

**IN THE HIGH COURT OF KARNATAKA AT BANGALORE
(ORIGINAL JURISDICTION)**

W.P. No. _____ / 2020 (PIL)

BETWEEN

Karnataka Federation of the Blind
A society registered under the
Karnataka Societies Registration Act 1960
Having its Registered Office at:
House No. 762, 2nd Main Road,
Kuvempu Nagar, Hasan
Represented through its General Secretary
Mr. Mahesha K

...PETITIONER

AND

1. State Government of Karnataka,
Secretariat
Vidhana Soudha
Bangalore
Represented by its Chief Secretary

2. State of Karnataka
Department of Women and Child Development
and Empowerment of Differently Abled and Senior Citizens
Gate No. 3, Ground Floor, M.S.Building,
Dr. B.R. Ambedkar Veedhi, Bengaluru-560 001
Represented by the Principal Secretary to Government

3. State Government of Karnataka,
Department of Personnel Administrative Reforms
Room No: 246, 2nd floor,
Vidhana Soudha, Bengaluru 560 001.
Represented by the Secretary to Government

4. State Commissioner for Persons with Disabilities
No. 55, 2nd Floor, "Abhaya Sankerna",
Risaldar Street (Plat Form Road),

**MEMORANDUM OF PETITION UNDER ARTICLES 226 AND 227 OF THE
CONSTITUTION OF INDIA, 1950**

The Petitioner most respectfully submits as follows:

1. The Petitioner submits that the present petition has been filed by the Petitioner seeking certain reliefs for the Karnataka State Government employees with disabilities affected by COVID-19 and the subsequent lockdowns. The Central Government has issued Office Memoranda dated 28.04.2020 and 14.09.2020 exempting employees with disabilities from roster duty during the COVID 19 pandemic. However, completely ignoring the Central Government directions, the 1st Respondent, through a circular dated 18.05.2020, has directed that from 19.05.2020 all Government Employees belonging to Group A, B, C and D will come for duty at 100% capacity. This is in complete violation of the various Office Memoranda by the Central Government, as well as the provisions of the Rights of Persons with Disabilities Act, 2016 (RPWD Act). Thus, aggrieved by the actions of the Respondents, the Petitioner has filed this Petition in public interest.

Array of Parties

2. The Petitioner is the Karnataka Federation of the Blind, an organisation working for the rights of the visually impaired and other persons with disabilities (PWD) since 1995. The Petitioner organization is a society registered under the Karnataka Societies Registration Act 1960, and is represented through its General Secretary. Its aims and objectives are the welfare and development of visually impaired persons and other persons with disabilities through events that the organization conducts. It is also improving the status and participation of visually impaired and other persons with disabilities in the society.

(A copy of the Registration certificate of the Petitioner organization is annexed herein and is marked as **ANNEXURE – A**)

3. The Respondent No. 1 is the State Government of Karnataka, having its Secretariat at Vidhana Soudha, Bangalore. It is responsible for the administration of the State of Karnataka, including issuing Orders, Office Memorandum, Circulars and other notifications towards the State's functions.
4. The Respondent No. 2 is the Department of Women and Child Development and Empowerment of Differently Abled and Senior Citizens. It is responsible for the welfare and development of women, children, elderly and differently abled in the State. Besides implementing developmental programmes, it formulates necessary policies, programmes and schemes for persons with disabilities.
5. The Respondent No. 3 is the Department of Personnel Administrative Reforms, Karnataka. It is responsible for the facilitation and improvement of governance and to provide responsive and accountable people centric services in all departments. It also formulates and implements policy for sustainable administrative reforms, and proves human resource capabilities through competency enhancement to render improved services to the people, by encouraging and replicating innovations.
6. The Respondent No. 4 is the State Commissioner for Persons with Disabilities in Karnataka. They identify provision of any law or policy, programme and procedures, which are in consistent with this Act, and recommend necessary corrective steps; inquire deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for which the State Government is the appropriate Government and take up the matter with appropriate authorities for corrective action; review

the safeguards provided by or under the RPWD Act or any other law for the time being in force for the protection of rights of persons with disabilities and recommend measures for their effective implementation; review the factors that inhibit the enjoyment of rights of persons with disabilities and recommend appropriate remedial measures; undertake and promote research in the field of the rights of persons with disabilities; promote awareness of the rights of persons with disabilities and the safeguards available for their protection; monitor implementation of the provisions of this Act and schemes, programmes meant for persons with disabilities; monitor utilisation of funds disbursed by the State Government for the benefits of persons with disabilities; and perform such other functions as the State Government may assign.

