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IN THE HIGH COURT OF ORISSA AT CUTTACK

WA No.1289 of 2023

Arising out of judgment dated 01.05.2023 passed by learned Single Judge in W.P. (C) No.10399 of 2020.

Odisha Public Service Commission Appellant

-Versus-

Biswajit Panda Respondent

Advocates appeared in this case:

For Appellant : Mr. Tarun Patnaik, Advocate

For Respondent: Mr. S.K. Pradhan, Advocate

CORAM:

**THE HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
AND
THE HON'BLE MR. JUSTICE MRUGANKA SEKHAR SAHOO**

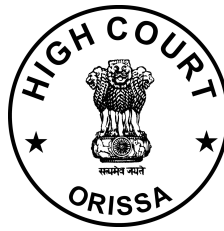
J U D G M E N T

Dates of hearing: 04.08.2025 and 05.08.2025

Date of judgment: 26.08.2025

PER MRUGANKA SEKHAR SAHOO, J.

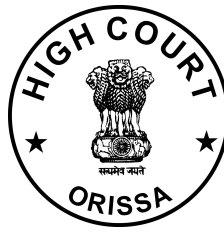
The appellant-Odisha Public Service Commission being aggrieved by the judgment dated 01.05.2023 passed in W.P. (C) No.10399 of 2020 by the learned Single Judge have filed the appeal.



In the writ petition, the petitioner had sought for direction from this Court to be appointed as Assistant Agriculture Engineers in Group-B pursuant to the advertisement No.2 of 2019-20 issued by the appellant-Commission inviting online applications. The advertisement was pursuant to the requisition filed by the Agriculture & Farmers Empowerment Department, Government of Odisha. The learned Single Judge after considering the writ petition and the counter filed by the opposite party-Commission allowed the writ petition. The operative portions of the judgment which are relevant for adjudication are reproduced herein:

“23. From the pleadings of the parties, so also submissions made by the learned Counsel for the parties and the documents on record, as detailed above, it is amply clear that the Petitioner was eligible to apply for the post of Assistant Agriculture Engineer (Group-B) in terms of the advertisement No.02 of 2019-20. Though rightly the OPSC entertained the candidature of the Petitioner under PwD category and he was allowed to appear the Written Examination, the reason best known to the authority concerned, he was not called for the viva voce test. The Coordinate Bench, in W.P.(C) No.3377 of 2020, as an interim, rightly ordered to allow the Petitioner to appear in the Viva Voce Test. Though the said Writ Petition was finally disposed of on 26.02.2022 with an observation that it is open to the OPSC to declare the result of the candidates, to the reason best known, the OPSC declared the result of all the candidates, excepting the Petitioner. The result of the Petitioner was declared, being directed to do so vide Order dated 09.03.2023 in the present Writ Petition.

24. Admittedly there were 5 vacancies under the reserved category for persons with disabilities and as per the Counter Affidavit filed by the OPSC, 3 persons were selected and appointed against the said vacancies meant



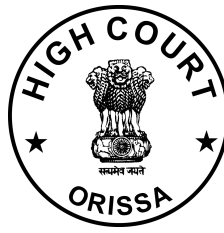
for the said category and 2 posts are still lying vacant and as stated in the Compliance Affidavit dated 09.03.2023, the 3rd candidate secured total 91.476 marks.

25. Further, as stated in the Compliance Affidavit dated 27.03.2023, the cut-off mark is being fixed based on the marks secured by the last candidate. As per the Affidavit filed by the OPSC, the last candidate secured 91.476 marks. As because there was no suitable candidate under the said category of PwD, only 3 persons were selected and appointed as against 5 vacancies and the Petitioner has secured total 83.506 marks, i.e. just below the marks secured by the third candidate, who has already been selected and appointed as Assistant Agriculture Engineer (Group-B).

26. Since as per previous advertisement made by OPSC for the year 2014-15, persons with low vision were considered to be eligible for applying under PH category for the post of Assistant Agriculture Engineer (Group-B), the advertisement for the year 2019-20 being identical to the advertisement for the year 2014-15, this Court is of the view that OPSC was not justified to debar the Petitioner taking a plea that Petitioner having disability of low vision, is not falling under the PwD category for appointment in the post of Assistant Agriculture Engineer (Group-B). Hence, this Court directs the OPSC to declare the Petitioner to be a selected candidate under the PwD category as he belongs to 1st subcategory i.e. person suffering from blindness or low vision and intimate the requisitioning Authority forthwith to do the further needful in accordance with law.”

