obligation imposed upon the appropriate Government to "appoint not less than 3 % vacancies for the persons or class of persons with disabilities". In our considered view, it is not plausible in the light of established rules of interpretation. The minimum level of representation of persons with disabilities has been provided in this very first part and the second part deals with the distribution of this 3 % among the three categories of disabilities. Further, in the last portion of the second part the words used are "in the identified posts for each disability" and not "of identified posts". This can only mean that out of minimum 3 % of vacancies of posts in the establishments 15 each has to be given to each of the 3 categories of disability viz. blind and low vision, hearing impaired and locomotor disabled or cerebral palsy separately and the number of appointments equivalent to the 1 % for each disability out of total 3 % has to be made against the vacancies in the identified posts. The attempt to read identified posts in the first part itself and also to read the same to have any relation with the computation of reservation is completely misconceived.

33.3. The third part of the section is the proviso which reads thus:

"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."

The proviso also justifies the above said interpretation that the computation of reservation has to be against the total number of vacancies in the cadre strength and not against the identified posts. Had the legislature intended to mandate for computation of reservation against the identified posts only, there was no need for inserting the proviso to section which empowers the appropriate Government to exempt any establishment either partly or fully notification to be issued in the Official Gazette in this behalf. Certainly, the legislature did not intend to give such arbitrary power for exemption from reservation for persons with disabilities to be exercised by the appropriate Government when the computation is intended to be made against the identified posts."

17]. The contention of the Respondent/Rajiv Gandhi University is contradictory to their statement in different paragraphs of their affidavit-in-opposition. According to them, 3% reservation has been implemented and the post has been identified against the Physics Department whereas in the advertisement dated 21-07-2009, the post under Physics Department was not at all advertised. Further, the respondents contended that the advertisement dated 21-07-2009 was cancelled as the posts were not advertised and later on, after identification of the posts, there was another advertisement dated 25-05-2011. They have not rebutted the contention of the petitioner that as per advertisement dated 21-07-2009, one Jumuni Bini was appointed in the Hindi Department as Assistant Professor some time in the month of March, 2010.

19]. In view of the circumstances, the respondent authorities are directed to declare the result of the interview held on 12-02-2010 and if the petitioner is found to be successful in the said interview, his case may be considered against the 3% reservation quota for person with disability candidate along

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with similarly situated persons appeared in the said interview. Since, there is nothing on record to show that the interview dated 12-02-2010 was cancelled and there is no reversal affidavit filed by the respondents that no appointment has been made against the said advertisement dated 21-07-2009.

20]. With the above observations and directions, this writ petition stands disposed of. The interim order passed earlier by this Court stands vacated.

JUDGE

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