Brief Facts

7. The present petition has been filed as a public interest litigation by the Petitioner organisation on behalf of government employees who are blind and with other disabilities in the Respondent State government to seek reasonable accommodation for work due to the challenges posed by COVID-19. The Petitioner mainly seeks to quash the circular issued by the Respondent No. 1 in direct contravention of the Central Government directives. The petition seeks to exempt government employees with disabilities from work during COVID-19 pandemic. This exemption will be counted as special paid leave for PWD. Alternately, the petitioner seeks for providing the employees with the option of working from home. In addition, where not possible, the Petitioner seeks reasonable accommodation in terms of door-to-door transport being made available or to government employees with disability or to provide reimbursement where private transportation is used.

8. It is submitted that from 23rd March 2020, a lockdown was imposed in India due to the increasing number of COVID-19 cases in the country. As part of the same, several workplaces have adapted to working from home. The National Disaster Management Authority released guidelines and safety procedures to be followed during COVID-19 and several other guidelines and circulars were issued by the Central Government as well as the Karnataka State Government to ensure safety from COVID-19.
9. In light of the difficulties due to the restriction of movement imposed by the lockdown and after, government employees with disabilities have found it difficult to continue with their duties.
10. The Petitioner submits that, it is necessary to take adequate measures in line with the RPWD Act as well as the guidelines to ensure protection and safety of PWD in light of COVID-19. Section 8 of the RPWD Act states that the National Disaster Management Authority and the State Disaster Management Authority shall take appropriate measures to ensure inclusion of PWD in its disaster management activities as defined under clause (e) of section 2 of the Disaster Management Act, 2005 for the safety and protection of PWD. Section 8 of the RPWD Act reads as follows:
- 8. Protection and Safety:*
- (1) The persons with disabilities shall have equal protection and safety in situations of risk, armed conflict, humanitarian emergencies and natural disasters.*
- (2) The National Disaster Management Authority and the State Disaster Management Authority shall take appropriate measures to ensure inclusion of persons with disabilities in its disaster management activities as defined under clause (e) of section 2 of the Disaster Management Act, 2005 for the safety and protection of persons with disabilities.*
- (3) The District Disaster Management Authority constituted under section 25 of the Disaster Management Act, 2005 shall maintain record of details of*

persons with disabilities in the district and take suitable measures to inform such persons of any situations of risk so as to enhance disaster preparedness.

(4) The authorities engaged in reconstruction activities subsequent to any situation of risk, armed conflict or natural disasters shall undertake such activities, in consultation with the concerned State Commissioner, in accordance with the accessibility requirements of persons with disabilities.

11. When the lockdown was imposed, the Department of Empowerment of Person with Disability (DEPwD) at the central government level issued comprehensive disability-inclusive guidelines dated 27.3.2020 to States/UTs for protection and safety of persons with disabilities in light of COVID-19. The guidelines state that employees with blindness and other severe disabilities in both public and private sector should be exempted from essential services work during the period as they can easily catch the infection. Additionally, an Office Memorandum dated 27.03.2020 bearing No. 11013/9/2014-Estt. (A.III) was issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions regarding preventive measures to contain the spread of COVID-19. It stated that employees who have disabilities are exempted while issuing guidelines regarding drawing up a roster of staff who are required to attend essential services within their respective Ministry/ Department.

