

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 23.02.2023

% **Judgment delivered on: 06.03.2023**

+ **W.P.(C) 8455/2017 & CM APPL. 34834/2017**

NATIONAL FEDERATION OF THE BLIND Petitioner

Through: Mr. S.K. Rungta, Senior Advocate
with Mr. Shivakur Shukla,
Mr.Prashant Singh & Mr. Sumit,
Advocates.

versus

GOVT. OF NCT OF DELHI AND ANR. Respondents

Through: Ms. Avnish Ahlawat, Standing
Counsel with Ms. Tania Ahlawat,
Mr.Nitesh Kumar Singh, Ms. Palak
Rohmetra, Ms. Laavanya Kaushik &
Ms. Aliza Alam, Advocates.

**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present writ petition under Article 226 of the Constitution of India has been filed by the National Federation of the Blind (NFB) as a Public Interest Litigation (PIL) alleging inaction on the part of the Respondents in filling up the vacancies which are reserved for Blind and

Low Vision candidates, and is also against the inaction on the part of the Respondents in not providing reservation to Disabled Persons (Blind and Low Vision) keeping in view Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Act of 1995) read with Right of Persons with Disabilities Rules 2017.

2. The main objective of the Petitioner organization is to ensure that suitable policy and legislative provisions are made for protection of rights of blind and they are given proper representation as per the statutory provisions in vogue. The Petitioner organization is doing a commendable job for protecting the rights of Specially Abled Persons. It has established training centres, institution of higher education, hostels and has imparted training to Specially Abled Persons, and the present PIL is one such PIL which is genuinely filed in public interest. In the past, the Petitioner organization has also filed large number of PILs for protection of rights of Specially Abled Persons and details have also been provided to this Court.

3. The Petitioner organization has stated that the Ministry of Social Welfare, Government of India has issued an Office Memorandum dated 04.11.1977 providing reservation to Persons with Disabilities in Group-C and Group-D posts to the extent of 1 per cent each (for the (i) Blind; (ii) Hearing and Speech Impairment; and (iii) Persons suffering from locomotor disability). It has been further stated that the Department of Personnel & Training (DoP&T) vide Office Memorandum dated 01.04.1986 has directed all the departments to take into account both identified and unidentified posts for the purposes of reservation in respect of Disabled Persons.

4. It has been further contended that despite the scheme of reservation, the benefit of reservation was not being extended in spite of orders being issued by the Government of India, by various Government establishments as well as Public Sector Undertakings (PSUs). Consequently, a nation-wide agitation took place, and finally, an agreement was arrived at to ensure that the backlog reserved vacancies are filled up by conducting a special recruitment drive. Ultimately, a special recruitment drive was undertaken by the Staff Selection Commission (SSC).

5. It has been further stated that in spite of statutory provisions as contained in the Act of 1995 and various Office Memoranda, as large number of vacancies remain unfilled or efforts were not being made by the organizations to fill up the vacancies, a writ petition was preferred (PIL, i.e. W.P.(C.) No.15828/2006), and the same was disposed of on 19.12.2008. This Court has passed the following order on 19.12.2008:

“i. We direct the respondents to constitute a committee consisting of the Chief Commissioner for disabilities (Chairman), Joint Secretary, Department of Personnel & Training, Joint Secretary, Ministry of Social Justice and Empowerment, Joint Secretary, Department of Public enterprises, and Secretary, Staff Selection Commission to do the following acts in terms of this order:

- (a) *To solicit information with regard to recruitments made by departments/public sector undertakings/ government companies from the date when the Disabilities Act came into force in 1996 and to work out backlog of vacancies for the disabled on the total cadre strength in different establishments within one month from the date of this order.*

