

IN THE HIGH COURT OF KARNATAKA  
CIRCUIT BENCH AT GULBARGA

DATED THIS THE 14<sup>TH</sup> DAY OF SEPTEMBER, 2010

PRESENT

THE HON'BLE MR.JUSTICE N KUMAR

AND

THE HON'BLE MR.JUSTICE SUBHASH B.ADI

WRIT PETITION NO.10897/2008

BETWEEN:

Shivapputhra Chellamarad  
Aged about 45 years,  
Son of Sangappa Chellamarad  
R/o at & Post Nalathwada  
Muddebihal Taiuk,  
Bijapur District.

...PETITIONER

(BY SRI.I.R.BIRADAR, ADV)

AND:

1. State of Karnataka  
By its Secretary,  
Agriculture Department  
M.S.Building,  
Bangalore - 560 001.

2. The Karnataka Public Service Commission  
Park House,  
Bangalore - 560 001  
Represented by its Secretary

...RESPONDENTS

(BY SRI.M.KUMAR, GA FOR R-1,  
M/s.SANJEEV ANGADI & ASSOCIATES, ADVs FOR R-2)

THIS WRIT PETITION FILED U/A 226 & 227 PRAYING TO CALL FOR RECORDS PERTAINING TO THE ORDER DATED 14.03.2008 PASSED BY THE KARNATAKA ADMINISTRATIVE TRIBUNAL, BANGALORE IN APPLICATION NO.6032/2001, ANNEXURE-E AND PERUSE THE SAME AND QUASH THE ORDER DATED 14.03.2008, PASSED BY THE KARNATAKA ADMINISTRATIVE TRIBUNAL, BANGALORE IN APPLICATION NO.6032/2001, ANNEXURE-E, AS A CONSEQUENCE THEREOF, ALLOW APPLICATION NO.6032.2001 FILED BEFORE THE TRIBUNAL.

THIS WRIT PETITION COMING ON FOR FINAL HEARING TODAY, MR.N.KUMAR J., MADE THE FOLLOWING

**ORDER**

The petitioner has challenged in this writ petition, the order passed by the Karnataka Administrative Tribunal rejecting his application, in which he has challenged the notification which did not provide reservation to physically handicapped persons, when his candidature for the post was rejected on merits.

2. The petitioner claims to be physically handicapped person, in support of that he has produced Annexure-A-2, a certificate issued on 10.11.90 by the members of the medical board attached to the Special

Employment Exchange for the Physically Handicapped/Vocational Rehabilitation Center.

3. On 04.11.1999, the Karnataka Public Service Commission invited application for recruitment for 50 posts of Assistant Director of Agriculture and 50 posts of Agriculture officers in the Agriculture Department. Petitioner has passed B.Sc.(Agriculture) with 84.96%. Therefore he possessed requisite educational qualification to apply for the said post. The petitioner filed his application before 10.12.1999, which is the last date prescribed for submitting the applications. He filed the application claiming reservation as person belonging to Category 3(b). After selection process was completed, when the petitioner was not selected under Category 3(b) as he did not secure the requisite marks, the petitioner preferred writ petition in W.P.43640/99 challenging the notification as well as the rejection of his application for appointment. Subsequently the writ petition was transferred to Karnataka Administrative Tribunal and it was numbered as application 6032/2001. The

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Government was notified to file reply statement on 09.05.2003 justifying the notification.

4. The grievance of the petitioner was, if he is not considered for the said post under Category 3(b) atleast he should have been considered under the Category of Physically Handicapped. As no reservation was prescribed under the notification and no reservation was made under the category of physically handicapped persons he wanted the notification to be quashed, reservation to be made and his application be considered by providing reservation to the physically handicapped category at Point No.33. The Tribunal on consideration of the aforesaid contentions held, as in the writ petition there is no interim order and only on 03.09.2005 the Government issued notification identifying 3% of the Group A and Group B posts, as by that time selection process was over, they could not give effect to the said reservation policy. Therefore it held that the petitioner is not entitled to the relief sought for. It also held that no direction can be given to the Government to identify the post for physically disabled nearly after lapse

of 10 years from the date of notification. For the aforesaid reasons, the application was rejected. Aggrieved by the same the petitioner is before this Court.

5. The learned counsel for the petitioner assailing the impugned order contended that, after passing of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 – referred to as Act for short). It is the bounden duty of the Government to identify the post and issue notification regarding posts reserved for physically disabled and make recruitment in accordance with the Act. Admittedly in the notification issued no such reservation was made for physically handicapped persons. Notification issued after the Act came into force. Therefore he submits that the said notification is bad. At any rate in terms of the reservation his case should have been considered for the said post under the category of physically disabled.

6. We do not see any merit in this contention. The Act came into force in the year 1995. If the petitioner is

claiming a right under the Act, the condition precedent is he must be declared as a physically handicapped person under the Act by an authority constituted under the Act and then only he could be considered as a physically disabled person. Till today the petitioner has not applied to the competent authority under the Act for issue of such certificate declaring that he is physically handicapped person who is entitled to benefit under the Act. He relies on a certificate issued in the year 1990 by a medical board which is constituted under a notification which is not recognized under the Act. Therefore in the first place the material on record do not establish that the petitioner is a physically handicapped person. Secondly the petitioner applied under the notification as a person belonging to category 3(b), participated in the selection process but unfortunately he could not succeed, as he did not have the requisite merit. Thirdly, mere passing of the legislation would not confer such right on a physically disabled person. In pursuance to the said Act, the Government has to identify the posts as required under Section 32 of the Act and then issue a notification identifying such posts

and thereafter the said reservation is given effect to in the recruitment process. Admittedly on the date the notification was issued, the post in the agriculture department for which applications called for were not identified. Therefore in the notification issued calling for application no provision was made for reservation to the physically disabled persons. It is only in the year 2005, the posts were identified and the learned counsel for the Government submits that no posts in the cadre in which the petitioner has applied for has been identified.

Under these circumstances seen from any angle, the petition is devoid of merits. Accordingly it is dismissed.

Sd/-  
JUDGE

Sd/-  
JUDGE

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