Karnataka High Court
Union Of India vs Shri Yaswanth G V on 27 October, 2014
Author: K.L.Manjunath And A.V.Chandrashekara

1 W.P.NO.44696/2014

R

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 27TH DAY OF OCTOBER, 2014

PRESENT

THE HON'BLE MR. JUSTICE K.L.MANJUNATH

AND

THE HON'BLE MR. JUSTICE A.V.CHANDRASHEKARA

WRIT PETITION NO.44696 OF 2014 (S-CAT)

BETWEEN

UNION OF INDIA
MINISTRY OF PERSONAL, PUBLIC GRIEVANCES &
PENSIONS
NORTH BLOCK
NEW DELHI-110001
REPRESENTED BY ITS SECRETARY ... PETITIONER

(BY SRI ARUN M I, ADV.)
AND
1.SHRI YASWANTH G V
S/O R VINAY KUMAR
AGED ABOUT 29 YEARS
C/O CHENDRASHEKAR
NO.54/4, GURUVAPPA STREET
FIRST FLOOR, SKV GAYATHRI FLAT
AYANAVARAM, CHENNAI-600023

2.THE MINISTRY OF SOCIAL JUSTICE & EMPOWERMENT
DEPARTMENT OF DISABILITY AFFAIRS
GOVERNMENT OF INDIA
SHASTRI BHAWAN

2 W.P.NO.44696/2014

NEW DELHI-110001
REPRESENTED BY ITS SECRETARY

3.THE DIRECTOR GENERAL OF HEALTH SERVICES
NIRMAN BHAVAN, NEW DELHI-110011
REPRESENTED BY ITS DIRECTOR GENERAL

4.CHIEF COMMISSIONER FOR PERSONS WITH
DISABILITIES
SAROJINI HOUSE, 6 BHAGAWAN DASS ROAD
NEW DELHI-110001
REPRESENTED BY ITS CHIEF COMMISSIONER

5.THE UNION PUBLIC SERVICE COMMISSION
DHOLPUR HOUSE, SHAHAJAHAN ROAD
NEW DELHI-110069
REPRESENTED BY ITS SECRETARY ... RESPONDENTS
(BY SRI M N PRASANNA, ADV. FOR C/R1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DT.12.12.2013 PASSED IN T.A.NO.470/2013 BY THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL, BANGALORE BENCH VIDE ANNX-E.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 23.09.2014 COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, A.V.CHANDRASHEKARA, J., MADE THE FOLLOWING:-

ORDER

Present writ petition is filed under Articles 226 and 227 of the Constitution of India requesting this Court to issue a writ, order or direction in the nature of 3 W.P.NO.44696/2014 certiorari quashing the impugned order passed on 12.12.2013 by the Central Administrative Tribunal, Bangalore Bench, in case bearing T.A.No.470/2013 and consequently, to dismiss the said case T.A.No.470/2013.

2. Respondent was applicant before the Central Administrative Tribunal, Bangalore Bench. Respondent No.1-Yaswanth G.V. appeared for the Civil Service Examination (CSE) 2009, under the category "Physically Handicapped" (Visually impaired) and secured 107th rank. Hence, his name was recommended as a successful candidate by the Union Public Service Commission in VI sub-category of Physically handicapped category for services allocation on the basis of CSE-2009. As per Rules 21 and 27 of Civil Service Examination, Yaswanth G.V., was asked to undergo a medical examination to testify his claim. The Central Standing Medical Board (CSMB) at New Delhi, 4 W.P.NO.44696/2014 conducted the examination and gave a finding certifying that he had 30% visual disability.

3. According to the statutory notification issued by the Ministry of Social Justice and Empowerment Notification vide No.16-18/97 NI.I dated 01.06.2001, a person having vision between 40% and 75% would be categorized as person with low vision and those persons with vision impairment exceeding 76% would fall in the category of "persons with blindness". The same is clarified in the letter of Chief

Commissioner for Persons with Disabilities bearing No.Identification/Emp./CCD 2008 dated 05.08.2008. Therefore, it is contended that respondent No.1 Yashwanth cannot be considered as a person with low vision.