- (b) *To undertake special recruitment drive by organising centralised recruitment against backlog so worked out so as to fill up the vacancies by utilising at least 50% of the vacancies available with the respective establishments for this purpose only.*
- (c) *To organise further special recruitment drive as required so as to fill up the remaining backlog of vacancies by 31st December, 2010.*

ii. Respondent No.1 will issue an appropriate order modifying the OM dated 29.12.2005 and the subsequent OMs consistent with this Courts order.

iii. The respondent No.1 shall issue instructions to all the departments /public sector undertaking/government companies declaring that the non observance of the scheme of reservation for persons with disabilities should be considered as an act of non-obedience and the Nodal Officer in departments/Public Sector undertakings/government companies responsible for the proper strict implementation of reservation for person with disabilities to be departmentally proceeded against for his default.

iv. The respondent No.1 is further directed to issue instructions to all the departments/public sector undertakings/government companies as well as recruiting agencies not to undertake recruitment for any department/public sector undertakings/government company unless the departmental/public sector undertaking/ government company makes provisions for reservation for persons with disabilities in terms of the order of this Court and a clearance is granted by the Committee headed by the Chief Commissioner for Disabilities.

v. The Committee headed by the Chief Commissioner for Disabilities shall submit a status report on implementation of the above directions of this Court within three months from the date of this order.”

6. It has been further stated that the aforesaid order passed by this Court was subjected to judicial scrutiny before the Hon'ble Supreme Court by way of Civil Appeal No.9096/2013. The same was decided by an order dated 08.10.2013 and the following order was passed by the Hon'ble Supreme Court:

“(i) We hereby direct the Appellant herein to issue an appropriate order modifying the OM dated 29.12.2005 and the subsequent OMs consistent with this Court's Order within three months from the date of passing of this judgment.

(ii) We hereby direct the "appropriate Government" to compute the number of vacancies available in all the "establishments" and further identify the posts for disabled persons within a period of three months from today and implement the same without default.

(iii) The Appellant herein shall issue instructions to all the departments/public sector undertakings/Government companies declaring that the non observance of the scheme of reservation for persons with disabilities should be considered as an act of non-obedience and Nodal Officer in department/public sector undertakings/Government companies, responsible for the proper strict implementation of reservation for person with disabilities, be departmentally proceeded against for the default.”

7. The Petitioner has further stated that in spite of orders being passed by the Hon'ble Supreme Court, as the vacancies were not being filled up/ reservation was not being done, the Petitioner again started taking follow up action and the present petition has been filed praying for the following reliefs:

“a) Issue a writ of certiorari or any other appropriate writ order or direction thereby calling for the records relating to the

maintenance of roster for giving effect to 3% reservation for persons with disabilities in terms of section 33 of the Persons With Disabilities (Equal Opportunities, Protection Of Rights And Full Participation) Act, 1995 read with directions of Hon'ble apex court in judgment dt. 8.10.13 in Civil Appeal No.9096/2013 upto March 2017 and thereafter in terms of Section 34 of Rights Of Persons With Disabilities Act 2016 read with rule 11 of Rights Of Persons With Disabilities Rules 2017 including 1% for persons suffering from blindness and low vision by all govt. Departments at least beginning from 1996, examine the same and quash all such recruitments to the extent of 3% upto march 2017 and thereafter 4% from April 2017 till date if provision of reservation in terms of section 33 of the old Act of 1995 and Section 34 of the said new Act of 2016 r.w.rule 11 of the said rules have not been followed.

b) Issue a writ of certiorari or any other appropriate writ order or direction thereby calling for the records relating to the issuance of advertisement No.01/17 dt. 18.7.17 issued by respondent no.2 on behalf of respondent no.1, examine the same and quash it to the extent it does not include the backlog reserved vacancies for persons with disabilities in terms of Section 33 of the old Act of 1995 and Section 34 of the new Act of 2016 and also to the extent it notifies the reserved vacancies for physically handicapped in contravention of Rule 11 of the RPD rules 2017 which mandates that category wise reservation has to be notified for each category of disability in terms of Section 34 of the said new Act and consequently direct the respondents to issue a corrigendum to the said advertisement by reserving all backlog vacancies for persons with disabilities in terms of the said statutory provision and Hon'ble apex court judgment and also by notifying disability wise reserved vacancies separately for each category of disability entitled to the benefit of reservation in terms of rule 11 of RPD rules 2017.

