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DAYA RAM TRIPATHI

v.

STATE OF UTTAR PRADESH & ANR.

DECEMBER 12, 1986

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[O. CHINNAPPA REDDY AND V. KHALID, JJ.]

Social Justice to physically handicapped persons—Appointment to the Provincial Civil Service (Executive Branch) denied to the appellant on the plea that 2% reservation under G.O. No. 43/90/66 Appt. 4 dated 18.7.1972 had been revoked by the Government letter dated 1.3.1979—Construction and scope of the letter dated 1.3.1979 explained—Constitution of India, 1950, Article 38.

As far back as 1972, the Uttar Pradesh Government by G.O. No. 43/90/66-Apptt. 4 dated July 18, 1972 announced "for the physically handicapped persons, the reservation in all the services under the Government shall be 2%". All the Government Departments were directed to follow the policy for reservation in services accordingly. Later, by G.O. No. 7/4/1971-Personnel-2 dated May 20, 1978 the Government of Uttar Pradesh while affirming the "reservation of 2% posts for the appointment of disabled persons in all the services under the Government", defined who a physically handicapped person was. Pursuant to a letter from the Public Service Commission there was a proposal not to reserve any post for disabled persons in the Provincial Civil Service. This proposal, however, did not result in the issuance of any G.O. by the Government. But the Public Service Commission was informed by the Government by their letter dated 1.3.1979 that none of the categories of disabled persons was suitable for appointment to the U.P. Civil Service (Executive Branch) and no reservation for disabled persons might be made in the Provincial Civil (Executive Branch) Service. In 1981 the Chief Secretary, Government of Uttar Pradesh addressed all the Secretaries to the Government, Head of Department and Commissioners in Uttar Pradesh pointing out that though a provision for reservation of 2% posts was made for physically handicapped persons by G.O. No. 43/90/66 dated July 18, 1972 in the services under the State Government, appointments had not been made of handicapped persons in accordance with the reservation. The necessity of making appointments of physically handicapped persons to the reserved posts was impressed upon all the Secretaries, Heads of Departments and Commissioners and it was particularly brought to their attention that 1981 had been declared as "the International Year for

the physically Handicapped Persons'. It was also directed that vacancies should be carried forward and efforts should be made to ensure that the maximum number of physically handicapped persons were appointed.

The appellant, a disabled person who was successful at the combined State Services Examination held in 1982 by the Uttar Pradesh Public Service Commission was offered the post of Manager Marketing and Economic Survey instead of a post in the Provincial Civil Service (Executive) Branch on the ground that the reservation of 2% to the disabled persons had been revoked by the Government letter dated 1.3.1979. The Writ Petition filed by the appellant was dismissed by the Allahabad High Court. Hence the appeal by special leave.

Allowing the appeal, the Court,

Held: A perusal of the letter dated 1.3.1979 indicates that it was confined to "recruitment on the basis of Combined State Services Examination, 1978". It was not intended to be an amendment of G.O. No. 43/90/66 dated July 18, 1972 or G.O. No. 7/4/1971 dated May 20, 1978. It was not intended to depart from general rule of reservation of 2% posts in favour of disabled persons in the case of the Provincial Civil Service (Executive Branch). Further in the face of the communication in 1981 by the Chief Secretary drawing attention of all departments to the G.O. 1972, it is now futile for the Government to contend that the appellant cannot be appointed to the Provincial Civil Service (Executive Branch). Having announced very rightly their determination to rehabilitate physically handicapped persons, by reserving posts for them in all the services of the Government, the Government cannot now create needless hurdles. [577C-H]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4460 of 1986.

From the Judgment and Order dated 16.10.1985 of the Allahabad High Court in Civil Misc. Writ Petition No. 5440 of 1983.

S.N. Kacker and J.M. Khanna for the Appellant:

Anil Dev Singh and Mrs. Shobha Dikshit for the Respondents.

