

Delhi High Court

National Federaton Of The Blind vs Uoi & Ors. on 12 September, 2014

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ WP(C) 15828/2006

NATIONAL FEDERATON OF THE BLIND Petitioner

Through: Mr.S.K.Rungta, in person.

Versus

UNION OF INDIA & ORS Respondents

Through: Mr.Sanjeev Narula, Adv. for UOI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

12.09.2014 : Ms.G.ROHINI, CHIEF JUSTICE CM 14710/2014 (delay) For the reasons stated in the application, delay in filing the Review Application is condoned.

The application is disposed of.

Review Application No. 412/2014

1. The present application is filed seeking review of the order dated 17.07.2014 in C.M. No. 230/2014 in W.P.(C) No. 15828/2006.

2. The main petition was filed by way of Public Interest Litigation assailing the alleged illegal action of the respondents in not giving reservation to the blind and low vision candidates in accordance with Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short 'Disabilities Act') in all the recruitments beginning from 1996.

3. By the order under review, this Court disposed of CM No. 230/2014 observing/holding inter alia as under:

"37. We may at the outset point out that Para 14 as it stood prior to modification by OM dated 03.12.2013 also provided for reservation in direct recruitment quota in Group A and Group B posts and the same has been reiterated in the modified Para 14. So far as the computation is concerned, Para 14 as modified by OM dated 03.12.2013 made it clear that it should be on the basis of total number of vacancies in the cadre instead of vacancies occurring in the identified posts. The said modification, according to us, is in tune with the judgment of the Supreme Court wherein it was declared that the computation shall be in case of Group A, B, C & D posts in an identical manner and that the same shall be on total number of vacancies in the cadre strength. 38. However, the contention of Shri S.K. Rungta is that the reservation ought not to have been confined to the vacancies occurring in direct recruitment quota, but the same shall be extended even with regard to promotional and deputation posts. It is contended by the learned Senior Counsel that the cadre

strength includes direct recruitment posts as well as promotional and deputation posts.

38. However, the contention of Shri S.K. Rungta is that the reservation ought not to have been confined to the vacancies occurring in direct recruitment quota, but the same shall be extended even with regard to promotional and deputation posts. It is contended by the learned Senior Counsel that the cadre strength includes direct recruitment posts as well as promotional and deputation posts.

39. As we could see, this issue was not raised either before this Court or before the Supreme Court. The only contention was that the computation of reservation should not be confined to identified posts and that the same should be on total number of vacancies in the cadre strength and the same was accepted by the Supreme Court. Having regard to the fact that the abovementioned contention was neither urged nor adjudicated either by this Court or by the Supreme Court, it is not open to the petitioner now to contend that the reservation ought to have been extended even with regard to promotion and deputation posts."

4. The present application is filed seeking to review/recall the said order contending that though the issue relating to provision of reservation with regard to promotional and deputation posts had already been considered and adjudicated by a Division Bench of this Court in W.P.(C) No. 2821/2010 titled as MCD vs. Manoj Kumar by judgment dated 04.08.2010 and the same was also affirmed by the Apex Court by judgment dated 10.12.2013 in SLP(C) No. 9473/2011, this Court failed to notice the same and held erroneously in para 39 of the order under review that it is not open to the petitioner to contend that the reservation ought to have been extended even with regard to promotion and deputation posts.

5. We have heard Shri S.K. Rungta, Sr. Advocate as well as the counsel for the respondents.

6. We may at the outset point out that our observations in Para 39 of the order under review were only with reference to the order dated 19.12.2008 passed by this Court in W.P.(C) No. 15828/2006 and the judgment of the Apex Court dated 08.10.2013 in Civil Appeal No.9096/2013 titled Union of India & Anr. Vs. National Federation of the Blind & Ors., reported as (2013) 10 SCC 772. The fact that the issue relating to reservation in promotion and deputation posts was not urged in the above said proceedings, has not been disputed by Shri S.K. Rungta; however it is contended that by virtue of the order of the Supreme Court dated 10.12.2013 in MCD v. Manoj Gupta, the issue relating to reservation in the matter of promotion has been conclusively adjudicated.

7. As expressed above, in the order under review we were only referring to the contentions urged in W.P.(C) No.15828/2006 and Civil Appeal No.9096/2013 and therefore the observations made in Paras 38 and 39, according to us, do not in any way amount to negating the claim of the petitioner for reservation in promotion and deputation posts.

8. However, to avoid any controversy on the issue, we make it clear that the observations in para 39 of the order under review shall not in any manner affect the right/claim of reservation with regard to promotions in terms of Section 33 of the Disabilities Act.

9. The Review Application is accordingly disposed of.

CHIEF JUSTICE RAJIV SAHAI ENDLAW, J SEPTEMBER 12, 2014 pk P.S. - Before we signed the order, we have come across news reports dated 13th September, 2014 titled "Supreme Court clears 3% quotas for disabled, in jobs, promotions".

On further enquiry, it was learnt that the Supreme Court on 12th September, 2014 itself dismissed in limine SLP (Civil) (CC) No.13344/2014 titled Union of India vs. National Confederation for Development of Disabled which was filed against the judgment of the Division Bench of the Bombay High Court dated 04.12.2013 in PIL No.106/2010 (MANU/MH/2301/2013).

On a perusal of the judgment in PIL No.106/2010 dated 04.12.2013, it is found that the Bombay High Court held that no distinction can be made between the posts to be filled in by direct recruitment and by promotion and that the total number of vacancies in the cadre strength would include the vacancies to be filled in by nomination and vacancies to be filled in by promotion on the basis of the following observation made by the Supreme Court in Civil Appeal No.9096/2013 dated 08.10.2013 titled Union of India & Anr. Vs. National Federation of the Blind and Ors. (i.e. the appeal arising from the matter before us):

"Thus, after thoughtful consideration, we are of the view that the computation of reservation for persons with disabilities has to be computed in case of Group A, B, C and D posts in an identical manner viz., "computing 3% reservation on total number of vacancies in the cadre strength" which is the intention of the legislature. Accordingly, certain clauses in the OM dated 29 December 2005, which are contrary to the above reasoning are struck down and we direct the appropriate Government to issue new Office Memorandum(s) in consistent with the decision rendered by this Court."

Needless to state, our order aforesaid is not intended to be in the way of the said pronouncements.

CHIEF JUSTICE RAJIV SAHAI ENDLAW, J