(A copy of the DEPwD comprehensive disability-inclusive guidelines to States/UTs for protection and safety of PWD in light of COVID-19, dated 27.03.2020 is annexed herein and is marked as **ANNEXURE – B**)

(A copy of the Office Memorandum bearing No. 11013/9/2014-Estt. (A.III) dated 27.03.2020 is annexed herein and is marked as **ANNEXURE – C**)

12. The Petitioner submits that on 28.04.2020, an Office Memorandum was published by the Government of India, bearing number No. 34-06/2020-DD-III which stated that since employees with disabilities were exempted from

duty during the lockdown period, treating the absence of such employees as "sick leave" during this period was not appropriate and that such period of absence may be treated as "Special Leave without loss of pay". The same was reiterated by the Ministry of Finance in a representation dated 29.04.2020 bearing number No. 3/4/2017-Welfare.

(A copy of the Office Memorandum bearing number No. 34-06/2020-DD-III dated 28.04.2020 is annexed herein and is marked as **ANNEXURE – D**)

(A copy of the representation bearing number No. 3/4/2017-Welfare dated 29.04.2020 is annexed herein and is marked as **ANNEXURE – E**)

13. Understanding the difficulties faced by persons with disabilities, a Circular dated 07.05.2020 bearing No. HFW 142 ACS 2020, titled Standard Operating Procedure for Industrial, Commercial Establishments and Private Offices during COVID-19 was released by Respondent No. 1. Clause 4.15 of the Circular stated that PWDs shall be asked to work from home.

(A copy of the circular dated 07.05.2020 bearing number No. HFW 142 ACS 2020 is annexed herein and is marked as **ANNEXURE – F**)

14. However, on 18.05.2020, another circular by the Respondent No. 1 bearing number DPAR 123 DBM 2020 (Section), stated that as per Government of India – Ministry of Home Affairs' Order dated 17.05.2020 bearing number 40-3/2020-DM-I(A), the lockdown has been lifted in Karnataka and that from 19.05.2020 all Government Employees belonging to Group A, B, C and D will come for duty at 100% capacity. Therefore, employees with disabilities have been mandated to come to duty at 100% capacity.

(A copy of the order bearing number 40-3/2020-DM-I(A) dated 17.05.2020 is annexed herein and is marked as **ANNEXURE – G**)

(A copy of the circular by the Government of Karnataka bearing number DPAR 123 DBM 2020 (Section) dated 18.05.2020 is annexed herein and is marked as **ANNEXURE – H**)

15. The Petitioner submits that despite the existence of a Central Government Office Memorandum exempting persons with disabilities from roster duty, the Respondent No. 1 has issued a circular asking all employees to report to duty at 100% capacity. Two competing circulars, one by the Central Government exempting employees with disabilities coming to work and the another by the State Government directing all employees to be present at the workplace, have created a situation where government employees with disabilities in Karnataka are required to come to work at great risk to themselves and others and without any proper logistical and transportation facilities. The circular released by Respondent No. 1 is in contravention of the circular by the Central Government.

16. The Ministry of Social Justice & Empowerment, DEPwD issued another Office Memorandum bearing number 34-06/2020-DD-III dated 14.09.2020 clarifying that employees with disabilities are exempted from roster duty till further orders. Despite the existence of several clarifications, persons with disabilities in Karnataka are still attending work in Government establishments or taking personal leave days when they are unable to work. (A copy of the Office Memorandum bearing number 34-06/2020-DD-III dated 14.09.2020 is annexed herein and is marked as **ANNEXURE – J**)

17. The Petitioner submits that due to the increased dependence on other persons to assist them, persons with disabilities, especially those with blindness are at an increased risk of infection of COVID 19 if made to travel to work. Persons with blindness need physical assistance in movement and making their way to work and even at work and hence they are not able to maintain physical distancing. Due to the risk of COVID infections, other persons including co-workers and staff are not willing to help persons with disabilities as they want to maintain physical distance. There is currently limited public transport available and public transport such as buses also does not allow for physical distancing as persons with disabilities have to

often approach and rely on others for understanding the bus numbers and also getting on and off the bus. Moreover, due to limited buses, the waiting time has also increased. Employees with disability belonging to Group D category who work as cleaners in government hospitals are also at a higher risk of infection.

18. The Petitioner submits that Section 23 of the RPWD Act provides for the appointment of Grievance Redressal Officer. The provision provides for the appointment of a Grievance Redressal Officer in every Government establishment and the same should be informed to the Chief Commissioner or the State Commissioner. The government employees with disabilities were unable to file their complaints regarding exemption from work as no Grievance Redressal Officer was appointed. As such the Petitioner sent a representation regarding the above-mentioned difficulties to the Respondents dated 09.09.2020 through Speed Post. However, there has been no response.

