

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF MAY, 2025

PRESENT

THE HON'BLE MR. N. V. ANJARIA, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE K. V. ARAVIND

WRIT APPEAL No.1673 OF 2024

BETWEEN:

1 . ANIL KUMAR S. B.,
AGED ABOUT 37 YEARS,
S/O SIDDAPPA BHAVIKATTI,
WORKING AS ASSISTANT,
BENGALURU ELECTRICITY
SUPPLY COMPANY LTD.,
S-6 SUB-DIVISION,
JP NAGAR, BENGALURU-560078.

...APPELLANT

(BY SRI DHANANJAY V. JOSHI, SENIOR ADVOCATE A/W
SRI SWAROOP S., ADVOCATE)

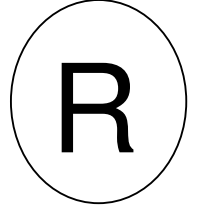
AND:

1 . THE KARNATAKA POWER
TRANSMISSION CORPORATION LIMITED,
CORPORATE OFFICE,
CAUVERY BHAVAN,
BENGALURU - 560 009,
REPRESENTED BY ITS MANAGING DIRECTOR.

2 . THE MANAGING DIRECTOR,
BENGALURU ELECTRICITY SUPPLY COMPANY LTD.,
K.R.CIRCLE, BENGALURU - 560 001.

...RESPONDENTS

(BY SMT. RAKSHITHA D. J., ADVOCATE FOR R1;
SRI LIKITH R. PRAKASH, ADVOCATE FOR R2)



THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO CALL FOR THE ENTIRE RECORDS PURSUANT TO THE EMPLOYMENT NOTIFICATION DATED 08.09.2016 AND SET ASIDE THE ORDER DATED 27.09.2024 PASSED BY THE HON'BLE SINGLE JUDGE IN WP No. 5666/2018 (S-RES).

THIS WRIT APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE THE CHIEF JUSTICE MR. JUSTICE
N. V. ANJARIA
and
HON'BLE MR. JUSTICE K. V. ARAVIND

C.A.V. JUDGMENT

(PER: HON'BLE MR. JUSTICE K. V. ARAVIND)

Heard learned Senior advocate Mr. Dhananjay V. Joshi along with learned advocate Mr. S. Swaroop for the appellant, learned advocate Smt. D.J. Rakshitha for respondent No.1 and learned advocate Mr. Likith R. Prakash for respondent No.2.

2. The petitioner in Writ Petition No. 5666 of 2018 has preferred this appeal, being aggrieved by the order of the learned Single Judge dated 27.09.2024.

3. The brief facts, as set out by the appellant, are that he is presently working as an Assistant in respondent No.2-company, having been appointed pursuant to the Notification dated 07.03.2015 under the category of Persons with Disability (PwD

quota). The respondents subsequently issued an Employment Notification dated 08.09.2016 inviting applications from eligible and qualified candidates for various posts, including the post of Assistant Accounts Officer. The eligibility criteria and the prescribed qualifications were duly notified. The appellant submitted his application for the post of Assistant Accounts Officer under the PwD category. It is the case of the appellant that, though his name was notified for the purpose of appearing in the examination, his name did not find place in the provisional selection list. The appellant asserts that he suffers from a disability exceeding 75% and is therefore eligible for appointment to the said post. However, the respondents issued a provisional selection list indicating that no eligible candidate was available for the post reserved for the PwD category.

4. The appellant preferred a writ petition seeking a direction in the nature of mandamus to consider his case under the General Merit PwD quota and to include his name in the final selection list to be notified for appointment to the post of Assistant Accounts Officer. The learned Single Judge dismissed the writ petition, holding that, in view of the nature of disability suffered by the appellant, he is not eligible for appointment to the post of Assistant

Accounts Officer under the PwD quota. The learned Single Judge further held that the post of Assistant Accounts Officer is not a promotional post, but one filled by direct recruitment, and that a candidate must satisfy all the eligibility criteria, including the specific disabilities prescribed.

4.1 The learned Single Judge further recorded that the recruitment notification prescribing the eligibility conditions had not been challenged. It was further held that the appellant, having participated in the selection process, is not entitled to challenge the eligibility conditions after being unsuccessful in the selection.

5. Learned Senior Advocate Mr. Dhananjay V. Joshi, appearing along with learned Advocate Mr. S. Swaroop for the appellant, submits that the appellant was appointed as an Assistant despite the disabilities he is suffering from. It is submitted that he was not an ineligible candidate for the post reserved under the General Merit PwD category. Once the appellant was considered eligible and suitable for appointment to the post of Assistant, he ought to be considered eligible and suitable for appointment to the post of Assistant Accounts Officer as well.