4. However, the respondent No.1 was given an opportunity to appeal against the findings of the Central Standing Medical Board (CSMB) Safdarjung Hospital, New Delhi. Accordingly, medical examination was 5 W.P.NO.44696/2014 conducted by a Special Medical Board at Ram Manohar Lohia Hospital, New Delhi. Even as per the findings of the Medical Board at RML Hospital, the respondent No.1 has 30% visual disability and hence, according to the petitioner herein, respondent No.1 is not visually handicapped person in terms of the letter dated 05.08.2008 at Annexure 'A'.

5. Later on respondent No.1 gave a representation on 08.04.2011 stating that he has 30% visual disability and 15% locomotor disability and on the basis of the same, he put forth a claim being a person with multiple disabilities (Visual and Locomotor) so as to treat him as a person belonging to physically handicapped category. This fact of first respondent having 15% locomotor disability had been confirmed by the Medical Disability Board attached to Lady Curzon Hospital, Bangalore. This was done on an appeal made by the first respondent to the Director General of Health Services.

6 W.P.NO.44696/2014

6. What is contended before this Court is that respondent No.1 has visual disability and the same is less than 40% and he cannot make any claim including 15% locomotor disability. According to him, the said 15% locomotor disability cannot be clubbed with the 30% visual disability. He cannot claim reservation on the basis of multiple disabilities, as per Section 33 of PWD Act, 1995, i.e., Act 1 of 1996.

7. Respondent No.2 the Ministry of Social Justice and Empowerment has opined that the first respondent cannot claim any benefit on the basis of multiple disabilities since visual disability is only 30%. On the basis of the opinion of the second respondent, it was held that respondent No.1 was not entitled to claim reservation on the ground that he is a physically handicapped person. According to the petitioner herein, there is no provision for reservation in employment for person with multiple disabilities with 40% and above 7 W.P.NO.44696/2014 where the percentage of disability in view of category mentioned above is less than 40% for availing of benefits including that of reservation in public employment. Hence, it is contended that the claim so made by the first respondent is contrary to the mandate of Section 33 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

8. Challenging the decision of the petitioner, respondent No.1 chose to file an original application before the Central Administrative Tribunal, Bangalore, in O.A.No.965/2012 subsequently renumbered as O.A.No.470/2013. Petitioner herein had filed detailed objections and had sought for dismissal of the application. The matter was taken up the by the CAT, Bangalore, and there was divergent opinion between the two learned members. As a result of the same, it was referred to a third Judge, and on the basis of the 8 W.P.NO.44696/2014 opinion of the third Judge dated 12.12.2013, it is held that first respondent is entitled to claim reservation under the category

"physically handicapped".

9. Several grounds have been urged in the appeal memo challenging the order dated 12.12.2013. A reference was made to the third Judge and the point of reference so made by CAT to the third Judge are as follows:

> "1. Whether degree of disability of the applicant has to be taken as assessed at the time of filing of the application for the Civil Services examination or as assessed subsequently after the interview.
>
> 2. Whether multiple disability or any individual disability in each of the three categories of disabilities viz. (i) blindness or low vision, (ii) hearing impaired, and (iii) locomotor disability/cerebral palsy, has to be taken into account for selection/appointment to the Civil Services and whether the concept of 9 W.P.NO.44696/2014 multiple disability as defined in the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999, can be taken note for selection/appointment to the Civil Services by adding the different disabilities and arriving at a score by using combining formula evolved by the Director General of Health Services.
>
> 3. Whether the communication/OM dated 16.02.2012 of the Ministry of Social Justice and Empowerment advising the DoPT, that "cancellation of the candidature of applicant for appointment on the basis of CSE 2009 does not appear to be justified as various services including IAS have been identified suitable for persons with visual impairment as well as for those with locomotor disability", and the underlying policy would be binding on the DoPT/UPSC in regard to selection/appointment of the Applicant, a physically disabled candidate, to the IAS and that whether the subsequent communications dated 5.3.2012 and 10 W.P.NO.44696/2014 16.11.2012 of the Ministry of Social Justice and Empowerment will have only prospective application.
>
> 4. Whether this forum can examine the validity of the policy followed by the DoPT, that is, taking only the individual disability in each of the three categories.
>
> 5. Whether this Tribunal could allow the transferred application without the likely affected/parties being impleaded in the case"

10. The learned third Judge of the CAT, Bangalore, has answered the points referred to him for his opinion. The answer is found in the order dated 12.12.2013 as per Annexure 'E' and the same is reproduced below:

> > "1. This is a matter in which my Brothers have expressed differing opinions. But Annexure A-22 which is issued by the most competent authority to deal with the issue 11 W.P.NO.44696/2014 had clarified

> the issue. They have already made clear that for a person with disability the appropriate method to consider the applicants' claim. They have also explained the reasons for the extra time allowed to the disabled persons for writing examination which is only to ensure a level playing field. The communication of DGHS Annexure A-23 which stated that applicant suffered a multiple disability of 40.67% is also pertinent as he is the concerned authority. It is also relevant that with all these disabilities the applicant had secured a rank of 107 and stood 2nd amongst the physically disabled candidates.

