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VIVEK SINGH

v.

STATE OF U.P. & ANR.

(Civil Appeal No. 10381 of 2014)

AUGUST 26, 2016

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**[S.A. BOBDE AND ASHOK BHUSHAN, JJ.]**

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*Service Law – Selection under physically handicapped category – Backlog quota – Appellant applied under the physically handicapped category, in Combined State/Upper Subordinate Service Examination 2001 – His first preference was for the post of Deputy Collector and second preference was for the post of Trade Tax Officer – Appellant was duly selected – U.P. Public Service Commission appointed him as a Trade Tax Officer – Appellant filed writ petition seeking post of Deputy Collector – Meanwhile in 2011, State Government issued requisition for appointment on post of Deputy Collector to fill backlog quota for physically handicapped category for the year 2001-2002 – Relying on the State Government's requisition, appellant modified his prayer – High Court declined relief on ground that entire seniority list will get disturbed – Held: Direction to accommodate the appellant in selection year 2001-2002 would create difficulties in the seniority of those who have been appointed every year since then – Appeal accordingly dismissed – Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995.*

**Dismissing the appeal, the Court**

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**HELD: 1. Direction to accommodate the appellant in the selection year 2001-2002 would create difficulties in the seniority of those who have been appointed every year since then, as observed earlier some of the Deputy Collectors who have been appointed may have got promoted. [Para 12] [280-G]**

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**CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10381 of 2014.**

From the Judgment and Order dated 10.05.2013 of the High Court of Judicature, at Allahabad in Civil Misc. Writ Petition No. 8334 of 2004.

Raju Ramchandran, Sr. Adv., Rajiv Tyagi, Dwakar Kumar, Mythili Vijay Kumar Thallam, Vikram Aditya Narayan, Advs. for the Appellant.

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P. N. Misra, Sr. Adv., Ms. Archana Singh, Abhishth Kumar, Shrish Kumar Misra, Advs. for the Respondents. A

The Judgment of the Court was delivered by

**S. A. BOBDE, J.** 1. On 29.01.2001, the U.P. Public Service Commission invited applications for filling up 800 posts through the Combined State/Upper Subordinate Service Examination 2001. Amongst others the posts to be filled up were Deputy Collector – 9 posts, Deputy S.P. – 67 posts and Trade Tax Officer – 12 posts. B

2. The appellant applied for selection under the physically handicapped category along with the necessary certificate. His first preference was for the post of Deputy Collector and second preference was for the post of Trade Tax Officer. The appellant was duly selected and placed at Sl.No.38 in the overall merit list. The U.P. Public Service Commission recommended the appellant's appointment as a Trade Tax Officer under the quota reserved for physically handicapped candidates. C

3. The appellant filed a writ petition before the Allahabad High Court praying for appointment on the post of Deputy Collector. However, pending the writ petition, he joined as a Trade Tax Officer in November, 2004. D

4. On 26.11.2010, in *National Federation of the Blind, U.P. Branch and others vs. State of Uttar Pradesh & others*<sup>1</sup>, the Allahabad High Court passed an interim order directing the State Government to henceforth not fill up any vacancy unless a reservation of 3% was provided to physically handicapped candidates from the initial stage, i.e., from the stage of advertisement itself. The relevant portion of the order reads as follows:- E

*"As an interim measure, we further direct that henceforth, the State Government or its authorities shall not fill up any vacancy falling within the domain of the State Government or its instrumentalities unless from the initial stage i.e. from the stage of advertisement of posts for recruitment to fill up the posts, reservation of 3% under the Act is earmarked and simultaneously filled up from open recruitment process. The State shall ensure that not only the quota of blind persons but also the quota of other categories under the Act shall be filled up simultaneously while making recruitment of various posts falling under the domain of the State Government and its instrumentalities."* F G

<sup>1</sup> Writ Petition No.6047 (MB) of 2009

- A     *Accordingly, the Government of U.P. shall issue a circular within one week from today. We may caution the State Government that non-compliance of the order passed by this Court today shall amount to contempt of this Court and this Court may proceed suo moto against those who are at fault in not filling the vacancies of blind and disabled persons under the Act."*
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This was in view of the Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as the 'Act').

- C     5. The High Court cautioned the State Government that non-compliance of the Order would amount to contempt of Court. In pursuance of this Order, the State Government carried out the following exercise:

D     On 13.1.2011 in pursuance of the aforesaid exercise, the State Government issued a requisition to the Public Service Commission for selection of suitable candidates belonging to the physically handicapped category for appointment on 5 posts of Deputy Collector by a special recruitment drive to fill up the backlog quota. In the said letter, 1 post of Deputy Collector for the year 2001-2002 i.e. the year in which the appellant had appeared and was declared successful was also directed to be filled up.