5.1. Learned Senior Advocate further submits that the scope of work performed by an Assistant and an Assistant Accounts Officer is almost similar. It is further submitted that the next promotional post for the appellant is that of Assistant Accounts Officer, which he would occupy upon promotion. It is contended that once the appellant is suitable for appointment to the post of Assistant Accounts Officer by way of promotion, he cannot be denied appointment through direct recruitment on the ground of eligibility conditions.

5.2 Learned Senior Advocate, by placing reliance on the judgment of the Hon'ble Supreme Court in the case of ***Re: Recruitment of Visually Impaired in Judicial Services (2025 SCC OnLine SC 481)***, submits that where no suitable eligible candidate is available, the next candidate under the PwD category is required to be accommodated by relaxing the eligibility conditions.

6. Learned Advocate Smt. D.J. Rakshita, appearing for respondent No.1, submits that the eligibility conditions prescribed for PwD candidates under the Recruitment Notification dated 07.03.2015, pursuant to which the appellant was appointed, permitted candidates even if both legs or both arms were affected.

In that view of the matter, the appellant was eligible under the 2015 Notification. It is further submitted that the appellant is now seeking appointment under the Recruitment Notification dated 08.09.2016, wherein separate eligibility conditions and specific types of disabilities have been prescribed.

6.1. It is submitted that once applications are invited from qualified and eligible candidates, with the qualifications and eligibility criteria, including the types of disabilities, duly prescribed, compliance with these conditions is mandatory, and no relaxation is permissible. It is further submitted that the appellant suffers from a locomotor disability affecting both legs and both arms. The eligibility, as per the prescribed criteria, is limited to candidates with a disability affecting only one arm. Hence, the appellant is not considered eligible.

7. Learned Advocate Ms. Likith R. Prakash, appearing for respondent No.2, reiterating the submissions of the learned advocate for respondent No.1, submits that the eligibility conditions, both with regard to qualifications and the types of disabilities, require strict compliance. There is no provision for any relaxation of these conditions. In the absence of a provision for relaxation, the appellant is not eligible.

8. Considered the submissions of learned advocates for the parties.

9. At the outset, it is noted that the appellant was appointed as an Assistant under the Notification dated 07.03.2015. The appellant has produced the Disability Certificate at Annexure-A, which is not in dispute. Learned advocates for the parties have sought to compare the eligibility conditions prescribed in the 2015 and 2016 Notifications. The eligibility conditions under the 2015 Notification for the posts of Assistant and Assistant Accounts Officer, as well as those under the 2016 Notification for the same posts, are as follows:

Post	Eligibility Criteria As per 2015 Notification	Petitioner's Disability (Annexure-A)	Eligibility Criteria As per 2016 Notification
Assistant (Annexure - B. See Page No.21 of the Writ Petition)	Should possess a medical certificate issued by the competent medical authority to show physical defect or deformity to an extent of minimum 40% which causes in interference with the normal functioning of bones, muscles and joints.	BLA- Both Legs and Both Arms affected. Percentage of disability is 75%	a) Locomotor disability: One Leg (OL), One Arm (OA), Both Legs (BL) b) Hearing Handicapped (HH) c) Blind (B), Low Vision (LV)
Assistant Account Officer (Annexure -D. See Page No. 40 of the Writ Petition)	a) Locomotor disability: One Leg (OL), One Arm (OA), Both Legs (BL) b) Hearing Handicapped (HH) c) Low Vision (LV)	No blindness or low vision. No hearing impairment.	a) Locomotor disability: One Leg (OL), One Arm (OA), Both Legs (BL) b) Hearing Handicapped (HH) c) Low Vision (LV)

9.1. The comparison of eligibility conditions and types of disabilities as prescribed is not in dispute between the parties. As per Annexure-A, the appellant suffers from a disability affecting both legs and both arms. The certificate also provides an assessment of the disability and outlines the nature of the work/functions that can be performed by the appellant. Under the 2015 Notification, a candidate with a physical difficulty or deformity to the extent of at least 40%, which caused interference with the normal functioning of bones, muscles, and joints, was eligible for the post of Assistant. Similarly, for the post of Assistant Accounts Officer, candidates with locomotor disability affecting one leg, one arm, or both legs were eligible. However, under the 2016 Notification, a person with locomotor disability affecting one leg, one arm, or both legs is eligible for appointment under the PwD quota.