The Judgment of the Court was delivered by

CHINNAPPA REDDY, J: Special leave granted. The appellant is a physically handicapped person. He has an orthopaedic problem. He suffers from a permanent impediment of the left leg, the result of an old compound fracture. His impediment did not prevent him from good academic performance. He went further. He appeared at the combined State Services Examination held in February, 1982 by the Uttar Pradesh Public Service Commission. According to the advertisement issued by Commission, one post in the Provincial Civil Service (Executive Branch) was reserved for handicapped persons. However, the appellant was offered the post of Manager, Marketing and Economic Survey instead of a post in the Provincial Civil Service (Executive Branch). He was not offered a post in the Provincial Civil Service (Executive Branch) on the ground that the reservation of 2% in the Uttar Pradesh Civil Services for physically handicapped persons had been revoked by the State Government by their letter dated 1.3.1979 in regard to the Provincial Civil Service (Executive Branch). Thereupon the appellant filed a Writ Petition under Article 226 of the Constitution in the Allahabad High Court. The Writ Petition was dismissed by the High Court on the ground that there was no reservation of posts for physically handicapped persons in the Provincial Civil Service (Executive Branch). The appellant has come before us under Article 136 of the Constitution.

As far back as 1972, the Uttar Pradesh Government by G.O. No. 43/90/66-Apptt. 4 dated July 18, 1972 announced "for the physically handicapped persons, the reservation in all the services under the Government shall be 2%." All the Government Departments were directed to follow the policy for reservation in services accordingly. Latter, by G.O. No. 7/4/1971-Personnel-2 dated May 20, 1978 the Government of Uttar Pradesh while affirming the "reservation of 2% posts for the appointment of disabled persons in all the services under the Government," defined who a physically handicapped person was and added the following instruction:—

"That in this context, I have to make it clear that the physical disability should not be of the nature which may cause interference in discharge of duties and obligations attached to the concerned service. Accordingly if the service is as such that it require continuous use of eye, then in such case reservation cannot be given to the blind persons. In the same manner if some services specifically involves the hearing faculty then no reservation can be given to the deaf persons in such services and in a service where the use of a particular organ of the body

is to be used then the person disabled of that particular organ cannot be given reservation in that service. On the basis of the principle every department will issue necessary orders regarding reservation for the post under their subordination.”

It appears that there was some discussion within the department pursuant to a letter from the Public Service Commission and their was a proposal not to reserve any post for disabled persons in the Provincial Civil Service. This proposal, however, did not result in the issuance of any G.O. by the Government. But the Public Service Commission was informed by the Government by their letter dated 1.3.1979 that none of the categories of disabled persons was suitable for appointment to the U.P. Civil Service (Executive Branch) and no reservation for disabled persons might be made in the Provincial Civil (Executive Branch) Service. A perusal of the letter dated 1.3.1979 indicates that it was confined to “recruitment on the basis of Combined State Services Examination, 1978”. It was not intended to be an amendment of G.O. No. 43/90/66 dated July 18, 1972 or G.O. No. 7/4/1971 dated May 20, 1978. It was not intended to depart from general rule of reservation of 2% posts in favour of disabled persons in the case of the Provincial Civil Service (Executive Branch). Again in 1981 the Chief Secretary, Government of Uttar Pradesh addressed all the Secretaries to the Government, Heads of Departments and Commissioners in Uttar Pradesh pointing out that though a provision for reservation of 2% posts was made for physically handicapped persons by G.O. No. 43/90/66 dated July 18, 1972 in the services under the State Government, appointments had not been made of handicapped persons in accordance with the reservation. The necessity of making appointments of physically handicapped persons to the reserved posts was impressed upon all the Secretaries, Heads of Departments and Commissioners, and it was particularly brought to their attention that 1981 had been declared as ‘the International Year for the Physically Handicapped Persons’. It was also directed that vacancies should be carried forward and efforts should be made to ensure that the maximum number of physically handicapped persons were appointed. In the face of this communication from the Chief Secretary, we think that it is now futile for the Government to contend that the appellant cannot be appointed to the Provincial Civil Service (Executive Branch). Having announced their determination, very rightly too in our opinion, to rehabilitate physically handicapped persons, by reserving posts for them in all the services of the Government, the Government cannot now create needless hurdles. The State Civil Service (Executive Branch) is a large enough service which can easily accommodate physically handicapped

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- A persons in suitable posts. A direction will, therefore, be issued to the Government of Uttar Pradesh to appoint the appellant to the Uttar Pradesh Civil Service (Executive Branch) with effect from the date on which he should have been appointed in the ordinary course. He will be entitled to all the other service benefits. He is also entitled to costs.
- B The appeal is allowed accordingly.

S.R.

Appeal allowed.