c) Issue a writ of mandamus or any other appropriate writ order or direction thereby directing the respondents to work out the vacancies which ought to have been reserved for each of the category of persons with disabilities in terms of section 33 of

the said old Act of 1995 upto March, 2017 and thereafter in terms of Section 34 of said new Act of 2016 from April 2017 till date in a time bound manner in terms of the directions of Hon'ble apex court as contained in judgment dt. 8.10.13 passed in Civil Appeal No.9096/2013 and undertake a special recruitment drive for filling up the backlog of vacancies so worked out for each category of disability including blind and low vision separately in compliance of the directions of Hon'ble Apex court in the said case.

d) Issue a writ of mandamus or any other appropriate writ order or direction thereby directing the respondent no.1 to monitor the implementation of scheme of reservation for persons with disabilities in the same manner as is done by it in the case of SC, ST & OBC.

e) Issue a writ of prohibition or any other appropriate writ order or direction thereby restraining the respondents from undertaking any recruitment in future without complying with the provisions of section 34 of the RPD Act r.w.r. 11 of the RPD Rules 2017 as well as without completing the recruitment process against backlog reserved vacancies for persons with disabilities in general and blind and low vision in particular in accordance with the directions contained in the judgment dt. 8.10.13 in Civil Appeal no.9096/2013.

f) Grant any other relief which Your Lordship deem fit and proper in the circumstances of the case.”

8. The present petition was filed in the year 2017. Mr. S.K. Rungta, Senior Advocate, appeared in the matter on almost every date fixed by this Court and ensured that the matter is brought to its logical conclusion.

9. On 09.11.2022, the learned Standing Counsel for GNCTD was fair enough in stating before this Court that she will prepare a department-wise, disability-wise and post-wise detailed chart and shall furnish all minute details of the posts reserved for the disabled category/ posts vacant under the

category and the information shall be shared with Mr. S.K. Rungta, learned Senior Advocate. It was also brought to the notice of this Court that the Commissioner of Disabilities shall also be apprised of the report prepared by the Government and he can thereafter arrive at a conclusion in the matter of proper representation of Specially Abled Persons.

10. As directed by this Court, the State Commissioner for Persons with Disabilities (SCPD) took up the matter on 20.02.2023 and a detailed order has been passed by the SCPD furnishing all minute details of the vacancies which are available to be filled up by Persons with Disabilities. The said Order dated 20.02.2023 is reproduced as under:

“ The present matter was deliberated, discussed and four hearings were done with both parties in attendance in the Court of State Commissioner for Persons with Disabilities (SCPD), Delhi, as per the judgement of Hon'ble High Court, Delhi dated 09.11.2022 with reference to the Writ Petition (Civil) No. 8455/2017 & CM APPL.34834/2017 in the matter of National Federation of the Blind Vs Govt of NCT of Delhi and Others.

2. As the instant case involves all the establishments of Govt. of NCT of Delhi, it was indeed a herculean task to ascertain department wise, category-wise, disability-wise roster vacancies w.e.f. 1996 till date. Several hearings had to be scheduled in phases, wherein both parties were present and with micro level management of several departments and focus on each of the issues were addressed. One pertinent point to mention in the beginning is that since 1996 till 2017, reservation to PwDs was @ 3% and subsequently post RPwD Act, 2016 came in vogue, it was increased to 4%. GNCT of Delhi duly implemented the same by issuing necessary corrigendum.