2. But, my Brother Hon'ble Shri Naresh Gupta had taken a view that even though there is a change in policy provided for taking into consideration multiple disabilities, it can have only a prospective application and cannot be relied upon to reopen or undo the selections already made in the past. But then, apparently the claim of the applicant was not 12 W.P.NO.44696/2014 based on any policy change, but in fact the policy change might have been the result of a cumulative thought process generated in the Ministry of Empowerment, after they have examined the issue in full. But then, Annexure A-22 & 23 have been issued and therefore, it has to be held that it will govern the field.

3. Now coming to the matters of reference as assessed by my Brother Hon'ble Shri Naresh Gupta, the degree of disability on the applicant has not changed either at the time of writing the examination or thereafter. It had remained the same, only the methodology of the assessment of it had changed after the concerned annexures were issued by the concerned Ministry. That is to say that a new light has been thrown into an already existing fact. Therefore, at least at that point, the applicant should be considered.

4. Coming to the 2nd issue raised by my learned Brother Hon'ble Naresh Gupta, there is no law 13 W.P.NO.44696/2014 which prevents clubbing together of disabilities as the idea behind the disability is that only to provide for mercy and pity to be taken into account. It does not behold a civilized society to say that one particular brand of disability alone need to be considered. There is nothing against disability being considered cumulatively as it is the effect of the disability i.e., which is the prime issue.

5. Coming to the 3rd issue, there is no question of prospective application as it is only an explanation of an already existing issue.

6. Coming to the 4th issue it is a duty of adjudicator to adjudicate every issue that pertinently and even arise as corollary issue therein.

7. Coming to the 5th issue, there is no question of any likely affected party or parties. When a principle is being set forth, the effect of the principle as held as correct law

will encompass the whole of the populace. But, that does not mean that every person who may have an interest in it will have to be 14 W.P.NO.44696/2014 heard. If that has to be adopted as a yardstick in every case the whole hundred crore of Indian populace will have to be heard. Anyway, this matter had been set at rest by Hon'ble Apex Court for many times and therefore, there may not be any need to examine this matter any further other than academically.

8. But, after examining both it cannot be said by the Tribunal that the applicant should be brought into one particular State Cadre. That of course, must be left to the cadre controlling authority to provide under Rules. It may also be noted in this connection that in all probability all the seats might be filled. Therefore, one adjustment will have to be made for him. Naturally it will be made in terms of availability and suitability. But then, when cadre selection is made by the cadre controlling authority, they shall take into account the facilities for continued treatment for him so as to encompass his special needs 15 W.P.NO.44696/2014 with special prerequisites of the region to which he has to be posted.

9. OA is to be allowed with the modified results as stated above. No order as to costs."

11. Learned counsel for the petitioner has vehemently argued that the learned third Judge, CAT has virtually interpreted Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as PWD Act, 1995, for short) by ignoring the golden rule of interpretation. It is argued that unless Section 33 is amended to include persons with multiple disabilities of 40% and above to claim reservation, there cannot be any order. It is argued that the learned third Judge has virtually made a new law which was outside the scope of the CAT. It is argued that reservation for appointment as per Section 33 of PWD Act, 1995, is allowed for only those persons with disabilities who have not less than 40% in a particular category of disability and there is no 16 W.P.NO.44696/2014 provision for reservation in employment for persons with multiple disabilities with 40% and above where the percentage of disability in any particular category mentioned above is less than 40%. It is also contended that respondent No.1 cannot be allocated service against non-PH category vacancies since he had availed extra time in CSE 2009, both in preliminary as well as the main examination.