We have heard in extenso the learned counsel for the appellant-Commission and learned counsel for the respondent.

2. Learned counsel for the Appellant, Mr. Patnaik refers to the Advertisement No.02 of 2019-20 dated 16.07.2019 issued by the Appellant-Odisha Public Service Commission (hereinafter “OPSC”/“The Commission”) and submits that, applications were invited for recruitment to the post of



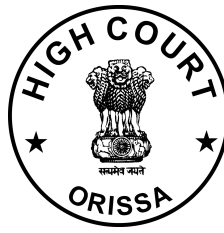
Assistant Agriculture Engineers (Group-B) of Odisha Agriculture and Food Production Service under Agriculture & Farmers Empowerment Department, Govt. of Odisha. The advertisement provided reservations in the service for different categories and also provided reservation of five posts for the persons with disabilities. Learned counsel refers to Sub-para(1) in para-2 of the advertisement –

“NB. Out of vacancies mentioned above, 04 (four) posts are reserved for Ex0servicemen, 05(01-W) (five) posts are reserved for P.H. (Persons with Disabilities) and 01 (one post is reserved for Sports Persons.

Further it is clarified that the [one leg affected (MNR), PD (with suitable aid) categories of disabled are suitable for the post of Assistant Agriculture Engineers.] PH persons with disability of one leg affected (Right or Left) & Partially Deaf (PD) should be able to perform work by standing, walking, speaking/hearing and seeing which is required for the post of Assistant Agriculture Engineer. Only those Persons With Disabilities, whose nature of disability, is permanent and is 40% and more shall be eligible to apply for the post.” (sic)

[Underlined by us]

3. The sum and substance of the argument of the learned counsel for the Appellant in challenging the judgment passed by the learned Single Judge is that, the learned Single Judge while deciding the matter, has not taken note of the above quoted condition reflected in the advertisement; sections 32 and 33 of the Persons With Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short, ‘the Act, 1955’), in Chapter VI, that provide for employment opportunity to be provided to persons with



disability have not been taken note of and decision in the writ petition is contrary to those sections.

4. For convenience of reference, the said Sections 32 & 33 are reproduced herein –

“CHAPTER-VI

32. Identification of posts which can be reserved for persons with disabilities. – Appropriate Governments 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.

33. Reservation of posts. – Every appropriate Government shall appoint in every establishment such percentage of vacancies 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 –

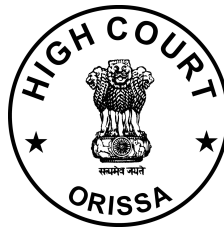
- (i) blindness or low vision;
- (ii) hearing impairment;
- (iii) locomotor disability or cerebral palsy,

in the posts identified for each disability;

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.”

[Underlined to supply emphasis]

5. Learned counsel refers to the order passed by the coordinate Bench dated 07.11.2023, of which, paragraph-3 is reproduced herein –

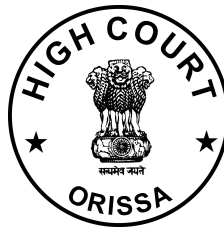


“xxx. Though averment has been made in the application that the Government has excluded such person by way of an issuing a notification, in that case, Mr. Tripathy, learned counsel appearing for the Appellant wants to produce such notification excluding the categories which are explained in Section 34 of the Act to be notified for the purpose of recruitment to the post of Assistant Agricultural Engineer.”

It is submitted that, pursuant to the said order, the Appellant filed affidavit sworn to by the Special Secretary-cum-OSD, Odisha Public Service Commission dated 11.12.2023 enclosing copy of Govt. Notification dated 03.12.2013. Copy of the affidavit has been served on the Respondent, and the Respondent has also filed his response.