3. *Hon'ble High Court in its order asked SCPD to go into details of the case and to calculate the number of vacancies (posts reserved for the disabled category/post vacant under each category). Mr. S.K Rungta, learned Senior Advocate appearing for the petitioner as well as Ms. Avnish Ahlawat, learned Standing Counsel for GNCTD, shall share all the information with the State Commissioner for Persons with Disabilities for a formal order on the subject as per the RPWD Act, 2016.*

4. *Accordingly, four hearings were held in the instant case. During the first hearing on 11.01.2023, the Court directed as under:-*

- a) *Services Department was directed to submit the revised consolidated statements as per proformas devised and circulated by the Court of SCPD.*
- b) *In terms of Supreme Court judgement dated 08.10.2013 every Establishment is bound to maintain a separate vacancy wise 100 point roster in terms of DoP&T's OM of 29.12.2005 & 15.01.2018, every Head of Establishment / Department was directed to take immediate actions as under:-*
 - i) *To submit a copy of Vacancy Based 100 Point Roster (Group-wise for Direct Recruitment) maintained by their establishment to the Services Department, GNCTD.*
 - ii) *To submit a copy of Vacancy Based Roster in Promotion alongwith statement showing the promotion made year-wise and reservation provided year-wise to each category of disability separately to the Services Department.*
- c) *An affidavit to the effect required from each Head of Establishment/Department regarding authenticity and correctness of the information provided by respective establishments and that it complies with the Rights of*

Persons with Disabilities Act and judgements of Hon'ble Apex Court passed in this regard from time to time.

5. *During the second hearing on 20.01.2023, it was noted that while the information from most of the departments were received, some departments submitted 'Nil' report, requisite information regarding preparation of roster w.e.f. 1996 was not received from some of the departments including four major recruiting Departments/Establishment i.e. Education, Social Welfare, Health & Family Welfare and MCD. Court issued a Show Cause Notice to Heads of these four Establishments/Departments imposing penalty of Rs. 10,000/- against them under Section 89 for violating Section 93 of the RPwD Act, 2016.*

6. *During the hearing, Services Department informed that some departments have not submitted affidavit as on 20.01.2023. It was further informed that many departments raised queries about the format in which the required affidavit was to be submitted. A standard format for affidavit was drafted and circulated to all establishments of Govt. of NCT of Delhi which had to be submitted by the departments to the Services Department. Subsequently the Services Department would compile and submit before the Court on the next date of hearing, scheduled on 03.02.2023.*

7. *During the third hearing on 03.02.2023, Shri S.K. Rungta, Senior Advocate for the petitioner expressed his dissatisfaction with 'Nil' report submitted by several Establishments/Departments and requested the Court to call for Roster of some departments for cross checking. The Court called upon two major recruiting department/establishment i.e. Department of Education and Municipal Corporation of Delhi to present details of calculations of 100 Point Reservation Rosters (Direct recruitment & promotion) of each categories viz. Group A,B, C & D (disability-wise, post-wise) in this Court on 08.02.2023.*

8. *During the fourth hearing on 08.02.2023, Education Department and MCD provided the information relating to backlog of vacancies in all Groups under Direct Recruitment as well as Promotion. Services Department was directed to submit the final consolidated information to this Court by 10.02.2023. Shri S.K. Rungta through his representative filed certain submissions dated 08.02.2023 :-*

(a) *Submission:-*

That all the departments have not shown backlog vacancies against Group 'D'. The Group 'D' posts were upgraded and re-designated as Group 'C' and therefore the shortfall against Group 'D' vacancies are to be added in Group 'C' vacancies.

Fact of the matter :-

In this connection, departments submitted that Group 'D' posts have since been abolished and are now outsourced. Hence, there was no question of any vacancy as of now.

(b) *Submission :-*

Most of the departments have shown larger share to OH compared to VI.

Fact of the matter:-

In this connection, it was observed that there were certain operational requirements in which the posts can not be filled by VI candidates like that of a Driver or Conductor in DTC.

(c) *Submission:*

The figure submitted by MCD and Education Department also do not seem to be correct.

