



सत्यमेव जयते

न्यायालय मुख्य आयुक्त निःशक्तजन  
Court of Chief Commissioner for Persons with Disabilities  
सामाजिक न्याय एवं अधिकारिता मंत्रालय  
Ministry of Social Justice & Empowerment  
निःशक्तता कार्य विभाग / Department of Disability Affairs

**Case No.966/1011 /13-14**

**Dated:-21.07.2014**

**In the matter of:**

Shri Subhash Chandra Vashishth,  
Advocates & Legal Consultants.

..... Complainant

Versus

The Government of Kerala  
(Through its Chief Secretary)  
Thiruvananthapuram-695001  
(Kerala)

..... Respondent No.1

The High Court of Kerala,  
Through the Registrar  
(Recruitment & Computerization),  
Kochi-682031

..... Respondent No.2

**Date of hearing : 15.10.2013, 21.11.2013, 23.01.2014, 23.06.2014**

**Present :**

15.10.2013

1. Shri Subhash C. Vashishth, Complainant.
2. S/Shri T.G.N. Nair, Advocate and K.N. Madhusoodhanan, Advocate on behalf of Respondent No.2 (High Court of Kerala)

21.11.2013

1. E-mail dated 20.11.2013 from the complainant.
2. Letter dated 21.11.2013 from the Respondent No.1.

23.01.2014

1. Shri Subhash C. Vashishth, Complainant.
2. S/Shri T.G.N. Nair, Advocate and K.N. Madhusoodhanan, Advocate on behalf of Respondent No.2 (High Court of Kerala)

23.06.2014

1. None on behalf of Complainant
2. S/Shri T.G.N. Nair, Advocate and K.N. Madhusoodhanan, Advocate on behalf of Respondent No.2.
3. None on behalf of Respondent No. 1

**ORDER**

The above named complainant filed a complaint vide his e-mail dated 04.04.2013 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding provision of 1% reservation only to persons with orthopaedically handicapped instead of 3% reservation to persons with disabilities in Kerala Judicial Service.

.....2/-

2. The complainant submitted that Hon'ble High Court of Kerala published a Notification No.REC4-5384/2013 dated 21.03.2013 inviting applications for filling up of 74 posts of Munsiff-Magistrates in Kerala Judicial Service. Out of 74 posts, only one percent reservation was provided to persons with orthopaedically handicapped persons. He also alleged that the impugned notification restricted the visually impaired candidates to apply for the said post. He also submitted that the Kerala Govt. order dated 17.10.2012 regarding declaration of more posts in Class I, II & III as suitable for appointment of physically disabled persons is also contrary to the Union of India's identification lists and does not identify the post of Munsiff-Magistrate for the Visually Impaired. It is pertinent to mention that the post of Judges/Magistrates Subordinate in Lower Judiciaries appears at Sl.No.466 in the List of G.O. The identified jobs are published by Ministry of Social Justice and Empowerment, Government of India under the Persons with Disabilities Act. The list identifies the posts for categories OA, OL, BL, B, LV with functional requirements as S, ST,C, RW. The Order dated 17.10.12 and the Notification are both contrary to the stated identification list, hence, discriminatory and bad in law hence liable to be set aside. The complainant has been approached by a group of visually impaired Law Graduates from Kerala who have been adversely affected due to the above impugned notification/order of the Kerala Govt. The complainant prayed that a suitable direction/order be passed and Kerala Govt. and Kerala High Court be advised to correct this anomaly with immediate effect so that the eligible visually impaired candidates can also appear for the said examination and compete with others for post of Munsiff-Magistrate under Kerala Judicial Service Examination. The respondents be also asked to extend the date of submitting the applications for the examination and extend relaxation in fees, age, scribes etc. as the extant rules/norms under the Persons with Disabilities Act, 1995.

3. As per Notification No.16-70/2004-DD-III dated 18.01.2007 issued by Ministry of Social Justice and Empowerment, the post of Judges/Magistrates Subordinate in Lower Judiciaries are identified for persons with disabilities such as One Leg (OL), One Arm (OA), both Legs (BL), Blind (B) and Low Vision (LV).

