

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

WRIT APPEAL 433/2016

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| Sri Kamal Krishna Mishra | ----- | Appellant |
| | -versus- | |
| The State of Assam & 6 Others | ----- | Respondents |

BEFORE
**HON'BLE THE CHIEF JUSTICE MR. AJIT SINGH
HON'BLE MR. JUSTICE MANOJIT BHUYAN**

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| Advocate for Appellant | :: | Mr. B.D. Goswami |
| Advocate for the Respondents | :: | Mr. F.U. Borbhuiya Mr. R.K.D. Choudhury Mr. R. Dhar |
| Date of Hearing | :: | 18.12.2017 |
| Date of delivery of Judgment | :: | 18.12.2017 |

JUDGMENT & ORDER

(Manojit Bhuyan, J)

Heard Mr. B.D. Goswami, learned counsel for the appellant. Also heard Mr. RKD Choudhury, learned Senior Government Advocate and Mr. R. Dhar, learned Senior Government Advocate for respondent nos.1 to 4 as well as Mr. F.U. Borbhuiya, learned counsel for respondent nos. 5 and 6.

The adjudication of the present appeal has narrowed down substantially in view of the stand now taken by the State Respondents. As on date, the appellant Kamal Krishna Mishra is discharging duties as Sub-Inspector, Food & Civil Supplies and Consumer Affairs Department, on his provisional appointment as such following this Court's Order dated 17.02.2017. The facts of the

present case vis-a-vis the relevant provisions under the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995*, leading to the interim direction for appointing the appellant, has been usefully delineated in the order of this Court dated 17.02.2017. The relevant portion of the said order is extracted hereunder:

"2. The appellant here is a *visually impaired* person and he is aggrieved by the dismissal of the WP(C) No.2638/2012, whereby his claim for appointment to the post of *Sub-Inspector* of Food & Civil Supplies and Consumer Affairs Department, was not accepted. The candidate applied for the benefit under the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995* [hereinafter referred to as "*the 1995 Act*"] but as the selection process was confined to only those, with *locomotor disability*, the candidature of the *visually impaired* candidate, was not considered.

3. Mr. P.K. Goswami, the learned Sr. Counsel submits that appropriate amendment of the writ petition was allowed on 31.10.2014, to challenge the restrictive recruitment exercise confined to only the *orthopedically impaired* category but the learned Court erroneously noted that the restrictive selection was not challenged by the writ petitioner. This is how, a mistake was committed and the writ petition was dismissed notwithstanding the 1/3rd right of the *visually impaired* category, under *Section 33* of the *1995 Act*.

4. The reservation of posts under the *1995 Act* is prescribed under *Section 33* and for the 3% reserved posts, 1% for each segment is required to be reserved for persons suffering from (i) *blindness or low vision*, (ii) *hearing impairment* and (iii) *locomotor disability or cerebral palsy*.

5. In the Job Identification Exercise undertaken by the committee constituted on 28.10.2003, the 3% reserve posts of *Sub-Inspectors* in the Food, Civil Supplies & Consumer Affairs Department,

were identified to be earmarked only for persons with orthopedic disability. Therefore it is apparent that the identification so made, do not take into account the other two disabled category, envisaged under *Section 23* of the *1995 Act*.

6. The private respondent Nos.5, 6 and 7 were selected against the *orthopedically impaired* category and out of them, *Santanu Bordoloi* and *Himangshu Kumar Das* are already appointed. But *Harun Al Rashid* (respondent No.7) as another of this category selectee, is still awaiting his turn.

7. The selection exercise undertaken in the present case was for 145 vacancies and if 3% of these posts are to be reserved under the *1995 Act*, minimum 4 persons from the impaired category, deserves to be appointed. In the counter affidavit filed by the Director of Food, Civil Supplies & Consumer Affairs on 13.02.2017, it is reflected that the current vacancy position out of the 145 posts is 13 and these posts have remained vacant, due to resignation and non-joining of some of the selected candidates.

8. The appellant is a *visually impaired* person with blindness in the left eye (40%) since birth and otherwise he is eligible to be considered under *Section 33* of the *1995 Act*. But only because all the posts of *Sub-Inspectors* have been identified for the *orthopedically disabled* category by the Job Identification Committee, only those from this category, were considered and few of them have been appointed. The next person in this category is the 7th respondent *Harun Al Rashid* and he is not yet appointed.

9. What appears from the above discussion is that all the reserve posts under the *1995 Act* have been usurped by one category and those with low vision/blindness and hearing impairment, are ignored in toto.

10. The writ petitioner had challenged the Office Memorandum dated 11.05.2005, whereby the Job Identification Committee had earmarked all the posts of *Sub-Inspectors* in the Food, Civil Supplies &

Consumer Affairs Department for the orthopedically disabled category, but there was no consideration to this challenge by the writ court. Whether a *visually impaired* person is also capable to work as a Sub-Inspector, should have been a matter of consideration of the Court when challenge was made to the Office Memorandum dated 11.05.2005. But unfortunately, this aspect was overlooked in the impugned judgment.

11. The *1995 Act* was enacted to facilitate equal treatment of people with disabilities and their full participation in the government sector and *Section 33* of the *1995 Act* provides for reservation of vacancies to the extent of 1% for persons suffering low vision or blindness. With such noble objective, it is not known why the Job Identification Committee earmarked all the posts of *Sub-Inspector* for one category, i.e. those with locomotor disability, when it is well known that persons with visual impairment have been appointed to govt. jobs with great responsibility. Unless the nature of the impairment makes a person totally unsuitable for a particular job, the exclusion of one category overlooks the enhanced capability of the other senses, by a person suffering impairment of one sense. Whether this aspect was considered by the committee is required to be seen when we consider the matter at the hearing stage.

12. In the above circumstances, noticing that 13 vacancies are still available, as an interim measure, we direct the appointment of the appellant *Kamal Krishna Mishra*, to the post of Sub-Inspector, Food, Civil Supplies & Consumer Affairs Department, under *Section 33(i)* of the *1995 Act*, within a period of 6(six) weeks from today. The appointment may be offered on probation basis to see the capability of the appointee, to discharge the responsibilities of the job. The appointment so made, is subject to the final result of the Writ Appeal. It is ordered accordingly."

Mr. Choudhury submits from instructions that the appellant has been discharging duties without any question being raised from any quarter as regards his suitability. Mr. Choudhury also submits that if this Court makes absolute the interim arrangement made in favour of the appellant, a necessary observation be made by this Court in order that the present case would not be treated as a precedent.

We take on board the fair stand taken by the respondent State. We are also mindful of the fact that the private respondent nos. 5 and 6 have already been appointed and both of them have joined and are working in the post of Sub-Inspector, Food & Civil Supplies and Consumer Affairs Department as belonging to Orthopedically handicapped category. Without going into the pros and cons and/or into the merits of the case and without disturbing the employment given to the private respondent nos. 5 and 6, the present appeal is disposed of with direction to the State Respondents to allow the appellant to continue in service as Sub-Inspector, Food & Civil Supplies and Consumer Affairs Department.

We, therefore, affirm our earlier Order dated 17.02.2017 with further direction that the service of the appellant shall now be governed by the applicable service rules.

The order of the learned Single Judge is modified to the above extent. With the above observation and direction, the present appeal stands accordingly disposed of.

JUDGE

CHIEF JUSTICE

sds