10. The distinction sought to be made by the respondents in denying the appellant's appointment is based on the fact that the appellant suffers from locomotor disability affecting both arms, whereas the condition under the 2015 Notification was different. The contention of the respondents cannot be accepted for more than one reason. Firstly, the appellant, despite suffering from

disability affecting both arms, has already been appointed to the post of Assistant. The appellant is also eligible for promotion to the next post in due course, which is the post of Assistant Accounts Officer. While promoting the appellant to the post of Assistant Accounts Officer, no additional eligibility criteria have been prescribed. Further, no such criteria have been placed before the Court. Therefore, when the appellant is deemed eligible for promotion to the post of Assistant Accounts Officer, it is difficult to accept that he is not eligible for direct recruitment to the same post. What requires consideration, in this context, is the functional assessment. In determining the suitability or eligibility of a candidate with a disability, the functional assessment, beyond just the medical evaluation, is crucial. Annexure-A, the Disability Certificate, clearly records that the appellant can perform normal work with both hands, albeit subject to certain restrictions.

11. It is contended by learned Advocate for the appellant that the functions assigned to the appellant are nearly identical to those to be performed by the Assistant Accounts Officer. The said contention merits consideration.

12. Learned advocates for the respondents, while urging compliance with the conditions of the recruitment notification, are

unable to dispute that, if the appellant is appointed as Assistant Accounts Officer, there would be no impediment due to his disability in performing the functions of the post.

13. The contentions of learned advocates for the respondents, that once the eligibility conditions, whether with respect to qualifications or the types of disabilities, are notified, they require strict compliance, do not warrant detailed deliberation.

14. The issue to be considered is,

" Whether the eligibility criteria regarding the types of disabilities for candidates under the PwD category can be relaxed when there is no other eligible candidate in the category for the post, and the appellant is functionally suitable to perform the duties of the notified post.?"

15. It is relevant to refer to the judgment of the Hon'ble Supreme Court in ***Re: Recruitment of Visually Impaired in Judicial Services*** (supra). In this judgment, the Hon'ble Supreme Court, while laying down multiple guidelines to address the issues faced by persons with disabilities, has emphasized one of the key criteria as the 'Rights-Based Approach'. The same reads as under,

"E. RIGHTS-BASED APPROACH;

41. The spirit of the RPwD Act, 2016 would reveal that the principle of reasonable accommodation is a concept that

not only relates to affording equal opportunity to the PwD but also it goes further as to ensuring the dignity of the individual by driving home the message that the assessment of a person's suitability, capacity and capability is not to be tested and measured by medical or clinical assessment of the same but must be assessed after providing reasonable accommodation and an enabling atmosphere. The judgment of this Court in Vikash Kumar (supra) assumes increased significance in this regard. This Court in this case has expounded in detail the principle of reasonable accommodation by invoking the social model of disability. In response to the judgment, the Department of Disability Affairs, Government of India has notified guidelines for availing of scribes by all persons with specified disabilities to appear in written examinations thereby widening the ambit of its earlier guidelines issued in 2018 confining this privilege only to persons with benchmark disabilities. Very importantly, while overruling the earlier decision in Surendra Mohan (supra), this Court has held that any decision which is innocent to the principle of reasonable accommodation would amount to disability-based discrimination and is also in deep tension with the ideal of inclusive equality. After the judgment which has focused on a rights-based model and rejection of the medicalisation of the disability in order to assess the suitability and capability of PwD, the "suspicion ridden medical expertise driven model, is directly opposed to the principle as laid down by this court and also the spirit of the RPwD Act, 2016.

15.1 Further in conclusion, it is held as under,

67.1. Thus, after considering the pleadings, submissions of the learned counsel appearing for all the parties, as well as the legal positions and case laws, we conclude as follows:

- (i) Visually impaired candidates cannot be said to be 'not suitable' for judicial service and they are eligible to participate in selection for posts in judicial service.
- (ii) The amendment made in Rule 6A of the Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994 falls foul of the Constitution, and is hence, struck down to the extent that it does not include visually impaired

persons who are educationally qualified for the post to apply therefor.

- (iii) The proviso to Rule 7 of the Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994 relating to additional requirements, violates the equality doctrine and the principle of reasonable accommodation, and is hereby struck down in its application to differently abled persons who have the requisite educational qualifications for applying to the posts under judicial service.
- (iv) Relaxation can be done in assessing suitability of candidates when enough PwD are not available after selection in their respective category, to the extent as stated in the relevant paragraphs above, and in the light of existing Rules and Official Circulars and executive orders in this regard, as in the present case.
- (v) A separate cut-off is to be maintained and selection made accordingly for visually-impaired candidates as has been indicated in the relevant paragraphs in line with the judgment in *Indra Sawhney*.
- (vi) For the purpose of rights and entitlements of persons with disabilities, particularly in employment, and more specifically in respect of the issues covered in this judgment, there can be no distinction between Persons with Disabilities (PwD) and Persons with Benchmark Disabilities (PwBD).

