

D. SUDHAKAR

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v.

STATE OF A.P. & ORS.

(Special Leave to Appeal (C) No. 19898 of 2014)

MARCH 28, 2016

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[MADAN B. LOKUR AND S. A. BOBDE, JJ.]

Indian Administrative Service (Appointment by Selection) Regulations, 1997: Petitioner Regional Transport Officer and belonging to the Scheduled Caste community and also physically handicapped (Ortho) – Seeking consideration of his appointment to the IAS against Non State Civil Services Officers Quota – Not selected – Grievance of petitioner that Act of 1995 u/s.33 provided 3% reservation for persons with disabilities – Petitioner approached CAT challenging the selection of 15 candidates by the Selection Committee for consideration for appointment in the IAS – Tribunal held that the shortlisting process by Selection Committee was not at all satisfactory and therefore short listing of 15 candidates was set aside – Tribunal however held that there is no provision for reservation in the 1997 Regulations and 1954 Rules and the petitioner had not made out any case for being short listed for selection – Writ petition – High Court dismissed writ petition holding that in view of the fact that Supreme Court decision in National Federation of the Blind and amendment of office memo dated 29.12.2005 is prospective and that amendment cannot be retrospective to the petitioner to consider his case under 3% reservation of persons with Disabilities Act – On appeal, held: The decision of High Court was based on completely different grounds than the decision of the Tribunal – In fact reasons given by Tribunal were not even remotely adverted to by High Court – This petition raises questions regarding interpretation of s.33 of PWD Act r/w Regulations of 1997 and Rules of 1954, this petition also relates to interpretation of Office Memorandum 29.12.2005 and O.M. 3.12.2013 – Since all these issues are interlinked with the pending Civil appeals, leave granted and appeal tagged with C.A.7295/12 and CA 11895/14 – Indian Administrative Service (Recruitment) Rules, 1954 – Service law – Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

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A *Union of India v. National Federation of the Blind* (2013) 10 SCC 772; 2013 (9) SCR 1023; *H.C. Sharma v. N.D.M.C* 211 (2014) DLT 462; *Municipal Corporation of Delhi v. Manoj Gupta* 171 (2010) DLT 600 – referred to.

B Case Law Reference

2013 (9) SCR 1023 referred to Para 2

211 (2014) DLT 462 referred to Para 16

171 (2010) DLT 600 referred to Para 16

C CIVIL APPELLATE JURISDICTION: Special Leave to Appeal No. 19898 of 2014.

From the Judgment and Order dated 20.02.2014 in W.P No. 18563 of 2011 passed by the High Court of Judicature of Andhra Pradesh at Hyderabad.

D S.K. Rungta, Sr. Adv., Prashant Singh, Kanti Kumar, Rameshwar Prasad, Advs., for the Appellant.

Ms. Prerna Singh, Guntur Prabhakar, Advs., for the Respondents.

The Judgment of the Court was delivered by:

E **MADAN B. LOKUR, J.** 1. The petitioner was directly recruited in the Group-I services as a Regional Transport Officer in 1990 and has been working as Joint Transport Commissioner since 2008. The petitioner belongs to the Scheduled Caste community and is physically handicapped (Ortho).

F 2. The petitioner says that he has been unfairly treated for selection to the Indian Administrative Service (for short 'the IAS') and that he is entitled to the benefit of the quota for physically handicapped persons under S.C. category for selection under the Indian Administrative Service (Appointment by Selection) Regulations, 1997. For this, the petitioner places reliance on the decision of this Court in *Union of India v. National Federation of the Blind*¹ and Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

G 3. The background facts of the case indicate that the State of Andhra Pradesh had short listed the petitioner in 2002 for consideration

H ¹ (2013) 10 SCC 772

for appointment to the IAS against Non State Civil Services Officers quota. The petitioner was interviewed but not selected. Even thereafter, the petitioner was considered for appointment but was not short listed or selected. The petitioner says that in spite of the reservation for persons with disabilities as provided under Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short 'the PWD Act') which provides for 3% reservation for persons with disabilities in every establishment of the appropriate Government, the petitioner was not selected in the IAS. A
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4. At this stage, it may be mentioned that there are three modes of recruitment to the IAS under the Indian Administrative Service (Recruitment) Rules, 1954. These are (a) by direct recruitment; (b) by promotion of State Civil Services Officers; (c) by selection from amongst Non State Civil Service Officers. The case of the petitioner falls in the third category that is selection from amongst Non State Civil Services Officers. C

5. When the petitioner was not short listed for selection for the IAS in 2010, he approached the Central Administrative Tribunal, Hyderabad Bench by filing O.A. No. 1297 of 2010 challenging the selection of 15 candidates by the Selection Committee constituted for this purpose that had recommended the 15 candidates to the Union Public Service Commission for consideration for appointment in the IAS. The further prayer of the petitioner was for a direction to include his name in the short list sent by the State of Andhra Pradesh under the physically handicapped quota and under S.C. category. D
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6. The State of Andhra Pradesh and the Union of India both contested the claim of the petitioner on merits and at law. It was submitted by the State of Andhra Pradesh and the Union of India that the concerned Selection Committee had fully examined the records of the candidates and thereafter did not shortlist the petitioner. As such it was contended that the decision taken by the Committee could not be faulted. The State of Andhra Pradesh and the Union of India also contended that the Indian Administrative Service (Appointment by Selection) Regulations, 1997 do not provide for rules of reservation for including a candidate in the zone of consideration. Therefore, apart from the contention that the petitioner was not meritorious enough, the submission was that even at law the petitioner had not made out any case for interference by the Tribunal. F
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A 7. The Tribunal by its Order dated 28th February, 2011 partly allowed the original application filed by the petitioner. The Tribunal held that the short listing process by the Selection Committee was not at all satisfactory and therefore the short listing of the 15 candidates was set aside as the selection was not fair.