4. As per Section 33 of the Persons with Disabilities Act, 1995, 3% of the vacancies are to be reserved for persons with disabilities of which 1% 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. Section 33 of the Act provides as under:-

*“Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three percent for persons or class of persons with disability of which one percent each shall be reserved for persons suffering from –*

*(i) Blindness or low vision; (ii) Hearing impairment; (iii) Loco motor 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."*

5. The matter was taken up with Registrar, High Court of Kerala on 16.04.2013.
  
6. Assistant Registrar, High Court of Kerala vide letter No.REC-5384/2013 dated 06.05.2013 submitted that as per Article 233 and 234 of the Constitution of India, the appointments to the posts of District Judges and other posts in the judicial service are to be made by the Governor of the State in consultation with the High Court. These provisions are included in the Constitution in order to ensure the independency of the judiciary. Therefore, the Government while deciding the question of reservation of posts to physically handicapped persons in the judicial service, has to consult with the High Court. In Writ Appeal No.1257/2008 pertaining to reservation of posts to physically handicapped persons in the appointment of Munsiff-Magistrates in the Kerala Judicial Service, the Hon'ble High Court directed the Government to take a decision on the issue under the provisions of the Persons with Disabilities Act, 1995 for appointment by direct recruitment to the post of Judicial Officers including Munsiff-Magistrates after obtaining the view of the High Court. A Special Committee of Hon'ble Judges was constituted to look into this matter in detail and to make appropriate suggestions. The Special Committee considered the question of reservation of posts for physically handicapped persons in appointment to Kerala Judicial Service in the light of Section 33 of Persons with Disabilities.
  
7. He further submitted that as per Rule d10(1)(e) of the Kerala Judicial Service Rules, 1991 prescribes that the persons seeking appointment to the judicial service shall be of sound health having no infirmities which renders him unfit for such appointment was also taken note of by the Committee. The Committee was of the firm view that reserving posts for persons having blindness, low vision, hearing impairment or cerebral palsy in the judicial service was not at all feasible having regard to the type of work carried on by judicial officers. However, it was resolved by the Committee that one percent of vacancies arising in the category of Munsiff-Magistrate be reserved for the persons having locomotor disability. The suggestion made by the Committee was approved by the Full Court and the Government issued orders accordingly. As per G.O. (P) No.43/2009/SWD dated 13.10.2009, the post of Munsiff-Magistrate is included as Sl. No. 48 in the list of posts under Class I and Class II which are identified as suitable for appointment of physically disabled candidates. He further submitted that the Government as per letter dated 08.07.2010 informed the High Court that the turn reserved for the persons with locomotor disabilities comes again every 99 in cycle of 100 vacancies out of turn basis.
  
8. A copy of reply dated 06.05.2013 received from the respondent was forwarded to the complainant vide this Court's letter dated 15.05.2013 for submission of his comments.
  
9. The complainant vide e-mail dated 16.08.2013 furnished the comments in the matter. He submitted that respondent's reply smacks of a silent discriminatory attempt on the part of the respondent with hand in gloves with Govt. of Kerala to deny law graduate persons with visual impairment an opportunity to compete for judicial offices in he State of Kerala while the Union of India

has already identified the post of Magistrate/Civil Judge for person with low vision and those with complete blindness. Such denial will lead to travesty of justice and label the person with visual impairment as incapable and must be reconsidered by the respondent. He also submitted the para-wise comments.

10. After considering the reply dated 06.05.2013 of the respondent and the complainant's rejoinder dated 16.08.2013, a hearing was scheduled on 15.10.2013.

11. During the hearing, reiterating his written submissions, the complainant urged upon this Court to refer to the judgment dated 02.07.2013 of the Hon'ble Supreme Court of India in Civil Appeal No.9324 of 2012, whereby the Hon'ble Supreme Court has set at rest all confusion in respect of the powers of the State Commissioner for persons with disabilities and upheld the order of the Commissioner for persons with disabilities, Government of Gujarat to reinstate an employee of the State Government who had been illegally dismissed from service on acquiring disability in violation of Section 47(1) of the PwD Act, 1995. Among other things, highlighting the Hon'ble Supreme Court's pronouncement that Section 62 of the PwD Act, 1995 was not an empty formality and that the State Commissioner was empowered to decide complaints accordingly, he contended that on the same analogy, the powers conferred on the Chief Commissioner u/s 59 of the PwD Act read together with Section 63 of the Act could not have been an empty formality.

12. Citing a Notification of Hon'ble High Court for filling up of various posts in Delhi Judicial Service through Delhi Judicial Service Examination 2010, the complainant asserted that posts, vide the said Notification, were reserved for persons with blindness and for persons with low vision.

13. The complainant further expressed his utter shock and dismay at the emerging trends to attach incapacity to persons with blindness and persons with low vision in Kerala as evidenced by the Kerala Government Notification G.O.(P) No. 61/2012/SWD dated 17.10.2012.

