

# **RIGHT TO EMPLOYMENT OF PERSONS WITH DISABILITIES**

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## **Introduction**

Human rights for all should not remain as mere declarations on national and international legal instruments but the legislative corpus must redeem the fruition of the rights regime to the marginalized and ignored segment of the human bracket in order to enable and empower them to accord complete realization of the wider content of 'life' to them. Recognition of the inherent rights of all human beings as well as equal entitlement of each individual to all human rights forms the core of human rights doctrine. Equality is the corner stone of the human rights doctrine and it presupposes the elimination of all forms of discrimination in all its manifestations. These rights should be equally available and should be made available to persons with disability without any discrimination. Struggle for the realization of rights of the persons with disability should not be merely an event but it must be an effective and continuing movement to see that their rights are observed and enforced religiously. Right to development is an inalienable human right and this right is available to all irrespective of any discrimination including disability. The clarion call of the time is to empower them to be financially independent and this requires that there should be a law that serves the cause of their absorption in employment. Thus, the employment related aspects of disability law clearly forms the core of disability legislation and constitute some of the most empowering provisions in the disability rights discourse. The law must require respect for such rights and, therefore, oblige to enable disabled persons to effectively exercise these rights on an equal footing. This paper discusses the international law and national law regime to ensure the provision of employment to the disabled persons and the judicial propositions advancing the cause of employment to the disabled persons.

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## **International Law Regime**

While keeping in view the neglect and the discrimination being meted out to the persons with disabilities, the United Nations Charters, 1945, the *Universal Declaration of Human Rights, 1948*, the *Declaration on the Rights of the Child, 1959*<sup>1</sup>, the *International Covenant on Economic, Social and Cultural Rights, 1966* and *U N Declaration on Social Progress and Development, 1969* were framed. They emphasized collectively on the need to assure to disadvantage and marginalized sections of the people, equal opportunities for social and economic advancement in order to achieve an effectively integrated society.

The training, employment, suitable working conditions with dignity and recognition for labour are considered as the essential prerequisites for the integration of persons with disabilities. In furtherance of the objectives of its Constitution, the International Labour Organization (ILO) formulated international labour standards in the form of Conventions and Recommendations.<sup>2</sup> After the adoption of the Workers' Compensation (Minimum Scale) Recommendation in 1925, the *Vocational Rehabilitation (disabled) Recommendation, 1955*<sup>3</sup>, the *Vocational Rehabilitation Employment (disabled Persons) Conventions, 1983*<sup>4</sup>, and its accompanying Recommendation<sup>5</sup> emphasizing the need for vocational rehabilitation and employment opportunities to the persons with disabilities were also adopted. These instruments direct the states parties to take measures by effective networking with the employers, the community and other agencies in successful implementation of the goals enshrined in these instruments for integration of persons with disabilities. Further the

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1 Adopted by the General Assembly of the United Nations on November 20, 1959. India acceded to the Convention on December 11, 1992.

2 With an aim to provide guidance to the process of policy on issues affecting workers with disabilities, ILO has built up its knowledge base and capability to re-evaluate and assess policies and system. To this end, in February 1995, the ILO has launched a global network for applied disability research in the field of employment and training (GLANDNET).

3 Convention No. 99.

4 Convention No. 159.

5 Recommendation No. 168.

*Discrimination (Employment and Occupation) Convention, 1958*<sup>6</sup> provides the basis for tackling the issue of the direct and indirect discrimination including access to training, employment, occupation, and terms and condition of employment. Besides the *Human Resources Development Convention, 1975*<sup>7</sup>, the *Employment Promotion and Protection Against Unemployment Convention, 1988*<sup>8</sup>, Occupational Safety and Health Convention, 1981 also obligate the State Parties to take measures to prevent disability by adopting suitable legislative and administrative measures and to ensure equal rights in the area of employment to the persons with disabilities.