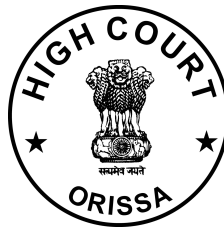
6. Learned counsel then refers to the notification dated 03.12.2013 issued by the Govt. of Odisha in General Administration Department (Annexure-4). That notifies consolidated instructions regarding reservation for the Persons with Disabilities in various posts/services under State Govt./Public Sector undertakings. It is further provided in the said notification that, “In compliance of Section 32 of PWD Act, 1995, a committee was constituted by the Government to identify the posts suitable for PWDs in State Government / Public Sector Undertakings, having following members –

1. Additional Secretary, General Administration Department
2. State Commissioner for Persons with Disabilities
3. Director for Persons with Disabilities



4. Assistant Director (Rehb.), Vocational Rehabilitation Centre for Handicapped (VRCH), Government of India, Bhubaneswar
5. Assistant Director, Training Center for Teachers of the Deaf (TCTD), Government of India, Bhubaneswar
6. Director, Swami Vivekanand National Institute of Rehabilitation Training and Research (SVNIRTAR)
7. Medical experts/doctors.

7. The Committee had held detailed discussion with all the departments of the Government in phased manner. Thereafter the expert committee completed the list of identified post which was shared with the Group of PWDs (Persons With Disabilities), DPUs and Activists in the consultative meeting chaired by State Commissioner for Persons with Disabilities. In the meeting, three sub-committees were constituted for each category i.e.: (i) like blindness/low vision, (ii) hearing impairment and (iii) locomotor disability/cerebral palsy. The views of the sub-committees were duly considered by the expert committee. After vigorous exercise, the expert committee recommended the draft resolution and list of suitable posts identified for PWDs in Group A, B, C and D. With a view to consolidating the existing instructions, bringing them in line with the reasons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995 and clarifying certain issues including procedural matters, the instructions in supersession of General Administration Department Resolution No.3404-2R/1-3/2004/Gen. dated the 13th February, 2006 were issued with



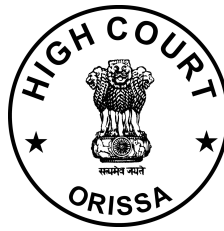
regard to reservation & relaxations for Persons with Disabilities in posts and services under the Government of Odisha and Public Sector Undertakings.

8. Learned counsel for the Appellant refers to 'Annexure-II', i.e. captioned as "Identification of Post Group-B", which provides a table. At Serial No.8, "Designation of the post : Assistant Agriculture Engineer", Physical Requirement is mentioned as S, ST, W, BN, MF, SE, RW, and thereafter Functional Classification has been provided that OL, OA, HI, BL (MNR). The full form of the abbreviations are mentioned at page 58 of the notification dated 03.12.2013.

8.1. The full forms of the above abbreviations are as under :-

- S** – Work performed by sitting (on bench or chair)
- ST** – Work performed by standing
- W** – Work performed by walking
- BN** – Work performed by bending
- MF** – Work performed by manipulating (with fingers)
- SE** – Work performed by seeing
- RW** – Work performed by reading and writing
- OL** – One leg affected (R and/or L)
- OA** – One arm affected (R or L) – (a) impaired reach; (b) weakness of grip; (c) ataxia.
- HI** – Partly deaf
- BL (MNR)** – Both legs affected but not arms (Mobility not restricted).

9. It is submitted by the learned counsel for the appellant that, after notification has been notified by the Government in

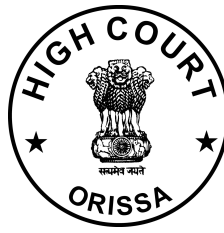


terms of Section 32 read with Section 33, of the Act, 1955 regarding jobs, the Commission acted upon the requisition given by the Department for filling up the post of Assistant Agriculture Engineer and only those category of persons can be given benefit of reservation only in consonance with G.A. Department notification dated 03.12.2013.

10. Learned counsel for the Appellant relies on the decision of the Apex Court in the case of **Ajay Kumar Pandey vs. State of U.P.**¹ particularly paragraphs 16, 17 & 18 of the SCC print, which read thus –

“16. A reading of the G.O. dated 7-5-1999 shows that posts have been identified to be filled up from physically handicapped category in Category C and D posts. Such identification of the posts in an establishment is in terms of Section 32(a) of the Act. Although, such list is to be reviewed every three years taking to consideration the development in technology, however the said exercise appears to have not been undertaken. But the identification of posts in terms of Section 32 of the Act has been carried out in the G.O. dated 7-5-1999. After such identification, the question of appointment in each establishment arises where the vacancies not less than 3% are to be reserved for the candidates with blindness or low vision, hearing impairment and locomotor disability. Such reservation of posts under Section 33 of the Act is not for all categories of posts irrespective of nature of work to be carried out. The 3% reservation has to be provided in an establishment and not in every cadre. The State Government has taken a

¹ (2023) 16 SCC 82

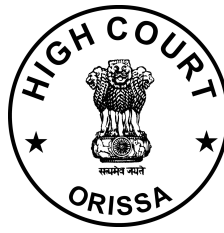


conscious decision to reserve certain posts for hearing impaired candidates and not for the candidates with locomotor disability.