16. If the facts of the present case are examined in light of the findings and the approach suggested by the Hon'ble Supreme Court in the judgment referred to supra, it becomes evident that, while assessing the capacity and capability of a candidate, undue emphasis cannot be placed on medical or clinical issues alone. Furthermore, it is held that, when there are insufficient PwD

candidates available for selection in their respective category, relaxation of the eligibility criteria may be considered in assessing the suitability of a candidate.

17. If the facts of the case are tested by applying the principles laid down by the Hon'ble Supreme Court, the analysis is threefold. Firstly, the appellant is already appointed as an Assistant, and he would be eligible for promotion to the post of Assistant Accounts Officer. If he can be deemed fit for promotion to the post of Assistant Accounts Officer, it would be unreasonable to declare him ineligible for the same post through direct recruitment. The functions to be performed by the Assistant and Assistant Accounts Officer are, as submitted, almost identical, a point which is not disputed by the respondents. Secondly, although Annexure-A, the Disability Certificate, certifies that the appellant suffers from a disability affecting both legs and both arms, it also provides a functional assessment of the appellant. According to the certificate, the appellant is eligible to perform light duties, which include sitting, writing with his hands, and performing normal work with both hands. This functional assessment qualifies the appellant to be appointed as Assistant Accounts Officer. Thirdly, as held by the Hon'ble Supreme Court, if there is no other eligible candidate under

the PwD quota available in the respective category, the eligibility criteria may be relaxed. Upon such relaxation, the appellant would be eligible for the post of Assistant Accounts Officer.

18. The Learned Single Judge proceeded to consider the case of the appellant as though he were challenging the eligibility conditions prescribed in the notification. However, the case of the appellant was based on the functional assessment of his disability, which he contends renders him eligible for appointment as Assistant Accounts Officer. The Disability Certificate certifies that the appellant suffers from locomotor disability affecting both legs and both arms. However, in assessing his functional capacity, the certificate clearly states that the appellant is able to perform light duties, including sitting and using both hands. This distinction was not considered by the Learned Single Judge. In light of the judgment of the Hon'ble Supreme Court referred to supra, the assessment of suitability must not be based solely on the medical certificate, but also on the functional assessment of the candidate.

19. Another unjustifiable finding recorded by the Learned Single Judge is that the post of Assistant Accounts Officer is not a promotional post, but rather a direct recruitment post. Learned Advocate for the appellant contended that the post of Assistant

Accounts Officer can be filled by promotion, a fact which is not disputed by the respondents.

20. Insofar as the finding of the Learned Single Judge, that once a candidate participates in the selection process without objection, he is estopped from challenging the process at a later stage, is concerned, such a situation does not arise in the present case. The appellant has not challenged the eligibility conditions or the selection process. What the appellant has pleaded is his eligibility for the post of Assistant Accounts Officer.

21. The finding of the Learned Single Judge, that eligibility criteria cannot be compromised or altered to favor an individual contrary to the prescribed criteria, is not disputed. However, what needs to be examined in the present case is the application of this principle in the context of a candidate seeking selection under the PwD category. Such a situation has been addressed by the Hon'ble Supreme Court in the case referred to supra, where it was held that relaxation of the eligibility criteria can be considered in assessing the suitability of a candidate when sufficient PwD candidates are not available for selection in their respective category.

22. For the reasons recorded as above, the order of learned Single Judge suffers from infirmities and requires interference of this Court. The order of learned Single Judge is not sustainable.

23. In light of the aforesaid reasons, the following,

Order

- (i) Writ Appeal is allowed.
- (ii) The judgment and order dated 27.09.2024 in Writ Petition No. 5666 of 2018 is set aside.
- (iii) The appellant is held to be eligible for the post of Assistant Accounts Officer under the reservation for persons with disabilities.
- (iv) The respondents are directed to appoint the appellant to the post of Assistant Accounts Officer.
- (v) The appellant is entitled to notional seniority as per the final list published pursuant to the notification dated 08.09.2016.
- (vi) The process of including the appellant's name in the final selection list, issuing the order of appointment,

and determining the seniority list shall be completed within eight weeks from the date of this order.

In view of disposal of main appeal, pending interlocutory application, if any, stands disposed of.

**Sd/-
(N. V. ANJARIA)
CHIEF JUSTICE**

**Sd/-
(K. V. ARAVIND)
JUDGE**

MV