(A copy of the Representation from the Petitioner dated 09.09.2020 along with the post receipts is annexed herein and marked as **ANNEXURE – K** collectively)

19. Aggrieved by the difficulties faced by government employees with disabilities and having no other alternative and equally efficacious remedy, the Petitioner has filed this petition before this Hon'ble Court. Through this petition, the Petitioner is challenging the circular issued by Respondent No. 1 dated 18.05.2020 produced herein as ANNEXURE - H which is in contravention to the Central Government notifications. Through this Petition, the Petitioner is seeking to exempt employees with blindness and other severe disabilities from working, specifically those in Group D category who are working in hospitals; or allowing them to work from home wherever possible. In cases that it is not possible, the Petitioner seeks to make door-to-door transport facility for persons with disabilities available as

the passenger buses are limited and also pose a health risk. In situations where the employees with disabilities use private transport services, to reimburse the cost for the same. The Petitioner has not filed any other petition either before this Hon'ble Court or any other court in respect of this cause of action. The Petition is filed on the following, among other grounds.

GROUNDS

20. THAT the actions of the Respondent State government in issuing the impugned directions requiring 100% duty attendance by state government employees including employees with disabilities is in complete violation of the directions issued by the central government in Office Memorandum dated 28.04.2020 and 14.09.2020, exempting government employees with disabilities from roster duty during COVID-19 pandemic and hence deserves to be quashed and set aside.

21. THAT by requiring 100% attendance in duty from all government employees with disabilities, especially employees with blindness and other disabilities who require physical assistance in travel and at work from other persons, the Respondents are putting the government employees with disabilities and other staff members at a high risk of infection with COVID-19. With employees with disabilities who need assistance, they will not be able to maintain the guidelines for physical distancing and this is leading to other persons also not being ready to assist them in their daily work-related activities. Hence, in light of these factors, the compulsory attendance of employees with disabilities by the impugned order is violating their right to health and their right to livelihood guaranteed under Article 21 of the constitution and deserves to be set aside.

22. THAT the RPWD Act under Section 3(5) reads that the appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities. Similarly, Section 20(2) of the

RPWD Act states that every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability. Making government employees with disabilities, to also come to work at 100% capacity without any further instructions or guidelines regarding any reasonable accommodation such as providing separate individual transport or reimbursement for costs incurred towards transport as employees with blindness and other disabilities are not able to access public transport without violating physical distancing guidelines is violative of the RPWD Act and hence deserves the intervention of this Hon'ble Court.

23. **THAT** as per Section 2 (y) of the RPWD Act, the principle of 'Reasonable Accommodation' requires the Government to take necessary and appropriate modifications and adjustments, without imposing disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of equal rights and opportunities with others. There have been no steps taken by the State Government to ensure ease of transport, or exemptions from work, making it conspicuous that no reasonable accommodation has been made for PWD. In fact, the reasonable accommodation taken by the Central Government to exempt government employees with disabilities during COVID-19 pandemic has been ignored, and all employees have been asked to attend work at 100% capacity.

24. **THAT** Section 8 of the RPWD Act guarantees equal protection and safety in situations of natural disasters. In such unprecedented times of COVID-19 pandemic, it is the responsibility of the Respondents to take steps to ensure the protection of health of employees with disability. However, the Respondents have failed to consider the health and safety of the government employees with disability. It is particularly unsafe for visually

challenged employees as their means of movement is based on tactile senses, which is discouraged while maintaining social distance.

25. THAT in *Jeeja Ghosh v. UOI, (2016) 7 SCC 761*, the Supreme Court held that the rights that are guaranteed to differently abled persons under the PWD Act are founded on the sound principle of human dignity which is the core value of human right and is treated as a significant facet of right to life and liberty. Such a right now treated as human right of the persons with disability has its roots in Article 21 of the Constitution. Requiring government employees with disabilities to resume their work at 100% capacity when their attendance to work would exposing them to the risks of the covid virus much more than others because of their need of requiring physical assistance from other people, would be in complete violation of their right to dignity guaranteed under Article 21 of the constitution and the impugned order deserves to be set aside.