17. We find that the G.O. dated 7-5-1999 could not be set aside in exercise of the power of judicial review on the basis of cursory glance of the G.O. dated 7-5.1999. The identification of the posts which can be filled up by candidates suffering from disabilities is the responsibility of the appropriate Government under Section 32 of the Act, which is the State Government in the present. Once such exercise has been carried out, the appropriate Government in terms of Section 33 of the Act shall reserve 1% each for the visual disability, hearing impairment and locomotor disability. The identification of the posts and the category of the disabled candidates who could be appointed against the posts reserved is the power conferred on the appropriate Government. Such exercise and the reservation of posts could not have been interfered with without holding such reservation to be totally arbitrary, irrational or against the objectives sought to be achieved and on judicially recognized principles.

18. We find that the order of the High Court striking the G.O. as a whole is on the basis of surmises and conjectures, thus the said order cannot be sustained in law. Since the posts of safai-karmis are not identified to be filled up from amongst the candidates having locomotor disability, the appellant could not be appointed against such category of post, even though they have appeared for cycling test or for interview. The appellants were not eligible for the appointment against such posts in terms of the advertisement. The G.O. dated 7-5.1999 is part of the advertisement and therefore, the appellants cannot claim appointment against the post reserved for disabled candidates only for the reason that they are locomotor disabled candidates when such post was not reserved for the safai-karmis.”

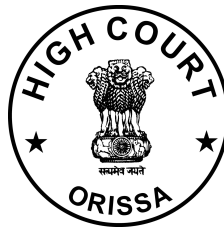
[Underlined to supply emphasis]



Learned counsel for the Appellant submits that, the scope of judicial review by this Court, as far as notification dated 03.12.2013 is concerned, is very limited, has to be within the parameters as has been elaborated in the case of **Ajay Kumar¹** (*supra*).

11. In response, Mr. Pradhan, learned counsel for the Respondent, submits that the Respondent has filed counter to the affidavit dated 11.12.2023 filed by the Appellant. He highlights in particular the contents of column-3 of the Notification dated 03.12.2013 which provides for 'physical requirement.' It is contended that, the 'physical requirement' as indicated in Annexure-2 of the Notification dated 03.12.2013 should be the guiding factor of providing reservation. It is submitted that, at serial No.8 of Annexure-II as physical requirement S, ST, W, BN, MF, SE, RW, is mentioned. If these requirements are satisfied, then any person (PWD) suffering from any category of disability can be recommended for employment.

12. Mr. Pradhan relies on the factual aspects, that nine (9) candidates had applied in the PWD Category, six (6) appeared for the examination, the respondent had appeared as directed by this Court by order dated 1st May, 2023 passed in W.P.(C) No.10399 of 2020. Out of seven (7) candidates, those who appeared including the appellant, four (4) along with the appellant appeared in the viva-voce.



The learned counsel for the respondent refers to paragraph-9 of the notification of the G.A. Department, Government of Odisha dated 03.12.2013, which is reproduced herein: -

“9. Identification of post

Pursuant to requirements of provisions contained under section 32 of PWD Act, 1995, the General Administration Department under the Chairmanship of Additional Secretary to Govt, held several consultative meetings with representatives of different Departments, experts of various field and after in-depth study of various jobs identified titles in Group A, B, C and D posts under State Government/ Public Sector undertakings suitable for Persons with Disabilities. The appointing authority may also give appointment against any post which is not included in the list if it is considered that the physical requirement of the post can be suitable for a person with disabilities.

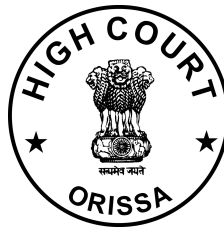
9.2 If identified post is upgraded or its nomenclature has been changed but physical requirement to perform that job remain same, that post shall remain as identified post for such categories.