B 8. With regard to the prayer of the petitioner that his name should be included in the short list, the Tribunal held that on an earlier occasion it had dealt with a somewhat similar issue in O.A. No. 998 of 2009. In that case the Tribunal had held that there was no provision for reservation in recruitment by promotion from the State Police to the Indian Police Service. It was held that the rationale for coming to that conclusion
C holds good for recruitment by selection of Non State Civil Services Officers to the IAS. Accordingly, it was held that the petitioner had not made out any case for being short listed for selection.

D 9. The Tribunal, in a somewhat oblique manner, upheld the contention of the State of Andhra Pradesh and the Union of India that there is no provision for reservation in the Indian Administrative Service (Appointment by Selection) Regulations, 1997 or the Indian Administrative Service (Recruitment) Rules, 1954.

E 10. Feeling aggrieved, the petitioner preferred Writ Petition No. 18563 of 2011 in the High Court of Andhra Pradesh. By its judgment and order dated 20th February, 2014 the High Court dismissed the writ petition (impugned).

F 11. The High Court did not even advert to the Indian Administrative Service (Recruitment) Rules, 1954 or the Indian Administrative Service (Appointment by Selection) Regulations, 1997 but in a rather cryptic manner rejected the case set up by the petitioner. The High Court held as follows:-

G “7. The facts are not in dispute. As on the date of committee constituted for selecting Non-Indian Administrative Service Cadre from various departments, the petitioner was eligible to be considered. The main contention of the learned counsel for the petitioner is that the case of the petitioner has to be considered under office memo, dated 3.12.13, wherein the persons with disabilities have to be given preference in 3% reservation on the total number of vacancies in the cadre strength. But, in view of
H the fact that the decision of the Hon’ble Supreme Court and the

[MADAN B. LOKUR, J.]

amendment of Office Memo dated 29.12.2005, is prospective, that amendment cannot be retrospective to the petitioner to consider his case under 3% reservation of persons with Disabilities Act. Therefore, we do not find any merit in this writ petition and it is liable to be dismissed.” A

12. The decision of this Court referred to above is in the case of *National Federation of the Blind* which dealt with the Office Memorandum dated 29th December, 2005 and struck down paragraph 12 thereof. B

13. Subsequent to the decision of this Court, the Union of India issued another Office Memorandum dated 3rd December, 2013 and inserted the following paragraph:- C

“Reservation for persons with disabilities in Group A or Group B post shall be computed on the basis of total number of vacancies occurring in direct recruitment quota in all the Group A post and Group B post respectively, in the cadre.” D

14. A perusal of the impugned judgment and order indicates quite clearly that the decision of the High Court was based on completely different grounds than the decision of the Tribunal. In fact the reasons given by the Tribunal were not even remotely adverted to by the High Court. E

15. Be that as it may, feeling aggrieved by the decision rendered by the High Court the petitioner is now before us. The primary contention urged before us is that in view of the decision of this Court in *National Federation of the Blind* read with Section 33 of the PWD Act, the petitioner is entitled to the benefit of reservation for persons with disabilities in the matter of short listing for selection to the IAS. F

16. We may note at this stage that the Office Memorandum dated 3rd December, 2013 and more particularly the inserted paragraph mentioned above came up for consideration before the Delhi High Court in *H.C. Sharma v. N.D.M.C.*² The Delhi High Court took the view that the inserted paragraph was contrary to the conclusions and directions in *National Federation of the Blind*. Accordingly, the said paragraph was struck down. In coming to this conclusion, the High Court made a reference to *Municipal Corporation of Delhi v. Manoj Gupta*³ and G

² 211 (2014) DLT 462

³ 171 (2010) DLT 600

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- A the dismissal on 10th December, 2013 of the petition for special leave to appeal against the decision of the High Court in *Manoj Gupta*.

17. Be that as it may, the decision of the High Court in *H.C. Sharma* came up for consideration before this Court and on 18th December, 2014 leave was granted to challenge the decision. The Civil Appeal arising therefrom being C.A. No. 11895 of 2014 is pending and has been tagged with C.A. No. 7295 of 2012 (*State of Haryana v. Viklang Sangh*).

18. Under these circumstances, we are of the opinion that apart from the fact that this petition raises questions regarding the interpretation of Section 33 of the PWD Act read with the Indian Administrative Service (Appointment by Selection) Regulations, 1997 and the Indian Administrative Service (Recruitment) Rules, 1954 this petition also relates to the interpretation of the Office Memorandum dated 29th December, 2005 and the Office Memorandum dated 3rd December, 2013. Since all these issues are inter-linked with the pending Civil Appeals, we are of the view that for a comprehensive decision in the matter and to settle the controversy, it will be more appropriate if leave is granted to the petitioner and this matter is tagged along with C.A. No. 7295 of 2012 and C.A. No. 11895 of 2014.

19. Accordingly, we grant leave and tag this appeal with C.A.No.7295 of 2012 and C.A.No.11895 of 2014.

Devika Gujral

Appeal allowed.