- E     6. In the pending writ petition, the appellant modified his prayer and claimed that since 1 out of the 5 posts of Deputy Collector was to be filled up under the special recruitment drive for physically handicapped category, included the post for the year 2001-2002 in which the appellant appeared and was selected, he is entitled to be selected therein.

- F     7. The High Court accepted that the post of Deputy Collector for selection in the year 2001-2002 was amenable to reservation for physically handicapped category under the horizontal quota of 3%. The High Court noted the contention of the State that for the year 2001-2002, 1 post of Deputy Collector for physically handicapped category was identified as backlog; that however does not mean that the appellant is entitled to be appointed on that post. The High Court reiterated the settled position of law that reservation for the physically handicapped category was to be provided as a matter of law and that such reservation was to be made on the basis of total sanctioned strength and not on the basis of available vacancy of a recruitment year. However, the Court declined relief to the appellant on the ground that if the appellant is adjusted against the sole
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vacancy for the year 2001-2002, the entire seniority list will get disturbed. The High Court proceeded to hold that in the year 2001-2002 all the 9 posts for which requisition was made were filled up. However, the High Court also noted that in the year 2010 it was found that 1 post out of 9 could have been reserved for physically handicapped candidates. The appellant could not be given appointment in that recruitment year since the posts were filled up. In particular, the High Court observed that many recruitments have taken place between 2001-2002 till the date of the decision of the High Court on 10.05.2013 and if the appellant is given appointment with retrospective effect from 2001-2002, the entire seniority position of the recruitment of that year as well as the subsequent years will get disturbed. The High Court noted that the gap between the recruitment year and the year in which the appointment was claimed was more than 10 years and since then recruitments have taken place almost every year.

8. Before us, Mr. Raju Ramchandran, learned senior counsel for the appellant argued that the High Court has accepted the legal entitlement of the appellant and yet did not grant any relief. It was submitted that the appellant is entitled for relief in view of the clear requirement of the law. On the other hand, it was submitted on behalf of the State that the State carried out an exercise in pursuance of the interim Order of the High Court in the case of National Federation of the Blind, U.P Branch (supra) where the Court directed the State Government not to fill up any vacancy unless from the stage of the advertisement itself, reservation of 3% is earmarked for the physically handicapped candidates. The State further carried out an exercise to determine the roster points on which such reservation would be available as follows:-

Exam/ Selection year	Total requisi tion vacanc ies	Total no. of filled vacancies	Roster point for Physical Handica pped	Category	Remarks
1997-98	20	20	0		The requisition for more than 33 vacancies had not been sent in any Selection Year. By clubbing
1998-99	20	40	01	P.B.	
1999-00	10	50	-		
2000-01	09	59	-		
2001-02	15	74	01	P.D.	
2002-03	--	93	-		
2003-04 (Spl. Apptt.)	19	93	-		

A	2004-05	--	93	-		all the requisitioned posts on the basis of roster the vacancies had been identified and accordingly 5 vacancies are calculated for filling up by backlog for various categories of physical handicapped candidates.
	2005-06	14	107	01	Permanent disability	
	2006-07	08	115	-		
	2007-08	22	137	01	P.B.	
B	2008-09	14	151	-		
	2009-10	32	183	01	P.D.	
	Total:	183	183	05		

9. It was pointed out on behalf of the State that for the year 2000-2001 in which 9 vacancies for Deputy Collector arose, there was no roster point for the persons with disability. Such a point is available in the next year i.e. 2001-2002. Therefore, in any case the appellant could not have been considered for the 9 vacancies which arose in the year 2000-2001. It is pointed out on behalf of the State that as a result of the aforesaid exercise, 5 vacancies are calculated for filling up the backlog and have been filled up in accordance with the roster.

10. Mr. Ramchandran contested this position by submitting that the exercise has been carried out by the State from 1997-1998 as is apparent from the chart. According to Mr. Ramchandran this could have been carried out from 1995 in which case according to his calculation the roster point could have been shifted to accommodate the appellant. It is not possible to agree with this point since the exercise was undertaken in pursuance of the Order of the High Court and the year 1997-1998 was taken as the starting point since that is the first year after the Act came into force on 01.01.1996.

11. We are satisfied that the reservation which must be provided for, as a matter of law has been duly provided by the State which has in fact determined the roster point which was calculated for the number of posts that ought to have been reserved from the year 1997-1998 to 2009-2010 and have accordingly made appointments. It is another matter that the appellant has not been appointed thereto.

12. In any case, we agree with the observation of the High Court that a direction to accommodate the appellant in the selection year 2001-2002 would create difficulties in the seniority of those who have been appointed every year since then, as observed earlier some of the Deputy Collectors who have been appointed may have got promoted.

13. Lastly, we see no merit in the appeal and it is hereby dismissed.

Ankit Gyan

Appeal dismissed.