9.3 Preference shall be given to persons with disabilities, while appointing persons in those post which are identified suitable for them even in excess of the 3% quota, whether the posts are reserved or not reserved.”

13. Learned counsel for the respondent then refers to paragraph-11 of the notification which is reproduced herein:-

11. 100 point Model Roster.

11.1 General Administration Department issued instruction regarding 100 point model roster vide resolution no. GAD-SC-RES-0002-2G13-11819/Gen dated 30th April, 2013. Accordingly, three categories of persons with disabilities as



given below shall be appointed covering following roster points;

Roster Points

- (a) 1 to 14*
- (b) 29 to 42*
- (c) 57 to 70*

Categories of disabilities

- Blindness or low vision*
- Hearing impairment*
- Locomotor disability
or cerebral palsy*

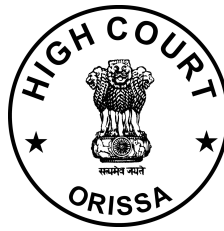
11.2 Roster Point No.1, 29 and 57 shall be earmarked for Blindness or low vision, Hearing impaired and locomotor disability / cerebral palsy respectively. If roster point no.1 or 29 or 57 not identified or not suitable for that category the appointing authorities shall reserve any other roster point from 2 to 14, 30 to 42 and 58 to 70 respectively for above categories of persons with disabilities. The purpose of earmarking roster point no.1, 29 and 57 is to provide first available post in three roster groups to respective category of persons with disabilities.

After covering all the point in 100 point roster, new cycle of 100 point model roster shall be started.

11.3 If reserved post in 1st or 2nd roster group are not filled due to non-availability of PWDs or the posts are not identified suitable for given categories of disabilities, those posts shall be transferred to 2nd or 3rd roster groups and all reserved posts shall be filled up by persons with disabilities from next roster groups. Even if post could not be filled up from roster group 1st and 2nd all three posts shall be filled up from 3rd roster group.”

He submits that the respondent should get selected in the category of PWD in accordance with the paragraphs 9 and 11 of the notification.

14. Having gone through the entire case brief, having heard the learned counsel for the parties and having given



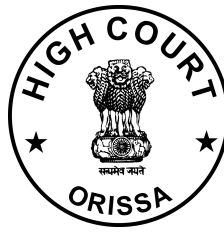
our anxious thoughts to the contentions raised, in our considered opinion, the short point that falls for determination in this appeal is: whether by exercising the power of judicial review this Court has the power to issue direction to the Odisha Public Service Commission to declare the respondent-writ petitioner to be a selected candidate under the PwD category, after giving a finding that the respondent-petitioner belongs to 1st sub-category i.e. person suffering from blindness or low vision with a further direction to intimate the requisitioning authority i.e. the Government in the Department of Agriculture & Farmers Empowerment to do the needful in accordance with law.

15. It is not disputed that the petitioner-respondent suffers from blindness to the extent 40% that comes within the definition/description of PwD category as he has 40% disability.

16. The learned Single Judge by order dated 05.04.2023 in the W.P. (C) No.10399 of 2020 observed thus:

“the petitioner should have been considered by the OPSC as he secured the fourth position by securing 83.506 marks i.e. just below 91.476 marks secured by the last selected candidate in PH category”.

Regarding the process of examination and participation of the respondent-petitioner, it has to be noticed that notices were issued by the bench of learned Single Judge by order dated 05.05.2020. Thereafter on 20.09.2022 the matter was placed before and considered by



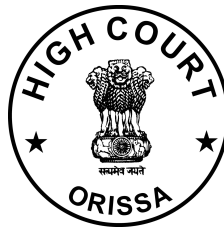
bench of another learned Single Judge, and the following was observed:

“... .. In the instant case, the advertisement has referred to person to the disabilities wherein persons with low vision have not been included. It is also mentioned in the counter that the candidature of the petitioner was not considered on such ground. Let the concerned requisition of the Government be placed before this Court. It be further clarified as to how or on what basis, the category of physically handicapped was further qualified to include only certain categories of physical disabilities leaving out disabilities relating to low vision, which was earlier considered in 2014-15.”