Subsequently in 1971 the United Nations General Assembly adopted the *Declaration on the rights of the Mentally Retarded Persons*<sup>9</sup>, which proclaimed that a mentally retarded person had, to the maximum degree of feasibility, the same right as that of other human beings. He has the right to proper medical care and such education, training, rehabilitation and guidance as would enable him to develop his maximum potential. He has right to social and economic security and to a decent standard of living to do productive work or engage in other meaningful occupations to the fullest extent of his capability. In 1975 general *Declaration on the Rights of the Disabled Persons*<sup>10</sup> are considered as landmark developments in the area of rights of persons with disabilities. These Declarations strive to protect the civil and political rights of persons with disabilities. They also direct the States Parties to take measures to provide medical, psychological and functional care, social and medical rehabilitation, counseling and assistance and to placement facilitating their integration with society. The two Declarations specifically emphasize to provide them with suitable employment and to cater to their needs. These Declarations inspired nations to enact legislations at the local level.

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6 Convention No. 111.

7 Convention No. 142.

8 Convention No. 168.

9 Resolution 2856 (XXVI), on December 20, 1971.

10 The Declaration was adopted by the General Assembly on December 9, 1975 (Resolution No. 3447, XXX) in furtherance of various international Conventions and Declaration on Human Rights including the Economic and Social Council resolution No. 1921 (LVIII) of May 6, 1975 on the 'prevention of disability and rehabilitation of disabled persons'.

## **World Program of Action**

The World Program of Action adopted by the General Assembly is a long-term plan based on extensive consultations with Governments, organs and bodies within the United Nations system and intergovernmental and non-governmental organizations, including organizations of and for disabled persons. The objectives of the World Program of Action concerning Disabled Persons are to promote effective measures for prevention of disability, rehabilitation and the realization of the goals of ‘full participation’ of disabled persons in social life and development on the basis of equality. Due regard shall be paid in the implementation of the World Program to the special situation of developing countries and the under-developed countries.

The World Programme of Action is designed for all nations. The time-span for its implementation and the choice of items to be implemented as a priority will, however, vary from nation to nation depending on the existing situation and their resource constraints, levels of socio-economic development, cultural traditions, and their capacity to formulate and implement the actions envisaged in the programme. Member States should urgently initiate national long-term programmes to achieve the objective of the World Programme of Action; such programmes should be an integral component of the nation’s general policy for socio-economic development.

## **The Standard Rules on the Equalization of Opportunities for Persons with Disabilities**

These Rules<sup>11</sup> lay down principles concerning equality of opportunities and classify specific areas for action such as accessibility of the physical environment and extension of facilities for education, maintenance, income, employment and social security. They further provide guidelines not only for Governments but also for all the persons and organizations concerned with disabilities issues. The Standard Rules are not mandatory on the states, however, these Rules have constantly guided the municipal law to incorporate them in their legislation for the welfare of the persons with disability.

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<sup>11</sup> Adopted by the UN General Assembly at its 48th Session on December 20, 1993 (Resolution No. 48/96).

## Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities and its Optional Protocol was adopted on 13<sup>th</sup> December 2006 by the United Nations. There were 82 signatories to the Convention, 44 signatories to the Optional Protocol, and ratification of the Convention. This is the highest number of signatories in history to a UN Convention on its opening day. It is the first comprehensive human rights treaty of the 21st century and is the first human rights convention to be open for signature by regional integration organizations. The Convention entered into force on 3<sup>rd</sup> May 2008.

The Convention is intended as a human rights instrument with an explicit social development dimension. It adopts a broad categorization of persons with disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. It clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas where adaptations have to be made for persons with disabilities to effectively exercise their rights and areas where their rights have been violated and where protection of rights must be reinforced.

Article 27 of the Convention relates to the Work and Employment which provides that States Parties recognized the rights of persons with disabilities to work, on an equal basis with others; this includes the right to opportunity to gain a living by work freely chosen or accepted in labor market and work environment that is open, inclusive and accessible to persons with disabilities. States parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps through legislation, *inter alia*<sup>12</sup>, to prohibit discrimination on the basis of disability concerning all forms of employment, safe and healthy working conditions<sup>13</sup>, protection of rights of disabled persons and redress of grievances<sup>14</sup>, labor and trade union rights on an equal basis with others<sup>15</sup>, enable disabled

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12 Article 27 (1) United Nation Convention on the Rights of Persons with Disabilities.

