



Serial No of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
5.	19-12-2007	<p>Present: Dr. Doma T. Bhutia, Advocate for the petitioner.</p> <p>Mr. S.P. Wangdi, Advocate General with Mr. Karma Thinlay, Govt. Advocate for the State-Respondents.</p> <hr/> <p>The learned Advocate for the respondents prayed for adjournment of the matter yesterday on the ground that the reservation policy is under consideration for review by the State Government. However, adjournment was opposed by the learned counsel for the writ petitioners and we started hearing the matter yesterday. The matter is heard in part. Adjournment is requested today by learned counsel for the petitioners for filing of additional affidavit. Adjournment is refused.</p> <p>This is a writ petition at the instance of a disabled person who suffered 50% locomotor disability. The certificate to that effect given by the Govt. department is produced and it is submitted that such certificate can be obtained only on production a certificate by a registered Doctor. We have every sympathy with the writ</p>	



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		<p>petitioner for her disability but we are unable to grant any relief to her for the reasons stated below.</p> <p>The main grievance of the writ petitioner is against Clause 6 of the Notification dated 17-11-2003. The said Clause 6 mentions that there would be no carrying forward of roster points and this is what the writ petitioner is aggrieved by. The learned counsel for the writ petitioner relied heavily and solely on the <u>Disability Act of 1995</u> which is the first Act of 1996 and the full heading is The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.</p> <p>Sections 33 and 36 of the said Act were relied upon on the part of the writ petitioner.</p> <p>The said two Sections are set out below:-</p> <p>“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-</p> <p>(i) blindness or low vision;</p>	



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		<p>(ii) hearing impairment; (iii) locomotor disability or cerebral palsy.</p> <p>in the posts identified for each disability:</p> <p>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.</p> <p>36. Vacancies not filled up to be carried forward.-Where in any recruitment year any vacancy under section 33, cannot be filled up due to non-availability of a suitable person with disability or, for any other sufficient reason, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with disability is not available, it may first be filled by interchange among the three categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:</p> <p>Provided that if the nature of vacancies is an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the three categories with the prior approval of the appropriate Government.”</p> <p>According to the writ petitioner under the express terms of Section 36 there has to be a carry forward and since Clause 6 of the Notification prohibits carrying forward it is argued to be</p>	



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		<p>violative of the Act. Relief was accordingly claimed.</p> <p>The argument in our opinion is misconceived. <u>Section 36 applies</u> when and only when <u>Section 33 reserved posts are in issue</u>.</p> <p>This reservation u/s. 33 is to be made by the appropriate authority exercising power under the 1995, Act. The notification of 2003 is not the result of an exercise of power under Section 33.</p> <p>The Disabilities Act reservation is a special type of reservation. It is not a reservation of a certain percentage of certain posts for disabled persons. It is a reservation of the post itself, which is to be identified for each different type of disability. Incidentally, there have been notifications seeking to exempt the army from the application of the said Act but that matter does not concern us here.</p> <p>The Act came into being on the basis of a convention, the running idea where was that even people with a very great degree of disability, who</p>	



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		<p>are still able to work in spite of their great handicap, should be kept absorbed in society fully, and should be given full opportunity of work just like people with no disability at all. It was a very high aim which was sought to be achieved by the Act and there are obviously very great difficulties in the way of making this achievement fully and truly in the Indian context where even fully educated and fully able bodied persons do not have work. It is very difficult to have identification of posts which are kept apart only for highly disabled persons. Disabilities below 40% do not qualify as disability under the 1995 Act. Be that as it may, the attempt to apply Section 36 of the Disabilities Act to Clause 6 of the said Notification is an impossible one, since there is no identification of posts with particulars of disability which is the base upon which only Section 36 can operate. Speaking very accurately, there has to be post identification for different types of disability i.e. there would have to an</p>	

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identification of locomotor disabilities posts u/s. 33 by the establishment in question under the 1995 Act before Section 36 could be invoked by the writ petitioner. The writ petition is thus misconceived in law and is dismissed without any order as to costs.

A.N. Ray
(A.N. Ray, CJ)

A.P. Subba
(A.P. Subba, J)