

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

WRIT PETITION No.21366 OF 2019

Between:

The Union of India,
Rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi – 110011 and four others. --- Petitioners.

And

Kampara Venkata Giri,
S/o.Shankara Rao, Age 24 years,
Occ:Un-employee,
R/o.D.No.8-58, Kampara Palem Colony,
R.R.V.Puram, Visakhapatnam. --- Respondent.

DATE OF ORDER PRONOUNCED : 30.06.2021

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE JOYMALYA BAGCHI

AND

HON'BLE SRI JUSTICE K.SURESH REDDY

1. Whether Reporters of Local Newspapers
may be allowed to see the order? Yes/No
2. Whether the copy of order may be
marked to Law Reporters/Journals? Yes/No
3. Whether Their Lordships wish to
see the fair copy of the order? Yes/No

JOYMALYA BAGCHI, J

K.SURESH REDDY, J

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AND
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**! Counsel for the Petitioners : Sri N.Harinath
(Assistant Solicitor General)**

^ Counsel for Respondent : Sri P.Kameswara Rao

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> Head Note:

? Cases referred:

This Court made the following:

HON'BLE SRI JUSTICE JOYMALYA BAGCHI

AND

HON'BLE SRI JUSTICE K.SURESH REDDY

WRIT PETITION No.21366 OF 2019

ORDER: (Per Hon'ble Sri Justice Joymalya Bagchi)

1. Order, dated 01.11.2018, passed in O.A. No.1397 of 2015 by the Central Administrative Tribunal, Hyderabad, (for short, 'the Tribunal') directing the respondent to be considered for appointment to the post of Multi Tasking Staff (for short, 'the MTS') which was kept vacant by virtue of the *interim* order, dated 16.10.2015, for the purpose of giving effect to the statutory reservation up to 3% of the posts under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, 'the Act of 1995') with a further direction to complete the entire process of appointment within the stipulated time is under challenge in the instant Writ Petition.

2. Factual matrix giving rise to the instant proceeding is to the effect that a notification was issued in December, 2012 by the petitioner-Union of India for recruitment of MTS in the Naval Armament Depot, Visakhapatnam. The respondent, who is a visually challenged person with 40% disability, responded to the said notification, participated in the written test and received a call letter for participation in the interview/physical endurance test. But the petitioners did not clear him in the physical endurance test as he was a visually challenged person. Under such circumstances, he approached the Tribunal seeking a declaration that the petitioners herein were required to provide for reservation to persons with disabilities in the aforesaid selection process and a direction for his appointment to the post of MTS by extending the

rule of reservation under the Act of 1995. At the initial stage, the Tribunal, by order dated 16.10.2015, directed the petitioners to keep one post vacant, pending disposal of the O.A. Thereafter, upon hearing the parties, the Tribunal came to a finding that the petitioners had acted contrary to the Act of 1995 by not implementing the rule of reservation provided therein. Accordingly, a direction was given to the petitioners to consider the appointment of respondent to the post kept vacant by treating him as entitled to appointment under the persons with visual disability quota envisaged under Section 33 of the Act of 1995.

3. During hearing of the Writ Petition, the Union of India was called upon to furnish notification under the proviso to Section 33 exempting the post of MTS from the reservation provided under the Act of 1995.

4. Sri Harinath.N, learned Assistant Solicitor General, candidly admitted although an application for exemption has been made, no notification exempting the post of MTS from reservation in favour of persons with disabilities has been published. He, however, argues the case of the respondent could not have been considered under the reserved category as he had applied in the open category and participated in the selection process. It is also submitted once the respondent applied in the open category and participated in the selection process, he could not have challenged the self same notification and seek appointment by availing reservation under the Act of 1995.

5. Act of 1995 was promulgated in terms of the international commitments made by our country to ensure full participation and equality of people with disabilities in the society. The solemn pledge of equality of opportunity and dignity to all enshrined in our Preamble was sought to be extended to all individuals including those challenged with various

disabilities by promulgation of the said legislation. The law provided for setting up of various authorities to lay down policies to extend equal opportunities to people with disabilities in the area of education, employment, affirmative action, social security as well as institutional assistance. Section 33 of the Act *inter-alia* provided that the appropriate government shall in every establishment make appointment of not less than 3% of persons or classes of persons with disabilities of which 1% each shall be suffering from (i) blindness or low vision; (ii) hearing impairment; and (iii) locomotor disability or cerebral palsy respectively.

6. Section 33 of the Act of 1995 relating to reservation of posts reads as follows:

“33. Reservation of Posts - Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering from –

- (i) blindness or low vision;
- (ii) hearing impairment;
- (iii) locomotor 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.”

7. The aforesaid provision unequivocally casts a statutory duty on every Government undertaking to reserve at least 3% of posts in favour of persons with disabilities, of which 1% of each shall be reserved for persons suffering from 1) blindness or low vision, 2) hearing impairment and 3) locomotor disability or cerebral palsy respectively. The sole exception to such reservation is by way of publication of a notification in

the official gazette by the appropriate Government exempting any type of work/posts specified therein from such reservation. Furthermore, such notification when made by the Central Government must be laid before the Parliament in terms of Section 73(3) of the Act of 1995. Admittedly, no notification exempting the post of MTS in the Naval Armament Depot, Visakhapatnam, from the reservation mandated under Section 33 of the Act of 1995 has been published in the official gazette. In view of such fact, there is no escape from the conclusion the notification inviting applications for appointment to the post of MTS was contrary to the statutory requirement of reserving at least 3% of posts for persons with disabilities. Appointment to public posts must conform to the principles of equal opportunity as envisaged under Articles 14 and 16 of the Constitution of India. Un-equals cannot be treated as equals and in order to ensure that the equality clause in the constitutional scheme is a palpable reality and not a mere formalism, affirmative action provided for persons with disabilities under the law must be given its fullest expression in the matter of public employment. Denial of reservation for persons with disabilities as provided under the Act of 1995 in the appointment to public posts would render the selection process un-constitutional being violative of the constitutional pledge of ensuring equality of opportunity to all in matter of public employment under Articles 14 and 16 and thereby assuring dignity and self respect to every individual in society. The Tribunal was therefore correct in holding the impugned notification, which fails to provide for reservation under the provisions of the Act of 1995, was illegal and the respondent was entitled to be considered for appointment to the post which had been kept vacant for him, as per the *interim* order, by giving effect to such reservation under the Act.

8. The argument of approbation and reprobation is inapposite in the facts of the case. It is not disputed that the respondent is a visually challenged candidate and was entitled to avail the reservation, as aforesaid. Failure to extend the statutory reservation by the appointing authority was an act contrary to the constitutional scheme of providing equal opportunity of employment to all articulated through the Act of 1995 and therefore such authority cannot take advantage of its wrong to rebut the claim of the respondent to seek appointment by enforcing his claim to such affirmative action in law.

9. It is settled law there is no estoppel against statute. The notification in question was in violation of the mandate for statutory reservation and mere participation in the selection process therefore cannot be a ground to deny that the respondent has rightful claim to reservation which ought to have been a part of the selection process itself.

10. In the light of the aforesaid discussion, we are of the opinion no interference is called for in the impugned order.

11. Accordingly, the Writ Petition is dismissed. No order as to costs.

12. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JOYMALYA BAGCHI, J

K.SURESH REDDY, J

Date: 30-06-2021

Note:
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