12. Per contra, the learned counsel appearing for the first respondent has supported the impugned opinion of the third Judge and has argued that one cannot lose sight of the subsequent Act, dealing with Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1994 i.e., Act 44 of 1999. It is argued that the provisions of Section 33 of PWD Act, will have to be read harmoniously in the light of the latest Act i.e., Act 49 of 1999 which is also the Central Act.

17 W.P.NO.44696/2014

13. He has argued that the intention of both the legislations will have to be kept in mind, more particularly, when India is a signatory to international covenant dealing with the protection of physically handicapped persons. He has relied upon several decisions of the Apex Court.

14. It is relevant to deal with the definition of disability as found in Section 2 (i) of the PWD Act, 1995. The same is as follows:

(i) "disability" means-

(i) blindness;

(ii) low vision;

(iii) leprosy-cured;

(iv) hearing impairment;

(v) locomotor disability;

(vi) mental retardation;

(vii) mental illness;

15. Section 2(o) of the said Act defines 'locomotor disability'.

18 W.P.NO.44696/2014 2(o) "locomotor disability" means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy;"

16. Section 33 of PWD Act, provides for reservation of posts for persons or class 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.

Section 33 is as follows:

33. "Reservation of posts.-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-

19 W.P.NO.44696/2014

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."

17. The National Trust For Welfare Of Persons With Autism, Cerebral Palsy, Mental Retardation And Multiple Disabilities Act, 1999 is a Central Act which has come into force with effect from 30.12.1999.

18. The object of PWD Act, 1995 is to provide full participation and equality of people with disabilities in the Asian and Pacific region. India is a signatory to the meeting convened at Beijing in December 1992. Since 20 W.P.NO.44696/2014 India being a signatory to the said meeting convened in 1992 at Beijing, it was obligatory on the part of our country to enact suitable legislation for persons suffering with disabilities. A proclamation was adopted in the said meeting held on 05.12.1992 at Beijing about the full participation and equality of people with disabilities in Asian and Pacific regions. The Act aims to provide for the following:

> i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;
>
> ii) to create barrier free environment for persons with disabilities;
>
> iii) to remove any discrimination against persons with disabilities in the
>
> sharing of development benefits, vis- Ã -vis non-disabled persons;
>
> 21 W.P.NO.44696/2014

iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;

v) to lay down a strategy for comprehensive development of programmes and services and equalization of opportunities for persons with disabilities; and

vi) to make special provision of the integration of persons with disabilities into the social mainstream.

19. It is true that on a plain reading of Section 33 of PWD Act, 1995, there should be a reservation not less than 3% for persons or class of persons with disability. Admittedly, the words "multiple disability" have not been defined in PWD Act, 1995. On the other hand, the words "multiple disabilities" have been defined in subsequent Act i.e., Act 44 of 1999 in Section 2(h).

22 W.P.NO.44696/2014

20. Section 2(h) of the said Act defines "multiple disabilities" and the same is as follows:

(h) "multiple disabilities" means a combination of two or more disabilities as defined in clause

(i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);

21. The intention of the subsequent Act i.e., Act 44 of 1999, is to strengthen families and to protect the interest of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability after the death of their parents.

22. As rightly pointed out by the learned Counsel for the petitioner, there is no provision dealing with multiple disability in PWD Act, 1995. Here is a case in which the first respondent has blindness to an extent of 30% and 15% locomotor disability, which is definitely more than 40% prescribed in the statutory notification 23 W.P.NO.44696/2014 issued by the Ministry of Social Justice and Empowerment, as per the relevant provisions of PWD Act, 1995. Just because there is no provision for 'multiple disability' in PWD Act, 1995, is it right to deny the opportunity to the first respondent, is the question?

23. What exactly should be the approach of the constitutional courts while interpreting two statutes of welfare legislation has been well dealt with at length way back in 1978 by the Hon'ble Apex Court in the case of Royal Talkies, Hyderabad And

Others Vs. Employees State Insurance Corporation reported in (1978) 4 SCC 204. If two interpretations are possible in a welfare legislation, it is specifically held that duty of the Court to choose the one which advances welfare of the weaker sections of society. As per the facts of the said case, the persons employed in the canteen and the cycle stands of cinema theatres are also be considered as employees of the owners of cinema theatres for the 24 W.P.NO.44696/2014 purpose of contribution of amount by the cinema theatre owners under the Employees State Insurance Act, 1948. Interpreting Section 2(9) of the Employees State Insurance Act, 1948, Hon'ble Apex Court in the case of Royal talkies has specifically held that though there is no statutory duty on the owner to run such canteens or cycle stands in the premises of the cinema theatres, the persons engaged in such canteens and cycle stands would be employees for all practical purposes and the cinema owner would be considered as a true employer and therefore, it would be liable for contributing money to the welfare of such employees under Section 2(9) of Employees State Insurance Act, 1948.