13 Id, Article 27 (1) a

14 Id, Article 27 (1) b

15 Id, Article 27 (1) c

persons to have technical and vocational guidance, placement services and continuing training<sup>16</sup>, promote employment opportunities and career advancement in the labor market<sup>17</sup>, promote avenues for self-employment and entrepreneurship<sup>18</sup>, employment in public sector<sup>19</sup>, promote employment of disabled persons in private sector through affirmative action and incentives<sup>20</sup>, provision of reasonable accommodation to disabled persons in the workplace<sup>21</sup>, promote vocational and professional rehabilitation of disabled persons<sup>22</sup> etc. Further the States Parties shall ensure that persons with disabilities are not held in slavery or servitude, and are protected, on an equal basis with others, from forced or compulsory labour<sup>23</sup>.

## **National Law Regime**

### **Constitutional Law**

The Constitution of India declares India as a Welfare State. In tune with the philosophy of welfare state ideals, disabled persons should receive special attention and treatment. There should have been a constitutional guarantee for full human rights, protection against exploitation and discrimination as well as for their all-round development. Even in the absence of constitutional provision, it is the duty of the state to provide sufficient facilities, training and rehabilitation of the disabled persons so that they may lead a normal life without any burden on their families and the community. The Constitution of India though does not specifically proscribe discrimination on ground of 'disability' but contains non-discriminatory provisions<sup>24</sup>, which guarantee equality and equal opportunities for all citizens<sup>25</sup>. The Constitution specifically mandates the state to strive for an egalitarian society founded on equality, liberty and welfare ideals. It

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16 Id, Article 27 (1) d

17 Id, Article 27 (1) e

18 Id, Article 27 (1) f

19 Id, Article 27 (1) g

20 Id, Article 27 (1) h.

21 Id, Article 27 (1) i.

22 Id, Article 27 (1) k.

23 Id, Article 27 (2).

24 Article 15 of the Constitution of India: provides that "(1) the State shall not discriminate against any citizen on the ground only of religion, race caste, sex, place of birth or any of them"

25 Article 14, Constitution of India guarantees 'equality before law and equal protection of laws.'

not only guarantees right to life and personal liberty<sup>26</sup> but also directs the state to make effective provisions for securing the right to work, education and to public assistance in case of unemployment, old age, sickness and disablement, and in other cases of undeserved want<sup>27</sup>. Even though these directives are not justifiable, nonetheless the Directives lend support to the rights of persons with disabilities. Directive Principles have often been used by the courts to adjust and expand the ambit of fundamental rights and also to interpret other Constitutional provisions. However, Article 41 specifically provides for effective provision to be made by the state for securing the right to work, to education and to public assistance in case of 'disablement' and Article 39A envisages equal justice and free legal aid to all citizens and that opportunities for securing justice are not denied to any citizen by reason of economic or 'other disabilities'.

### **Statutory Law**

The *Mental Health Act, 1987* and the *Rehabilitation Council of India Act, 1992* were the only enactments for the disabled person after the repeal of the Indian Lunacy Act, 1912. In pursuance of the Proclamation on Full Participation of People with Disabilities in the Asian and Pacific regions in Beijing in 1992, India enacted the *Persons with Disabilities, (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995*. The Act of 1995 provides for both preventive and promotional aspects of rehabilitation like education, employment and vocational training, reservations, research and manpower development and also creation of a barrier-free environment. More recently Parliament has enacted the *National Trust for welfare of Person with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999*. These enactments were enacted by the Government more for its commitment to social justice under the Constitution rather than as a part of its fulfillment of international obligation. The various Declarations on disability, of course, helped in the formulation of the national laws.

The *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995* is the core legislation in

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<sup>26</sup> Id, Article, 21.

<sup>27</sup> Id, Article 41.