17. By interim order dated 07.02.2020 passed in I.A. No.1443 of 2020 arising out of W.P. (C) No.3377 of 2020 the petitioner was permitted to appear in the viva voce conducted by the appellant-Commission with further observation that his result shall not be declared and appearance at the examination by order of this Court shall depend on ultimate outcome of the writ petition.

18. Apparently as would be evident from the order dated 20.09.2022 as quoted above, the Court i.e. bench of learned Single Judge had noticed the issue that was to be adjudicated i.e. *“the category of physically handicapped was further qualified to include only certain categories of physical disabilities leaving out disabilities relating to low vision, which was earlier considered in 2014-15.”*

Thereafter the hearing has proceeded and ultimately the judgment was pronounced by the judgment dated 01.05.2023 to the effect that the learned Single Judge directed “... ..

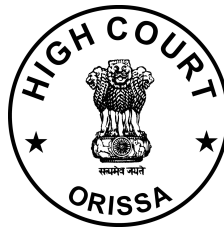


this Court directs the OPSC to declare the Petitioner to be a selected candidate under the PwD category as he belongs to 1st subcategory i.e. person suffering from blindness or low vision and intimate the requisitioning Authority forthwith to do the further needful in accordance with law”.

19. The question, that was formulated by order of the learned Single Judge dated 20.09.2022 quoted above has remained unanswered in the judgment.

However, since in the appeal the question which has been raised to be answered, we answer the same by our reasoning and analysis as detailed in the following paragraphs.

20. As indicated and discussed above, Chapter VI of the PwD Act, 1995 empowers the appropriate Government to identify posts, in the establishments, which can be reserved for the persons with disability. Section 33 mandates the appropriate Government shall appoint in every establishment person with disability in the posts identified for each disability. The proviso to section 33 as quoted above also empowers the Government to exempt any establishment from the provision of the section 33 having regard to the type of work carried on in any department or establishment subject to any conditions that would be imposed. Without violating the meaning of the words those have been used in the sections 32 and 33 of the Act, 1955 and by giving a plain meaning to the words contained in those sections, it has to be



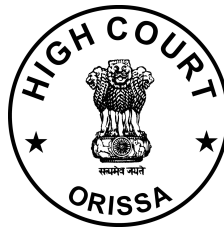
held that reservation of posts under section 33 is not for all categories of posts irrespective of nature of work to be carried out. Our conclusion finds force from the decision of the Apex Court in **Ajay Kumar Pandey** (supra), followed in **Union of India v. Ravi Prakash Gupta**², wherein it has been held: (SCC p. 634, paragraph 29).

“29. While it cannot be denied that unless posts are identified for the purposes of Section 33 of the aforesaid Act, no appointments from the reserved categories contained therein can be made, and that to such extent the provisions of Section 33 are dependent on Section 32 of the Act, as submitted by the learned ASG, but the extent of such dependence would be for the purpose of making appointments and not for the purpose of making reservation. In other words, reservation under Section 33 of the Act is not dependent on identification, as urged on behalf of the Union of India, though a duty has been cast upon the appropriate Government to make appointments in the number of posts reserved for the three categories mentioned in Section 33 of the Act in respect of persons suffering from the disabilities spelt out therein. In fact, a situation has also been noticed where on account of non-availability of candidates some of the reserved posts could remain vacant in a given year. For meeting such eventualities, provision was made to carry forward such vacancies for two years after which they would lapse. Since in the instant case such a situation did not arise and posts were not reserved under Section 33 of the Disabilities Act, 1995, the question of carrying forward of vacancies or lapse thereof, does not arise.”

[Underlined to supply emphasis)

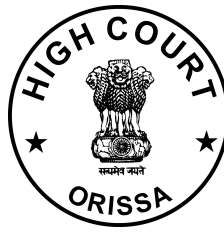
21. Now the next question that falls to be answered by us is that whether the appropriate Government has exercised the power and also in the manner that is prescribed and mandated under sections 32 & 33 of the Act, 1995. The

² (2010) 7 SCC 626



answer has to be clearly in the affirmative. As we have noted above, by notification dated 03.12.2013 issued by the Government of Odisha in the General Administration Department, consolidated instructions regarding reservation for persons with disabilities in various posts/services under State Government/Public Sector undertakings, was notified. The notification was pursuant to the opinion of the committee that was formed and acted in compliance of Section 32 of the PWD Act. Said committee comprised of seven members as experts. As indicated in paragraph-5 above, striking feature of the committee for preparation of the report is that it had experts, members representing all the stake holders concerning all relevant aspects, and they held detailed deliberation and consultation. It had all the features of institutional decision making by committee of experts which has to be dealt with deference by Courts.

