

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

WPPIL No.39/2002

Date of Decision: 14/8/2012

Jyotsna Mengi

VS

State and ors.

Coram:

Hon'ble Mr. Justice M.M. Kumar, Chief Justice
Hon'ble Mr. Justice Hasnain Massodi, Judge

Appearing Counsel:

For Petitioner(s) : Mr. S.P. Mengi, Advocate.
For Respondent(s) : Mr. Gagan Basotra, AAG for R-1 & 2
Mr. D.C. Raina, Sr. Advocate with
Mr. F.A. Natnoo, Advocate for R-3.

- 1. Whether approved for reporting in law journals? : Yes/No
- 2. Whether approved for publishing in Press/Media? : Yes/No/Optional

Per Massodi, J

1. The Jammu and Kashmir Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1998 (For short Equal Opportunities Act) is a piece of legislation intended to provide equal opportunities, care, protection, maintenance welfare, training and rehabilitation to differently-abled persons. One of the measures contemplated under the Equal Opportunities Act, to achieve the objects of the Act, is to reserve vacancies in government service for such persons.

2. Petitioner is aggrieved that the Jammu and Kashmir Civil Service (Judicial) has been left out

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 1) Extension of benefit of reservation to the petitioner.
 2) Amendment to the Reservation Act.
 Legal Aspect
 OPS
 A/O/CA/USCY
 These issues are involved.

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persons with disabilities. The Government is required to review, revise and up-date such list after regular intervals not exceeding three years. It would be profitable to reproduce Ss. 21 and 22 hereunder;

"21. Identification of posts which can be reserved for persons with disabilities

The Government shall:-

- (a) identify posts, in the establishments which can be reserved for the persons with disabilities;
- (b) at periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the development in technology.

22. Reservation of posts

The Government shall appoint in every establishment such percentage of vacancies not less than three percent, for persons or class of persons with disabilities of which one percent, each shall be reserved for persons suffering from:-

- (i) blindness or low vision;
- (ii) hearing impairment;
- (ii) locomotor disability or cerebral palsy, in the posts identified for each disabilities:

Provided that the 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."

5. The Government obviously has to look into all the aspects like the nature of duty performed by member of service, the challenges of work place, occupational hazards and like factors, while

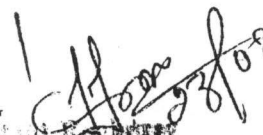
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taking a decision whether a post in an
establishment can be reserved for a person with
disabilities. There may be posts that, because of
occupational hazards involved, cannot be reserved
for differently-abled person, as such, person
because of the disability, he is suffering from, may
be exposed to bodily injury, if asked to man such
post. The Government, therefore, has to make an
enquiry regarding the type of disability that may
qualify for reservation against the post in an
establishment. The disability in terms of Section
22 of the Equal Opportunities Act may be
categorized as; (i) blindness or low vision; (ii)
hearing impairment; (iii) locomotor disability or
cerebral palsy. A person with a particular type of
disability may without any inconvenience man a
particular post but may not be in a position to
man a different post because of the duties
attached to such post. Therefore, while
identifying the post, which can be reserved for the
persons with disabilities, the Government may
having regard to different categories of disabilities
take a decision whether the reservation can be

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made for persons suffering from any of the
disabilities or such reservation may be available
only to a differently-abled persons suffering from
one category of disability. The extent of
reservation in the posts identified in terms of
Section under Section 21 of the Equal
Opportunities Act is 3 per cent to be equally
distributed amongst three categories of
disabilities, i.e. visual disability, hearing disability
and locomotor disability/cerebral palsy.
However, as already pointed out, the first step is
the identification of posts in the establishment
which can be reserved for the persons with
disabilities. The State Government vide Order
No.231-SW of 2011 dated 22.12.2011
has identified the posts of Teachers, Junior
Engineer (Civil) and Junior Engineer
(Mechanical/Electrical), for 3 per cent reservation
under Equal Opportunities Act.