India, which for the first time recognized the need to integrate person with disabilities with the mainstream of society by some normative action. Employment rights of persons with disabilities are mainly covered under chapter VI of the Act pertaining to various aspects through which the employment rights of disabled persons in the Government sector are to be facilitated. In addition, the right against discrimination in Government employment is covered in Section 47 under Chapter VIII-titled 'non discrimination'. Disabled persons' employment in the private sector has also been provided for in Section 41 of the Act while self-employment opportunities for disabled persons have also been bolstered through certain affirmative action in Section 43. Among other related provisions, for instance, research and manpower development, a part of Section 48 deals with Government's promotion and sponsorship of research on job identification and on-site modification in offices and factories, and under social security. Section 68 provides for schemes framed by Government for payment of 'unemployment allowance' to disabled persons who remain unemployed for more than two years after registering with the special employment exchange.

### **Special Employment Exchange**

The Government may also set up special employment exchange and require employers in every Government establishment to furnish to such exchange, information on vacancies identified for persons with disability that have occurred or are about to occur in that establishment and the establishment will then have to comply with such requisition<sup>28</sup>. The records of the Government establishments will also be accessible to public for inspection or to take copies or ask any question necessary for obtaining any information furnished by the Government establishment, which is relevant to appointment to vacancies for person with disability. Employers of government establishments must also maintain records of persons with disabilities employed in their establishments and these records shall be open to inspection by the Government.

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28 Section 34, The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

## **Scheme for Ensuring Employment**

The Government and local authorities must also issue notification to formulate schemes on certain matters towards ensuring employment of persons with disabilities, including their training and welfare, relaxation of upper age limit, regulation of employment, health and safety measures and creation of a non-handicapping environment in places where persons with disabilities are employed<sup>29</sup>.

## **Identification of Posts**

The right to work under international human rights law includes the freedom to freely choose and accept the work. Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which India is a party, while confirming the right to work<sup>30</sup>, has introduced a number of legal and administrative measures to guarantee the right to work to persons with disabilities. However, the freedom to choose an occupation has remained limited for persons with disabilities. The Government of India has embraced the notion of protected work by identifying specific posts for each category of persons with disabilities. By doing so it has enabled government and public sector establishments to appoint persons with disabilities to such posts whose functions they can perform without compromising on efficiency. This arrangement has also been quite effective in protecting persons with disabilities against problems arising out of ignorance, prejudice or stereotypes. In order to advance the cause of Section 32 of the Persons with Disabilities Act, 1995 by identifying posts to be reserved for persons with disability and the review of the posts to up-date the list taking into consideration the developments in technology<sup>31</sup>.

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29 Section 38. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

30 The states Parties to the prevent Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts and will take appropriate steps to safeguard this right.

31 Government of India, Ministry of Social Justice and Empowerment, vide Order No. 3-13/96-HW-III dated July 2, 1999; Notification: 36035/5/84- Estt. (SCT) dated February 28, 1986 at paragraph 2; Gazette Notification No. 16-25/99-NI-I dated May 31, 2001; Office Order. No. 16-31/2000-NI-I; page 459 and 460; Annexure 1 of the Extraordinary Gazette Notification No. 16-25/99-NI-I dated May 31, 2001.

## **Reservation of Posts**

Equality is the corner stone of the human rights doctrine and is crucial to right to work. The strategy to ensure equality adopted by the Constitution and supported by legislation is two-fold. Firstly, it prohibits discrimination in matter of work based on caste, race, religion, sex, place of birth or status etc., and secondly; it encourages introduction of affirmative action and positive measures to promote equality at work.

Article 16 (4) of the Constitution empowers the State to make Special provisions for reservation in appointments to public offices in favor of any 'backward class' of citizens. Over last fifty years, the central and state governments have established legal and administrative safeguards to protect the right to work, particularly of members of the weaker sections including persons with disability. These measures are not only informed by the principle of equality and non-discrimination but are also based on the Directive Principles enshrined in Part IV of the Constitution, especially Article 41.

Section 33 of the Disability Act, 1995 requires the Government to reserve 3% vacancies on identified posts in every Government establishment, 1% each for the following three categories respectively- (1) persons with blindness or low vision; (2) persons with hearing impairment and; (3) persons with loco-motor disability or cerebral palsy<sup>32</sup>.