Fact of the matter:-

To begin with, there is no reason for not believing the affidavits being submitted by the departments/establishments regarding the figures, which are pledged to be correct. Mere assumption is not proper.

9. *It was observed that due diligence on the subject was done by the establishments/departments of GNCT of Delhi. HODs of all establishments under the Govt. of NCT of Delhi were asked to focus and work out 100 Point roster w.e.f. 1996. Till 2016, the calculation was to be done @ 3% and subsequently w.e.f. 2017, post implementation of the RPWD Act, 2016, it was increased to 4%. It was a cumbersome and mammoth task for the establishments/departments to cross check and calculate the backlog vacancy and present it to the Court besides taking action to fill the pending vacancies through DSSSB.*

[Note:- Reservation in promotion quota is a recent phenomenon.

Refer:- O.M. No. 36012/1/2020-Estt.(Res.II) dated 17.05.2022 of DoPT, Govt. of India]

10. *Show Cause Notices to four major departments were issued to impose a penalty of Rs. 10,000/- for not furnishing requisite information on time, though the same was set aside post submission of the inputs by all the four defaulting departments/establishments.*

11. *Generally, an empathetic consideration is taken by the authorities in each establishment regarding matters pertaining to PwDs, but to ensure that there are no exceptions and the orders are followed, the Court of SCPD works relentlessly to deliver justice to any PwD on as required basis.*

12. *In general, the Court of the State Commissioner is happy to note that the desired awareness and sensitisation have been generated among all establishments of GNCT of Delhi, which was required and as a result, officials are more empathetic*

towards Persons with Disabilities. Departments have taken a positive step towards identifying and filling up the vacancies for persons with disabilities which is praiseworthy and can act as a role model for all the other States of the country.

13. Total backlog of vacancies as emerged out of this exercise, submitted by the Services Department is as under:-

Direct recruitment: 1351 (including 356 vacancies for VI)

Promotion :842 (including 149 vacancies for VI)

[Note: So far 1281 PwDs have been employed by GNCT of Delhi since 1996 and 1192 PwD employees were promoted under the promotion quota) (Group-wise vacancies filled under Direct Recruitment and Promotion quota enclosed as Appendix 'B']

14. Taking into account the consolidated information furnished by Services Department (Copy enclosed as Appendix 'C') and submissions by both the parties, the Court recommends/Orders as under:-

(a) All the establishments/departments of GNCT of Delhi need to hasten up the process by conducting a Special Drive to fill up the consolidated backlog vacancies as per the 100 Point Roster and send requisition to DSSSB/UPSC. Action Taken Report be submitted through Services Department within 90 days of this order.

(b) No organisation can grow and remain vibrant maintaining the desired standard of professionalism without regular Training. Towards this, adequate training on this aspect i.e. to maintain 100 point roster and to ensure reservation for PwDs as mandated under RPWD Act, 2016 would be important and required to be imparted among officers and officials of GNCT of Delhi. This Court recommends that Services Department should initiate action for conducting a training programme

through UTCS, regularly for officers/officials of all establishments/departments of GNCT of Delhi in this regard.

15. *Grievances and prayer of the National Federation of the Blind filed through Counsel Shri S.K. Rungta have been duly mitigated. Thus, the case can be closed and disposed on a very positive note in favour of Persons with Disabilities (including the Visually Impaired). It is a win-win situation for both, the applicant (National Federation of the Blind) and the respondent (GNCT of Delhi).*

16. *Further, it is observed that nobody is against the Persons with Disabilities whether VI or OH or any other type of disability. There could be some lacuna in understanding and proper implementation of the Act due to oversight and lack of awareness or knowledge and if any discrepancy is noticed in respect of a particular establishment/department, the same can always be rectified. Moreover, the channel of this Court is always open to resolve any such issue.*

17. *Given under my hand and the seal of the Court this 20th day of February, 2023.”*

11. The Order passed by the SCPD makes it very clear that 1351 vacancies are available under Direct Recruitment quota for Persons with Disabilities, including 356 vacancies for Visually Impaired persons; and in the matter of Promotion quota, the vacancies available are 852, including 149 vacancies for Visually Impaired persons. The Order further reveals that the GNCTD has been directed to fill up the vacancies by conducting a special drive.

