

SC AFFIRMS 3% QUOTA FOR DISABLED IN PSUS

Relevant for: Developmental Issues | Topic: Rights & Welfare of Persons with Disability including Mentally Ill People - Schemes & their Performance, Mechanisms, Laws Institutions and Bodies

Sigh of relief: There are no legal hurdles to reservation on the basis of disability, the campaigners argue. S. R. Raghunathan

A three-judge Bench of the Supreme Court has granted relief to persons with disabilities across the country by allowing reservation in promotion in all groups for those employed in public sector jobs.

The Bench led by Justice Rohinton F. Nariman confirmed that 3% reservation should be given to disabled persons both in direct recruitment and in promotions.

The Bench, also comprising Justices Aniruddha Bose and V. Ramasubramanian, was answering a reference on the question whether the disabled, included under The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, were eligible for reservation in promotion.

“This judgment will open the doors for thousands of persons with disabilities who have been stagnating at the lower levels in public sector jobs, as their promotion to higher level posts was made difficult due to discriminatory policies,” advocates Rajan Mani and Ritu Kumar of the Disability Law Initiative, who appeared in the case, reacted.

The judgment confirms a 2016 verdict of the top court in Rajeev Kumar Gupta’s case that granted reservation in promotion to disabled persons employed in Groups A and B in addition to Groups C and D categories in the public sector.

The 2016 judgment had held that wherever posts were identified to be suitable for persons with disabilities, 3% reservation must be given. The government had however challenged the 2016 judgement, leading to the reference to the larger Bench.

The government had referred to the Indira Sawhney case, which had capped reservation at 50% and prohibited reservation in promotions.

But Justice Nariman countered that the Sawhney judgment only pertained to the Backward Classes. It has no relevance in the case of persons with disabilities.

The Constitution only prohibits preferential treatment on the basis of caste or religion. Here, reservation is contemplated for disabled persons.

The rule of no reservation in promotions laid down in the Indra Sawhney judgment has clearly and normatively no application in this case.

Similarly, the top court said, “A perusal of Indra Sawhney would reveal that the ceiling of 50% reservation applies only to reservation in favour of Other Backward Classes under Article 16(4) of the Constitution of India whereas the reservation in favour of persons with disabilities is horizontal, which is under Article 16(1) of the Constitution.”

Justice Nariman pointed to how the 1995 law emphasises that “employment is a key factor in the empowerment and inclusion of people with disabilities”.

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