24. A bench consisting of Hon'ble three Judges of the Apex Court in the case of Union of India and Another Vs. National Federation of the Blind and Others reported in (2013) 10 SCC 772, had an 25 W.P.NO.44696/2014 opportunity to deal with Sections 32 and 33 of PWD Act, 1995. The provisions of these two Sections have been interpreted in the light of human and civil rights. It is held that reservation of posts for persons who have disabilities is not dependant upon identification of posts as stipulated by Section 32 and that Section 32 is not a precondition for computation of reservation of 3% vacancies for persons with disabilities out of which 1% each is reserved for persons suffering from blindness/low vision, persons suffering from hearing impairment and persons suffering from locomotor disability or cerebral palsy. It is further held that scope of identification comes into picture only at the time of appointment in post identified for disabled person and is not necessarily relevant at the time of computing 3% under Section 33.

25. The decision rendered in the case of Government of India Through Secretary Vs. Ravi 26 W.P.NO.44696/2014 Prakash Gupta And Another reported in (2010) 7 SCC 626, has been relied upon in the case of Union of India and Another Vs. National Federation of the Blind And Others reported in (2013) 10 SCC 772. In Ravi Prakash's case, the issue was as to whether the reservation of vacancies for persons with disabilities under Section 32 could be calculated on the basis of the backlog vacancies for persons with disabilities. Whether reservation under Section 33 of PWD, 1995, depends upon identification of posts under Section 32 was the question?

26. Section 32 is as follows:

"32. Identification of posts which can be reserved for persons disabilities.- Appropriate Government shall-

a. identify posts, in the establishments, which can be reserved for the persons with disability;

b. at periodical intervals not exceeding

three years, review the list of posts identified and up-date the list taking into consideration the developments in technology."

27. After analyzing the provisions of PWD Act, 1995 in the background of human and civil rights, it is held that identification of posts under Section 32 is for the purpose of making appointments and not for the purpose of reservation under Section 33. It is further held that persons with disability cannot be appointed unless posts are identified under Section 32 but provision for reservation under Section 32 became effective immediately when Act came into force in 1996. It is further held that identification of posts under Section 32 was intended to be carried out simultaneously with coming into force of the Act and therefore, delay in identification under Section 32 cannot be used as a tool to deny the benefit of 28 W.P.NO.44696/2014 reservation under Section 33. Therefore, it is held that Government is obliged to fill up reserved posts which had accumulated from 1996 though the posts were identified by Central Government in 2006. Therefore, Ravi Prakash's case was ordered to be considered. From this decision, which is subsequently followed in the decision of a Bench consisting of three Hon'ble Judges in National Federation's case, it is evident that the intention of the legislature is to give full protection and promotion to the handicapped persons.

28. Dealing with the interpretation of subordinate/ delegated legislation and the use of internal aids, Hon'ble Apex Court in the case of National Insurance Co. Ltd. Vs. Kirpal Singh reported in (2014) 5 SCC 189, has made clear that liberal interpretation is to be given to the word "retirement" occurring in para-14 of Pension Scheme, 1995. Kirpal Singh the respondent therein had opted 29 W.P.NO.44696/2014 for voluntary retirement in terms of SVRS of 2004 and claimed pension as one of the benefits admissible under para-6 of the above. His claim was rejected by the Insurance Company and hence, he approached the High Court of Punjab and Haryana which allowed his petition on 25.01.2008 holding that he and similarly placed employees were entitled to claim pension. Hon'ble High Court of Punjab and Haryana has taken a view in para- 6 of SVRS of 2004 read with paragraph-14 of the Central Insurance (Employees' Pension Scheme 1995) entitle the employees to claim pension so long as they had rendered minimum of ten years of service in the Corporation/Company from whose service they were seeking retirement under voluntary retirement scheme.