14. Reiterating his written submissions, the Ld. Counsel of the respondent, namely, the Kerala High Court produced before this Court a copy of the judgment dated 21.03.2013 in W.A. No.1728 of 2012 in WP(C) 16412/2009 of the Hon'ble High Court of Kerala. In the said judgment, the view taken by the Single Judge that the Chief Commissioner does not have any adjudicatory functions as may be seen from Para 21 of the said judgment, was upheld by the Division Bench of the same Court. He further submitted that in Para 8 of the reply dated 08.10.2013, it has been stated that a Special Committee of Hon'ble Judges has been constituted to reconsider the matter as to whether any change is necessary in the earlier decision taken with regard to the reservation of appointment for visually handicapped persons in the Judicial Service.

15. In the course of the hearing, this Court observed that there should now be no confusion with regard to the power of the Chief Commissioner or Commissioners for persons with disabilities as the case may be, more particularly, after the aforesaid judgment of the Hon'ble Supreme Court dated 02.07.2013, which, among other things, clearly stipulates that Section 62 of the PwD Act, 1995 is not an empty formality and the Commissioners can decide complaints accordingly. It was further

observed that a number of blind persons are working and have worked as Senior Advocates of both High Courts as well as the Supreme Court and one blind Senior Advocate had also served as Advocate-General in the State of West Bengal. It was further observed that there are countries where completely blind persons have worked as Judges of the Apex Court of their respective countries. It is also not understood as to how a job which can be successfully performed by persons with blindness and persons with low vision in Delhi is deemed beyond the capability and competence of similar set of people in Kerala.

16. After hearing out the submissions of the complainant and the Counsel of the respondent, namely, the Kerala High Court, it was decided to take on Board the version and the views of the Government of Kerala in respect of identification of posts in the State Judicial Service u/s 32 of the PwD Act, 1995 and the exemption granted subsequently under Proviso to Section 33 of the Act vide Government of Kerala Notification G. O. (P) No. 61/2012/SWD dated 17.10.2012. Accordingly, a copy of the complaint alongwith copies of the replies and other relevant documents available on record and the copy of the Record of Proceedings were sent to Government of Kerala to submit reply with a copy to the complainant who may submit his rejoinder within 15 days thereafter. The matter was fixed for hearing on 21.11.2013.

17. The complainant vide his e-mail dated 20.11.2013 requested for adjournment of the hearing. Additional Chief Secretary to the Government of Kerala also vide letter No.15261/D3/13/SJD dated 21.11.2013 submitted that the Expert Committee meeting held on 16.08.2013 decided in principle to include the category of low vision in the post of Munsiff-Magistrate and Government have requested the Registrar, Hon'ble High Court for concurrence to the proposal. The action taken based on this decision has not been complied due to the non availability of concurrence from the Hon'ble High Court. Govt. of Kerala further informed that the request shall be considered and G.O. will be issued as and when further concurrence would be received from the Hon'ble High Court. The case was adjourned to 23.01.2014.

18. On 23.01.2014, the Ld. Counsel for the Hon'ble High Court of Kerala submitted that a reference made from the Government of Kerala to Hon'ble High Court of Kerala regarding identification of the post of Munsiff-Magistrate in Kerala Subordinate Judicial Services as intimated by the Additional Chief Secretary to Government of Kerala vide his letter No.15261/D3/13/SJD dated 21.11.2013, was placed before a Committee of Hon'ble Judges constituted by the Hon'ble High Court. The said Committee has submitted its report to the Full Court for its consideration and approval, which is awaited. The Counsel appearing for the Kerala High Court, therefore, requested a month's time to report back to this Court about the progress in the matter.

19. The Ld. Counsel for the complainant submitted that the matter continues to hang fire for quite a while now, with the result that the candidates with disabilities continue to lose out in terms of their age and opportunity for no fault of theirs and also in terms of their appointment against the reserved/un-reserved post of Munsiff-Magistrate in Kerala Subordinate Judicial Services.

20. Considering all aspects, it was advised that this Court be informed as to whether its observations as envisaged in the Record of Proceedings dated 15.10.2013 in the context of identification of the post of Munsiff-Magistrate also for persons with blindness, among others, was brought to the notice of the Committee of Hon'ble Judges of the Kerala High Court before submission of its report to the Full Court. Since the matter had been pending for quite a while, its disposal brooked no delay as otherwise it was proving to be prejudicial to the interests of the candidates with disabilities in relation to the post of Munsiff-Magistrate. Therefore, expeditious decision in respect of the matter within a time frame not exceeding one month from the date of receipt of the Record of Proceedings was directed.

21. Despite lapse of sufficient time, no reply/report was received from the respondents and therefore, the case was scheduled for hearing on 23.06.2014.

22. During the hearing, the representative of the respondent produced a letter dated 20.06.2014 addressed to him by the Registrar of the Hon'ble High Court of Kerala, which states as under:-

“Sub : Kerala Judicial Service Examination, 2014 – Reservation for physically handicapped persons – Case No.966/1011/13-14 in the Court of the Chief Commissioner for Persons with Disabilities in the matter of complaint put in by Shri Subhash Chandra Vashishth – reg.