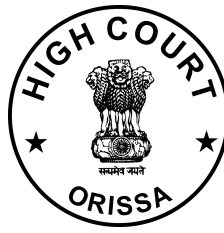
22. The further point that needs to be highlighted that as per the notification dated 03.12.2013 of the State Government, the kind of disability that is suffered by the respondent entitles him for employment under the State, in specified employment as has been enumerated in the detailed notification as reflected in Annexure-2. If the respondent wishes to get employed in Group-B posts under the State Government, the identified posts do not include the category of disability, suffered by respondent; as it only specifies one leg affected, one arm affected, partly deaf, both legs affected but not arms (Mobility not restricted) that does



not include blindness upto 40%. Now, this Court cannot act as an appellate authority of the committee as notified under sections 32 and 33 of the Act, 1955 to apply any subjective/objective scrutiny. Further the Court has to show due deference to the conclusions of the committee as has been notified which enables the respondent to get engaged in a particular category of posts but not as Assistant Agriculture Engineer.

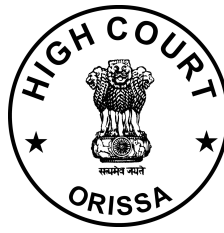
23. Applying the principle laid down in **Union of India v. Ravi Prakash Gupta** (*supra*) it has to be held that the posts have been identified for the purposes of sections 32 and 33 of the Act, 1955 by the notification dated 03.12.2013. The said notification has to be adhered to for the purpose of making appointments and not for the purpose of making reservation. On account of non-availability of candidates some of the posts reserved for PwD candidates may remain vacant in a recruitment year. The vacant posts that would remain, does not necessarily enure to the benefit of a person in the PwD category if he is not included for getting employment as per the notification dated 03.12.2013.

24. We would also add that though, the notification dated 03.12.2013 has not been challenged by the respondent (petitioner in the writ petition), in order to clarify the position both factual and legal we have analyzed these aspects in detail as above.



25. In view of the law laid down in **Ajay Kumar Pandey** (*supra*) if the State Government has taken a conscious decision as decided by the expert committee to reserve certain posts for certain category of PwD and not for other category of PwD, such action of the State cannot be held to be violative of any constitutional parameters inasmuch as each of the category of PwD candidate is getting opportunity to be considered in the particular category of post/job that has been notified. In **Ajay Kumar Pandey** (*supra*) the Apex Court has come to a conclusion that in the particular case the posts of safai-karmis was not identified to be filled up from amongst the candidates having locomotor disability. Therefore the appellant therein who had locomotor disability cannot be appointed against such category of post even though he had appeared for cycling test or for interview. The appellant in **Ajay Kumar Pandey** (*supra*) was held not to be eligible for the appointment against the post of safai-karmi in terms of the advertisement.

26. Drawing a parallel, by applying the principle as elaborated in paragraphs-17 and 18 of the **Ajay Kumar Pandey** (*supra*) and the principles laid in **Ravi Prakash Gupta** (*supra*) to the case at hand, the irresistible conclusion has to be and is to hold that the respondent is not eligible for appointment against the post of Assistant Agriculture Engineer in terms of the advertisement. The Government of Odisha notification dated 03.12.2013 being statutory, in terms of sections 32 and 33 of the Act, 1955 has to be read



along with the advertisement. The respondent cannot claim appointment against any post reserved for disabled candidates only for the reason that he is visually impaired when such kind of disability is not indicated for reservation in appointment to posts for Assistant Agriculture Engineer.

27. Accordingly, the writ appeal is allowed. The judgment dated 01.05.2023 passed by the learned Single Judge in W.P. (C) No.10399 of 2020 is directed to be set aside. The W.P. (C) No.10399 of 2020 has to be and is directed to be dismissed.

Costs made easy.

Manash Ranjan Pathak
Judge

Mruganka Sekhar Sahoo
Judge

Orissa High Court, Cuttack
The 26th August, 2025/Jyostna