12. In light of the aforesaid, this Court is of the opinion that the vacancies, which are in existence, are required to be filled up as soon as possible and, accordingly, the Chief Secretary, GNCTD, is directed to

undertake a special recruitment drive for filling up the back-log of vacancies for the Persons with Disabilities in a time bound manner.

13. The GNCTD is directed to carry out a special recruitment drive for Persons with Disabilities as reported in Case No.2862/1011/2022/12/428-431 by different Departments/ Establishments of GNCTD pursuant to our directions dated 19.11.2022 and the vacancies be filled up by adhering to the time schedule detailed as under:

- (a) The concerned Departments/ Establishments will send a requisition to the Delhi Subordinate Services Selection Board (DSSSB)/ Union Public Service Commission (UPSC), as the case may be, within 30 days from today;
- (b) The notification of advertisement by DSSSB/ UPSC, as the case may be, for filling up back-log of vacancies for persons with benchmark disabilities against requisition sent to them be issued within 30 days from the date of receiving requisition;
- (c) The DSSSB/ UPSC, as the case may, shall conduct written test/ interview/ process of selection within 30 days from the last date of receipt of applications by the DSSSB/ UPSC; and
- (d) The DSSSB/ UPSC, as the case may, shall declare the result and the process of appointment be concluded within a period of 30 days from the date of declaration of result/ interview.

14. As far as filling up the vacancies reported by different Departments/ Establishments against the reservation for promotion as observed by the learned SCPD is concerned, the following schedule shall be adhered to:

- (a) Notification of eligible candidates for consideration against vacancies reported for being filled up by promotion and obtaining of Annual Performance Assessment Report (APAR) or other relevant information in respect of eligible candidates be issued within a period of 45 days from today;
- (b) Convening of Departmental Promotion Committee (DPC)/ Interview by the concerned authority be concluded within 45 days from the date of finalization of the list of eligible candidates; and
- (c) The order of appointment be issued within 30 days from the date of convening of DPC/ Interview, as the case may be.

15. As this Court is disposing of the present PIL, the learned SCPD shall continue to monitor this special recruitment drive and after the special recruitment drive/ the process of promotion is over, he shall be free to examine the issue by summoning the vacancy-wise roster from 33 departments/ establishments of GNCTD who have reported 'NIL' vacancy position as well as 'NIL' vacancies in some of the other departments also. The SCPD after examination of the said record will again workout backlog of vacancies, if any, and shall be free to direct the concerned departments/ establishments to fill up the backlog of vacancies so worked out by him in the manner and method as directed by him by adhering to the time schedule as framed by this Court.

16. This Court appreciates the genuine and sincere efforts taken by Shri.S.K. Rungta, Senior Advocate, who has selflessly taken up the case of protecting the interests of Specially Abled Persons.

17. This Court also appreciates the efforts taken by Ms. Avnish Ahlawat, learned Standing Counsel for the GNCTD, who has also extended her support and cooperation in resolving the issue and was fair enough in submitting the vacancy position to this Court as well as to the Court of SCPD on the basis of which he has passed a detailed order dated 20.02.2023.

18. This Court also makes it very clear that any deviation in the time schedule framed by this Court will invite Contempt of Court proceedings and this Court shall be initiating *suo moto* contempt proceedings in case of non-compliance of the order passed by this Court read with the order passed by SCPD in the time frame as framed by this Court.

19. With the aforesaid observations, the present PIL stands disposed of.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

MARCH 06, 2023

B.S. Rohella