26. THAT the right to equality as enshrined under Article 14 of the Constitution of India provides that all persons be treated equally without discrimination and that provisions of special treatment be made for those categories of persons to ensure equal opportunities. Further, it ensures equality of treatment to persons who are similarly situated. The insistence for State government employees with disability to work at full capacity, in contravention of the Central Government directions, puts them at increased risk of contracting COVID-19 and also puts others at risk, making it difficult for anyone to assist them. Furthermore, access to public transport due to limited numbers and social distancing is also made more difficult. Hence, treating employees with disabilities in the same class as employees who are not disabled is unequal as it exposes them to higher health risks and stigma and the impugned order thus is in violation of the guarantee of equality under Article 14 of the constitution.

27. **THAT** under Article 41 of the Constitution, there is a duty on the State to make effective provisions for securing the right to work, to education and to public assistance in cases of disablement. In the present scenario, no reasonable provisions have been made by the Respondent State Government to allow persons with disabilities to attend work at Government establishments with safety, such as providing adequate transport facilities or any other work from home arrangements keeping their disability and right to health in mind.

28. **THAT** Article 11 of the Convention on the Rights of Persons with Disabilities puts an obligation on States to take all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters. By not providing any guidelines or reasonable accommodation to rejoin work, the Respondent State Government is violating Article 11 of the CRPD.

29. **THAT** Article 27 of the Convention on the Rights of Persons with Disabilities recognises the right of persons with disabilities to work, on an equal basis with others. It specifically prohibits discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions, and provides for ensuring reasonable accommodation in the workplace. By asking the state government employees with disability to work during COVID-19 in an unsafe working condition without providing for any reasonable accommodation is in violation of Article 27.

GROUNDS FOR INTERIM RELIEF

30. **THAT** if the impugned order issued by the 1st Respondent requiring 100% attendance for roster duty even for employees with disabilities is not stayed, and employees are required to come to duty, it would be exposing them to a higher risk of covid infection, as they cannot maintain physical distancing from others and need assistance in their work activities.
31. The requirement by the Respondents are in complete violation of Central Government guidelines in Office Memorandum dated 14.09.2020, government employees with disabilities are still exempted from roster duties during the COVID-19 pandemic and hence they ought to be stayed to the extent that they apply to employees with disabilities, as it endangers their health and imposes higher risks to their life.

PRAYER

WHEREFORE, in light of the above facts and circumstances, the Petitioner most respectfully prays that this Hon'ble Court be pleased to:

- A. Issue a writ of certiorari or any other appropriate writ, order or direction, setting aside the Circular dated 18.05.2020, issued by the Respondent No. 1, bearing number DPAR 123 DBM 2020 (Section) produced herein as **ANNEXURE - H**, as it is in violation of the Central Government Office Memorandum dated 14.9.2020 exempting employees with disabilities from roster duty during the COVID 19 pandemic, and direct the Respondents to exempt government employees with disabilities from roster duty and treat the same as special paid leave;
- B. Direct the Respondents to provide private transportation facilities for employees with disabilities, especially for persons with blindness, where exemption from roster duty is not possible, or to reimburse them with costs of private transport arranged by them;

C. Grant any other relief, which the Hon'ble Court deems fit in the circumstances of the case in the interests of justice and equity.

INTERIM PRAYER

Pending final disposal of this petition, it is prayed that this Hon'ble Court may be pleased to stay the operation of the Circular dated 18.05.2020, issued by the Respondent No. 1, bearing number DPAR 123 DBM 2020 (Section) produced herein as **ANNEXURE - H**, as it is in violation of the Central Government Office Memorandum dated 14.9.2020 exempting employees with disabilities from roster duty during the COVID 19 pandemic, in the interest of justice and equity.

Place: Bengaluru

Counsel for the Petitioner

Date:

ROHAN KOTHARI

Address for Service:

D6, Dona Cynthia Apartments,

35 Primrose Road

Bangalore – 560025