29. Paragraph-14 of the pension scheme speaks as follows:

14. Qualifying service- Subject to the other condition contained in this Scheme, an employee 30 W.P.NO.44696/2014 who has rendered a minimum ten years of service in the Corporation or a

Company, on the date of retirement shall qualify for pension.

30. On a conjoint reading of para-6 of SVRS 2004 and para-14 of the Pension Scheme, 1995, Hon'ble Apex Court has held that it would leave no manner of doubt that any employee retiring from the service of the Company/Corporation would qualify for payment of pension if he/she has rendered a minimum of ten years of service on the date of retirement. The word "retirement" as found in the definition clause is held to be an inclusive definition so as to include voluntary retirement and not only retirement on attaining superannuation.

31. Relying upon the decision reported in RBI Vs. Peerless General Finance & Investment Co. Ltd. reported in (1987) 1 SCC 424, Hon'ble Apex Court has held that not only the text but also the context in which 31 W.P.NO.44696/2014 a provision has been made will have to be looked into. Paragraph-33 of the decision in RBI Vs. Peerless General Finance's case is very much relevant and the same is extracted below:

> 33. Interpretation must depend on the test and the context. They are the bases of interpretation. One may well say if the text in the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section, clause by clause, phrase by phrase and word by word. If a statue is looked at, in the context of its context, its scheme, the sections, clause, phrases and words may take glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase the entire Act. No part of a statute and no word of a statute can be construed in 32 W.P.NO.44696/2014 isolation. Statutes have to be construed so that every word has a place and everything is in its place.

32. One more decision of a Bench consisting of three Hon'ble Judges of the Hon'ble Apex Court in the case of Pradip Kumar Maity Vs. Chinmoy Kumar Bhunia and Others reported in (2013) 11 SCC 122, has dealt with the definition "person with disability". It is held that a person with disability would mean a person from suffering not less than 40% of any disability as certified by medical authority and the same would have primacy notwithstanding any State legislation or rules irreconcilable or repugnant thereto. The statutory notification relied upon by the petitioner is a Subordinate/Delegated legislation. Explaining the definition of 'person with disability', it is specifically held that any notification/statutory notification contrary to the explanation of the definition as done by the Hon'ble Apex Court, would stand impliedly repealed.

33 W.P.NO.44696/2014

33. What is further held in the said decision is that statutes, whether Central or State must mandatorily comply with the Constitution and statutes must also conform with discipline of three lists contained in Schedule VII to Constitution.

34. Dealing with the laudable object behind the enactment of persons with Disabilities Act, 1995, in paragraph-4 of Pradip Kumar's case mentioned above, Hon'ble Apex Court has held that laudable intention of the Act is to provide full participation and equality to persons with disabilities in the matter of protection of their rights, provision of medical care, education, training, employment and rehabilitation.

35. It is further held in paragraph-5 that the Act specifically stipulates that in any recruitment year, any vacancy cannot be filled up due to non-availability of persons with disabilities, the same will have to be 34 W.P.NO.44696/2014 carried forward to the succeeding year and if once again it cannot, yet again be filled up by any eligible candidate. The vacancy must first enure to the benefit of any of the other two categories and only in the event that there are no candidates even therefrom, the employer can fill up such segregated or reserved vacancy by a general appointment.

36. Paragraphs-4 and 5 of the said decision are relevant and are extracted below:

4. The Disabilities Act was passed by Parliament in the wake of the Proclamation that came to be adopted by the Economic and Social Commission for Asia and the Pacific Region (ESCAP), the endeavour and expectation of which was the attainment of full participation and equality to persons with disabilities in the matter of protection of their rights, provision of medical care, education, training, employment and rehabilitation. Keeping in perspective that India was a signatory to the said Proclamation, 35 W.P.NO.44696/2014 necessitating its wholesome and holistic implementation, the Disabilities Act was introduced in the Lok Sabha on 26.8.1995 and came into force on 7.2.1996.

5. The Disabilities Act, inter alia, ordains in Chapter VI, provisions relating to the employment of disabled persons through the device of reservation of posts, establishment of special employment exchanges, the formulation of schemes for ensuring employment of persons with disabilities and the reservation and setting apart of not less than three per cent (3%) seats in government educations institutions and other educational institutions receiving aid from the Government, etc. etc. The Disabilities Act also specifically stipulates that if in any recruitment year any vacancy cannot be filled up due to non-availability of persons with disabilities i.e. (i) blindness or low vision; (ii) hearing impairment; and (iii) locomotor disability or cerebral palsy, such vacancy shall be carried forward. If in the succeeding year the vacancies in the three categories 36 W.P.NO.44696/2014 cannot yet again be filled up by an eligible candidate, the vacancy must first ensure to the benefit of any of the therefrom, can the employer fill up such segregated or reserved vacancy by a general appointment. It is also note worthy that the reservation of three per cent (3%) is a minimum requirement.