As I have already informed you over telephone, the Special Committee of Hon'ble Judges of the High Court constituted to consider the matter with regard to the reservation for physically handicapped persons in the judicial service, in its meeting dated 02.12.2013 has resolved to recommend reservation for appointment to the post of Munsiff Magistrate in the Kerala Judicial service to candidates with low vision and hearing impairment provided the Medical Board constituted for assessment certifies that the candidate will be able to perform the duties of a Judicial Officer with the aid of assistive technologies and the candidate qualifies in the selection in terms of the Kerala Judicial Service Rules, 1991.

I am to inform you that the above recommendation can be taken up with the Government only after getting the approval of the Full Court. The matter will be considered by the Full Court in its next meeting to be held on 24.06.2014.

Now, the Court of the Chief Commissioner for Persons with Disabilities has issued notice of hearing u/s 63 of PWD Act, 1995, directing the parties to appear before the Court in person or through a representative or a counsel well versed with the case at 3.00 p.m. on 23.06.2014 to present the case.

I am, therefore, to request you to appear before the Court on the above mentioned date and to present the case as above.

Yours faithfully,  
Sd/-  
(Venu Karunakaran )  
Registrar (Recruitment & Computerization)”

23. The Additional Chief Secretary to Government of Kerala, Social Justice (D) Department vide his letter No.15261/D3/13/SJD dated 20.06.2014 submitted as under:-

“Subject:- Social Justice Department – Complaint on the judgment dated 2.07.2013 of the Hon'ble Supreme Court of India in Civil Appeal No.9324 of 2012 – reg.

Ref: 1. G.O. (P)61/2012/SWD dated 17.10.2012.  
2. Expert Committee Meeting held on 16.08.2013.  
3. Lt. No.REC4-38122/13 dated 4.5.2013 and B4-12480/13 dated 17.05.2013 addressed to principal Secretary, Home(C) Department.  
4. Govt. letter No.8925/D1/13/SJD dated 9.9.2013 & 9.4.2014 addressed to the Registrar (Subordinate Judiciary), High Court, Ernakulam.

5. Case No.966/1011/13-14 dated 15.10.2013 and 6.6.2014 from the Chief Commissioner for Persons with Disabilities, Ministry of Social Justice & Empowerment, Government of India, New Delhi.

I am directed to invite your attention to the reference cited and to inform that as per the GOI cited Locomotor disability/cerebral palsy moderate were identified as eligible categories for the post of Munsiff-Magistrate in Kerala State Judicial Service. As per letter 3<sup>rd</sup> cited the Registrar, High Court has informed that the G.O. issued without consultation with the High Court as required under Article 233 and 234 of the Constitution of India and in view of the order of Hon'ble High Court of Kerala in W.P. No.1257/2008 and requested to delete the category of locomotor disability/cerebral palsy against the post of Munsiff- Magistrate in the G.O.(P)61/12/SWD dated 17.10.2012.

It may also be noted that the Expert Committee meeting held on 16.08.2013 decided in principle to include the category of low vision in the post of Munsiff-Magistrate and Government have requested the Registrar, Hon'ble High Court for concurrence to the proposal. The action taken based on this decision has not been compiled due to the non availability of concurrence from Hon'ble High Court. A reminder has already been sent to the Registrar High Court on 09.04.2014 but the remarks/reviews have not been received so far. Hence another letter alongwith your notice of hearing dated 06.06.2014 has been sent to the Registrar, High Court for furnishing the remarks. The request shall be considered and G.O. will be issued as and when further concurrence received from the Hon'ble High Court.

Yours faithfully,  
Sd/-  
Dr.K.M. ABRAHAM  
Addl.Chief Secretary to Govt. "

24. The complainant informed over the phone that as there is no communication received by him with regard to the matter from the respondent, no useful purpose would be served by his presence and so he sought leave of this Court not to attend the hearing. However, he added that he would like to put forth his further arguments in case there is any communication from the High Court which may be prejudicial to the larger interests of persons with disabilities.

25. In the above view of the matter, keeping in mind the fact that this Court has already expressed its opinion in respect of the matter, and that it is the prerogative of the appropriate Government within the ambit of Section 32 of the Act to take a decision and that the matter will be considered by the Full Court of the Hon'ble Kerala High Court on 24.06.2014 and the G.O. will be issued by the Government of Kerala as intimated by the Additional Chief Secretary, Government of Kerala vide his letter dated 20.06.2014, the matter stands disposed off accordingly.

Sd/-  
**( P. K. Pincha )**  
Chief Commissioner  
for Persons with Disabilities