## **Vacancies not filled up to be carried forward**

In any recruitment year, if any vacancy reserved for persons with one of the three mentioned disabilities cannot be filled up due to non-availability of a suitable person with that disability, or for any other reason, that vacancy will be carried forward to the next recruitment year. In case a suitable person with that disability is still not available even in the next recruitment year, it may first be filled by interchange among the three categories. Only when there is no person with disability at all available for the post in that year, the vacancy will be filled up by appointing a non-disabled person. Further, if the nature of vacancies in an establishment is such that a person with given category of disability cannot be employed,

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32 Section 33, The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

the vacancies may be interchanged among the three categories of disabilities with the prior approval of the Government<sup>33</sup>.

Apart from the major trust on government employment of disabled persons other employment options like private sector jobs and even self-employment have also been provided for in the Act, albeit less assertively. Section 41 encourages the private sector to create job opportunities for persons with disabilities through incentives to be provided by the government for those that employ disabled persons, comprising at least 5% of their total workforce. Also under the provisions for "affirmative action", Section 43 provides that the government must frame schemes for the potential allotment of land at concessional rates to entrepreneurs with disabilities interested in setting up their business and factories.

### **Judicial Response**

The Indian judiciary has upheld the cause of employment of the disabled persons so that they can lead a meaningful and dignified living by integrating in the mainstream of the national life. While heralding the cause of the disabled persons the judiciary has brushed aside the impediments and obstacles on the way of the disabled persons to have an access to employment and ensured the implementation of the Disabilities Act, 1995 in its letter and spirit, otherwise it was the legislation confined only to the statute books and could not prove its worth for the disabled fraternity of the Indian populace. In most cases, the courts responded with an unstinted defence of the right of employment for disabled and came down heavily on any attempt to curb it. The judiciary has delineated the following guidelines to enable the disabled persons to get employment:

In *Daya Ram Tripathi v. State of U.P. & Anr.*<sup>34</sup>, the Supreme Court held categorically that the state cannot revoke reservation for persons with disabilities. In this case the applicant, a physically disabled person, was offered a post in an executive branch instead of in the Provincial Civil Service after passing the Uttar Pradesh State Services Examination on the ground that the State Government had revoked reservation of 2% in the Provincial Civil Service. The Court emphatically stated that the

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<sup>33</sup> Id, Section 36.

<sup>34</sup> 1986 (Supp) SCC 497.

"physical disability should not be of the nature which may cause interference in discharge of duties and obligations attached to the concerned service" and further held that "the State was not entitled to withdraw the reservation requirement after initially reserving posts for persons with disabilities". The applicant was awarded service benefits and costs.

In *National Federation of Blind v. Union Public Service Commission & Ors.*<sup>35</sup>, the Supreme Court held that the question of providing reservation/preference to the disabled person on an identified post was a matter for Government of India to decide. The court further noted that since the present petition, the Standing Committee of the Government had already identified Group A&B posts suitable for disabled persons, though the matter is pending for several years, for the final decision of the Government. Under such circumstances, the Supreme Court allowed visually disabled persons to write the civil services examination and apply for such posts that have been identified as suitable by the Standing Committee. However, if in the hierarchy of promotional posts it was found by the Government that a particular post is not suitable for a visually disabled person, there shall not be any right to claim the said post.

In case of *Narendra Kumar Chandla v. State of Haryana & Ors.*<sup>36</sup>, the Supreme Court while rejecting the appellant's plea to order his appointment as Upper Division Clerk (UDC), which carried the same pay scale as his earlier post, directed the respondent to appoint him as Lower Division Clerk at the pay scale of UDC employees. In another case of *Lance Dafadar Jogindar Singh v. Union of India & Ors.*<sup>37</sup>, the appellant was serving in the army as Lans Dafadar, when he sustained server injuries in an accident while he was on casual leave in the year 1976. Thereupon he was discharged from services and army pension due to him was paid. However, he was denied the disability pension under the Pension Regulations on the ground that injury was not sustained in combat. The High Court dismissed this claim on the ground of delay in approaching the court in seeking the disability pension. In appeal, the Supreme Court was of the opinion that the question before it was not on the period of

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35 (1993) 2 SCC 411.

36 (1994) 4 SCC 460.