37. What is vehemently argued before this Court by the learned counsel for the petitioner is that there is no definition about 'multiple disability' in PWD Act, 1995, and therefore, it cannot be liberally interpreted by ignoring the golden rule of interpretation.

38. We are unable to accept the said contention in the light of a detailed discussion made by us, more particularly, in the light of the two decisions of the Hon'ble Apex Court in the case of Union of

India Vs. National Federation of the Blind and Others reported (2013) 10 SCC 772 and in the case of Pradip 37 W.P.NO.44696/2014 Kumar Maity Vs. Chinmoy Kumar Bhunia And Others reported in (2013) 11 SCC 122.

39. Apart from this, we have to follow the principles enunciated in Royal Talkies, Hyderabad And Others reported in (1978) 4 SCC 204, in which it is held that if two interpretations are possible in a welfare legislation, the duty of the Court is to choose one which advances the welfare of the weaker sections of the Society. Admittedly, persons with disabilities belong to weaker sections of the society and the Hon'ble Apex Court has liberally construed certain provisions of PWD Act, more particularly, Sections 32, 33 and 41.

40. This has to be viewed in the light of yet another similar legislation i.e., Act 44 of 1999 The National Trust for Welfare Of Persons With Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999, which has come into effect from 38 W.P.NO.44696/2014 30.12.1995. In the said Act, there is a specific definition about 'multiple disability'. The said definition could be imported to the earlier decision i.e., PWD Act,1995 and read down to include even persons suffering from multiple disabilities provided such multiple disability of a person exceeds 40% and above irrespective of the category of disability.

41. Learned counsel for the petitioner has vehemently argued that normally, the Courts should not add or subtract to a provision found in a statute by ignoring the golden rule of interpretation. It is argued that when the legislators themselves have not provided for multiple disability in PWD, 1995, the Court cannot substitute the same by its judgment in the form of a legislation.

42. To this, we have a novel judgment of the King's Bench, England reported in 1 (1948) AC page 291 in 39 W.P.NO.44696/2014 the case of Seaford Court Estates Ld Vs. Asher. It is a decision rendered by two Hon'ble Judges of which Lord Denning was also a Judge.

43. What is held in the said decision is that when a statute comes up for consideration, it must be remembered that it is not within human powers to foresee the manifold set of facts which may arise, and, even if it were, it is not possible to provide for them in terms of free from all ambiguity. The English language according to the said King's bench decision, is not an instrument of mathematical precision and English literature would be much poorer if it were. It is specifically observed that a Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It is further held that it would certainly save the Judges trouble if 40 W.P.NO.44696/2014 Acts of Parliament were drafted with definite prescience and perfect clarity.

44. What should be done in such a case has been very eloquently held and the relevant portion found in page 499 of Seaford Court's case is extracted below:

> In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the

> statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of the legislature. That was clearly laid down by the resolution of the judges in Heydon's case (I), and it is the safest guide to-day. Good practical advice on the subject was given about the same time by Plowden in his second volume Eyston V Studd. (2) Put into homely metaphor 41 W.P.NO.44696/2014 it is this: A Judge should ask himself the question; If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would have done. A judge must not alter the material of which it is woven, but he can and should but he can and should iron out the creases.

45. Section 33 provides for reservation of posts of 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.

46. As already discussed Section 32 provides for reservation for persons with disability in the 42 W.P.NO.44696/2014 establishments of the appropriate Government. On the basis of the same, a statutory notification is made.

47. Let us assume that only one person having hearing impairment of 40% and above and one person having locomotor disability or cerebral palsy of 40% and above are found to be eligible. Then those two persons would be appointed. Let us assume that there is no person having blindness or low vision of 40% and above. If there is a person who has a blindness of 25% and hearing impairment of 15%, such a person would be a person with multiple disability as per Section 2(h) of Multiple Disabilities Act, 1999 i.e., Act, 44 of 1999 which has come into existence from 30.12.1999. The subsequent Act i.e., Act 4 of 1999 is in addition to the existing benevolent welfare legislation i.e, PWD Act, 1995 and not in derogation of the same.