6. There is no reason why an exercise to decide
whether the benefit under Section 21 of the Equal
Opportunities Act is not extended to Jammu and
Kashmir Civil Service (Judicial) should not be


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undertaken at an earliest. Supreme Court in
"Government of India Vs. Ravi Prakash
Gupta and arr." (2010) 7 SCC 626, while
dealing with the case of a visually handicapped
candidate, who qualified the Civil Service
Examination but was denied the appointment to
the service, held the petitioner to be entitled to
appointment and upheld the Delhi High Court
judgment, commanding the respondents to
appoint him to one of the reserved posts. The
petitioner claimed benefit of reservation under
Disabilities Act. Sections 32 and 33 whereof are
per materia with Sections 21, and 22 of Equal
Opportunities Act of 1998. The Supreme Court
observed;

"22. We have examined the matter with great care having regard to the nature of the issues involved in relation to the intention of the legislature to provide for integration of persons with disabilities into the social mainstream and to lay down a strategy for comprehensive development and programmes and services and equalization of opportunities for persons with disabilities and for their education, training, employment and rehabilitation amongst other responsibilities. We have considered the matter from the said angle to ensure that the object of the Disabilities Act, 1995, which is to give effect to the proclamation on the full participation and equality of the people with disabilities in the Asian and Pacific regions, is fulfilled."

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"25.....The submission made on behalf of the Union of India regarding the implementation of the provisions of Section 33 of the Disabilities Act, 1995, only after identification of posts suitable for such appointment, under Section 32 thereof, runs counter to the legislative intent with which the Act was enacted. To accept such a submission would amount to accepting a situation where the provisions of Section 33 of the aforesaid Act could be kept deferred indefinitely by bureaucratic inaction. Such a stand taken by the petitioners before the High Court was rightly rejected. Accordingly, the submission made on behalf of the Union of India that identification of Groups A and B posts in the IAS was undertaken after the year 2005 is not of much substance."

7. The Delhi High Court in "*Ravi Prakash Gupta's*" case (Supra) held the petitioner entitled to appointment though the Union of India had, in terms of Section 32 of Disability Act, yet to identify posts of Indian Administrative and Allied Services for reservation of differently-abled persons. However, the facts of the present case are different from the facts of reported case, inasmuch as, in the case before Delhi High Court, the rights of the petitioner had got concretized by his successively qualifying the Civil Service Combined Examination, while in the present case, the petitioner and her similarly circumstances colleagues only aspire to compete for the posts as and when these would be available.

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8. The Jammu and Kashmir Civil Service (Judicial) Recruitment Rules, 1967 made in consultation with the Public Service Commission and the High Court govern recruitment etc. to the Jammu and Kashmir Civil Service (Judicial). However, though the consultation with the Public Service Commission and the High Court may become necessary, in case, extension of benefit of reservation under Section 21 of the Equal Opportunities Act, involves any amendment to the Rules, yet as a first step, Social Welfare Department of the State Government is to examine the claim, obtain necessary inputs from all concerned and take a decision in the matter. It is only after the department is of the opinion that the aforesaid benefit deserves to be extended to the posts under the Jammu and Kashmir Civil Service (Judicial), that it may have to hold consultation with the Public Service Commission Department and the High Court.

9. For the reasons discussed, the petition is **disposed of** with a direction to the Social Welfare Department of the State Government to

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examine the matter and take a decision as regards
extension of benefit under Section 21 of the Equal
Opportunities Act to the Jammu and Kashmir
Civil Service (Judicial) within three months from
the date of receipt of this order. In case, the
Department takes a decision in favour of the
extension of benefit and identifies the posts under
Service in terms of Section 21 of the Act for
reservation for differently-abled persons, it shall
enter into consultation with the Public Service
Commission and the High Court, so that the
decision is formalized within six months from the
date of disposal of the present petition and
differently-abled persons get the benefit of three
percent reservation under Equal Opportunities
Act for the posts under the Jammu and Kashmir
Civil Service (Judicial) Recruitment Rules, 1967,
without any further delay, in case, the decision
goes in their favour.

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No 10669

Sd/- Hon'ble
(Harnain Massadi)
Judge

Sd/- Hon'ble
M.M. Kumar
Chief Justice

Dt. 23-08-12

Copy of above order forwarded to the Commissioner
Secretary to the Social Welfare Department Civil
Sector Srinagar for information and necessary
compliance as directed.

M. C. J. O. M.
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Srinagar

SWP No. 2529/2012
CMA No. 3943/2012
Caveat No. 1312/2012

Date of Order: 04.01.2013

Appearing Counsel:

For Petitioner(s) : Mr. Shrishti Paul Mengi, Advocate.
For Respondent(s) : Mr. Gagan Basotra, Sr. AAG.

Petitioner seeks permission to withdraw the Petition with liberty to work out available remedy.

Dismissed with liberty as prayed for.

Sd/-
(J. P. Singh)
Judge

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Shrishti Paul Mengi
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Gagan Basotra

Examination