37 1995 Supp (3) SCC232.

limitation. Rather the Court was required to determine the entitlement of the appellant to the disability pension. Since no Army Rule or Regulation shows that a person on casual leave is not to be treated as 'on duty', the Supreme Court was not satisfied that the appellant was not entitled to disability pension.

In *Nandkumar Narayanrao Ghodmare v. State of Maharashtra & Ors.*<sup>38</sup>, the appellant was selected by the Public Service Commission for the post of Agricultural Officer (Class II) but was not appointed on the grounds of colour blindness. The appellant placed an affidavit on record stating that there were 35 posts available in the Department out of which only five required perfect vision without colour blindness. Accordingly, the Court directed that the appellant be appointed to any of the posts of Agricultural Officer of Class II service other than the five posts mentioned in his affidavit within two months from the date of the final order. In *Jaswant Singh & Anr. v. State of Panjab*<sup>39</sup>, the Supreme Court laid down on several occasions that an employee/workman acquiring disability is entitled both to compensation as per rules and to the protection under Section 47. This judgment has been included for the purpose of tracing the development of the concept of 'alternative appointment' of disabled persons. In *Baljeet Singh v. Delhi Transport Corporation*<sup>40</sup>, the High Court directed the respondent to take the petitioners back into service and pay them back wages. It was also held that in case the petitioners were not fit to perform the duties that they had been performing from their initial appointment till their disability, they should be accommodated in terms of proviso to Section 47 of the Disabilities Act.

In *Ashok M. Shrimali & Ors. v. State Bank of India & Ors.*<sup>41</sup>, the Court granted the petitioner liberty to move the court after the process of identification and reservations of posts is completed. In the interim, the respondents were directed to appoint the petitioner to a post consistent with his qualifications and results in appropriate examinations. In *Pushkar Singh & Ors. v. University of Delhi & Ors.*<sup>42</sup> the Court directed the

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38 (1995) 6 SCC 720.

39 (1986) 10 SCC 570.

40 83 (2000) DLT 286.

41 2001 (Supp) Bom C.R. 132.

42 90 (2001) DLT 36.

respondents to comply with the resolution with effect from the date of communication and to calculate the total number of seats that ought to have been reserved accordingly. The Court also clarified that in the absence of sufficient number of posts, the respondents were to create supernumerary posts or terminate the appointments that were made subject to the final adjudication in the present matter. In ***Smt Shruti Kalra v. University of Delhi & Ors.***<sup>43</sup>, the Court observed that the Respondent-University, which had decided to reduce the number of posts of Lecturer in Instrumental Music to one, is statutorily bound to recruit at least one disabled candidate. In stating that the court does not perform the function of the Selection Committee, the order clarified that it is within the jurisdiction on the court to decide whether the Selection Committee had duly and properly considered the candidature of the petitioner. Accordingly, between the two applicants, the petitioner ought to have been appointed. It was left open to the respondents to consider whether they would rather terminate the appointment of the general category candidate, as in both scenarios they are liable to appoint the petitioner.

In ***Government of NCT of Delhi v. Bharat Lal meena and Surindar Singh***<sup>44</sup> the Delhi High Court held that a person, after acquiring a degree, which is necessary for holding the post of Physical Education Teachers (PET), could not be told at a later stage that he was not suitable for job. In ***Kunal Singh v. Union of India***<sup>45</sup> the Supreme Court held that Rule 38 of Central Civil Services (Pension Rules), 1972 does not override Section 47 of the Disability Act, as the doctrine of *generalia specialibus non derogant* would apply. The doctrine is also found in Section 72 of the Act. In ***Delhi Transport Corporation v. Harpal Singh & Anr.***<sup>46</sup> the High Court held that since the Act was a social welfare measure enacted with a view to benefit disabled persons, the plea of the DTC could not be sustained as any statutory enactment incorporating a welfare measure, particularly for the weaker sections of society, has to be given full effect. The Court also held that since the reference was made after the Act

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43 90 (2001)DLT 262.

44 100 (2002) DLT 157 (DB)

45 (2003) 4 SCC 524.