43 W.P.NO.44696/2014

48. If a strict interpretation were to be adopted, a person having multiple disability with 25% low vision and 15% locomotor disability would not be considered for appointment under the reservation as per Section 33 and the same would go to a general category and not the definition of either of these two Acts under the hypothetical circumstance given above. This hard reality will also have to be kept in mind in order to give a liberal interpretation to the words 'multiple disability'.

49. We are also supported by another decision of the Hon'ble Apex Court rendered in the case of Madan Singh Shekhawat Vs. Union of India and Others reported in (1999) 6 SCC 459. Dealing with

the basic rules of interpretation and the beneficial construction. It is held that it is the duty of the Court to interpret a provision especially a beneficial provision, liberally in order to give it a wider meaning. It is made clear that 44 W.P.NO.44696/2014 restrictive construction should not be made so as to negate from the object of the provision.

50. As could be seen from the facts of Madan Singh Shekhawat's case, the appellant, while on casual leave was travelling at his own expense to his home station and during journey, met with an accident which resulted in amputation of his hand. Disability pension was denied to him on the ground that he was not on duty since he was on leave on his own "but not yet at public expense". Analysing Rule 6 (c) of Defence Service Regulations in the light of Rule 10 and 48, it is held that words "at public expense" is to be construed literally, since the object of the rule is to provide relief to a victim of an accident during travel. It is further held that the nature of expenditure incurred for the purpose of such travel is wholly alien to the object of the rule and therefore, the said provision will have to be interpreted as it is beneficial provision.

45 W.P.NO.44696/2014

51. Keeping in mind the intention behind formulation of those rules, that the rule-makers did not intend to deprive the army personnel of benefit of the disability pension solely on the ground that the cost of the journey was not borne by the public exchequer. If journey was authorized by the army, it can make no difference whether fare for the same came from public exchequer or army personnel or himself. Therefore, it is held that it would be undertaken by a defence personnel would be authorized travel to being it within the purview of "at public expense". It is further made clear that if an army personnel were to leave the Headquarters or the place of posting he cannot do it without permission and therefore, if he has undertaken travel to his home town or native place at his own cost cannot be considered as an unauthorized so as to deny him the benefit under Rule 6(c).

46 W.P.NO.44696/2014

52. In the case of Central Inland Water

Transport Corporation Vs. Brojo Nath Ganguly and another reported in AIR 1986 SC 1571, Hon'ble Apex Court has clearly held that the laws exist to serve the needs of the society which is governed by it. If the law is to play its allotted role of serving the needs of the society, it must reflect the ideas and ideologies of that society and must keep time with the heartbeats of the society and with the needs and aspirations of the people. It is made clear that as the society changes, the law cannot remain immutable and it must, therefore, in a changing society, march in tune with the changed ideas and ideologies, Legislatures are, however, not best fitted for the role of adapting the law to the necessities of the time, for the legislative process is too slow and the legislatures often divided by polities are slowed down by periodic elections and overburdened with myriad other legislative activities.

47 W.P.NO.44696/2014

53. This also holds good in the present case to keep in tune with the subsequent Act i.e., Act 44 of 1999 while importing definition of 'multiple disability' in the subsequent Act to the earlier PWD Act, 1995.

54. In the light of the above discussion made by us, we are of the considered opinion that the opinion of the third Judge, Central Administrative Bench, Bangalore, is quite consistent with the law laid down by the Hon'ble Supreme Court in the decisions referred to above. It is not the question of prospectivity or retrospectivity of the relevant provisions of the PWD Act, 1995. The learned Third Judge has explained the exact position of law in regard to the provisions of Sections 32 and 33 of PWD Act, 1995, which Act, is a welfare legislation enacted to protect the interests of physically handicapped persons who are from weaker sections of the society.

48 W.P.NO.44696/2014

55. Thus we do not find any infirmity or illegality committed by the learned 3rd Judge, in answering points of reference. We do not find any grounds to interfere with the impugned order and as such, the present writ petition is liable to be dismissed.

ORDER Writ petition is dismissed.

Sd/-

JUDGE Sd/-

JUDGE JT/-