46 105 (2003) DLT 113.

came into force, the benefit of the Act was available to Harpal Singh in any event be termed a retrospective operation of the Act.

In *LIC of India v. Chief Commissioner for Disabilities & Anr.*<sup>47</sup> the High Court noted that the Disabilities Act called affirmative action to ensure the equal status of disabled amongst us and hence, it would be befitting of LIC to accept the respondent as a peon. The High Court rejected LICs contention and held that if his condition rendered him unfit for work in the future, he could always be dispensed with in accordance with the recruitment rules of the LIC. However, that might happen in future could not be a ground to deny him employment today.

In *Shaji Kumar v. Bharat Petroleum Corporation*<sup>48</sup>, the High Court stated that there was no stipulation that a person who received compensation in an accident case was ineligible to apply or that a person who did not receive any compensation or relief in respect of the disability should be preferred to a person who received compensation. In other case *Shri Darambir Swaroop v. Delhi Transport Corporation*<sup>49</sup> the High Court held that payment of compensation upon acquiring disability could not be a ground for denying reinstatement on the previously held job under Section 47 of the Disabilities Act. In *M. Adiappan v. Union of India & Anr.*<sup>50</sup> the ratio of the Supreme Court judgment in Narendra Kumar Chandla v. State of Haryana, the tribunal allowed the appeal and granted the applicant the pay protection as prayed for with arrears and others monetary benefits with effect from a date three years prior to the filing of the appeal. In *Piyush Agrawal v. Central Public Works Department*<sup>51</sup> the complainant, a person with locomotor disability, approached the Chief Commissioner when the post of the Junior Engineer (Electrical) was advertised by the Central Public Works Department, without declaring any reservation for person with disabilities, despite it being an identified post. The CCPD directed the department to publish a corrigendum in this regard, with provisions for adequate extra time for disabled candidates to submit their applications for the same and make

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47 2003 (67) DRJ 136.

48 2004 (I) KLT 961

49 CWP No. 5503/1999, Delhi High Court, 13.08.2002

50 CAT, Madras Bench, 18.09.2001

51 Case No.2854/2004, CCPD, 2004

special concession in the examination fees as well. In *Chandar Kishor Joshi v. DRDO, Ministry of Defence*<sup>52</sup> the CCPD held that the purpose of the Persons with Disabilities Act needed to be upheld in this case. The Chief Commissioner found that the hostile conditions encountered by the scientist were pertinent to orthopedically disabled and visually impaired persons but not to hearing impaired persons. The Defence Research and Development Organization was advised not to deny reservations to persons with disabilities as per the Act and to appoint the complainant as a scientist with the organization.

### **Conclusion**

The 1995 Act provides for both preventive and promotional aspects of rehabilitation like education, employment and vocational training, reservations, research and manpower development and also creation of a barrier-free environment, which is another thing that doesn't work at all. It is important to mention that the Act does not give the right to employment to every disabled person, even according to the already limited definition of persons with disabilities under the Act. Employment rights are available to only those persons who come within the three stated categories of disabilities. Persons with mental illnesses and mental retardation are expressly excluded from the purview of the employment provisions, irrespective of the nature and extent of their disability, and also irrespective of the nature of employment being sought, even though these persons are otherwise covered under the Act.

The reservation of vacancies is mandated only in Government establishments—a sector which is shrinking fast in the country today. Even within the Government sector there is an exemption clause, which allows the Government to exclude organizations from the purview of the provisions for reservation and non-discrimination at the workplace. The right against disability-based discrimination at the workplace has evoked strong criticism since, apart from only being applicable to Government establishments, it expressly provides against discrimination only in those cases where disabilities have been acquired during service and the type of discrimination covered have been very specifically spelt out. Hence, the Act fails to

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<sup>52</sup> Case No. 2519/2002, CCPD, 10.03.2004

provide a right against any form, whatsoever, of disability-based discrimination. Further, there is no protection against discrimination at the workplace or in employment conditions for those who are already disabled at the time of their appointment. Judiciary has played a vital role in promoting and safeguarding the employment rights of the disabled persons, which will go a long way to help this segment of the society to lead a life full of dignity and worth.

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