

**Neutral Citation No. - 2024:AHC-LKO:20203-DB**

**AFR**

**Reserved**

**Chief Justice's Court**

**SPECIAL APPEAL No. - 40 of 2024**

|                                                                                              |       |                   |
|----------------------------------------------------------------------------------------------|-------|-------------------|
| <b>Dr. Manvendra Singh</b>                                                                   | ..... | <b>Appellant</b>  |
| <b>Vs.</b>                                                                                   |       |                   |
| <b>State of U.P. Thru. Addl.<br/>Chief Secy. Medical<br/>Health U.P. Lko. and<br/>Others</b> | ..... | <b>Respondent</b> |

**Counsel for Appellant** : Praveen Tripathi, Sudha Pal

**Counsel for Respondent** : C.S.C., Raj Kumar Upadhyaya  
(R.K. Upadhyaya)

**Hon'ble Arun Bhansali, Chief Justice**

**Hon'ble Attau Rahman Masoodi, J.**

**(Per: Arun Bhansali, CJ)**

1. This appeal is directed against the judgement dated 18.01.2024 passed in Writ A No. 13611 of 2021, whereby writ petition, filed by the petitioner-appellant against the rejection of his candidature as a person with disability, has been rejected.

2. The petitioner applied for the post of Homeopathic Medical Officer pursuant to advertisement dated 18.05.2018, whereby 494 posts were advertised, which were later increased by notification dated 09.08.2018 to 596 posts. Out of the said 596 posts, 319 posts were unreserved, 169 were reserved for other backward classes, 99 posts were reserved for scheduled caste category candidates and 9 posts were reserved for scheduled tribe category candidates. The horizontal

reservation was, 118 posts for women candidates, 11 posts for dependents of freedom fighters and 17 posts for physically handicapped persons with disability (O.L.-9, PB-8).

3. A preliminary screening of the candidates was conducted, in which category wise candidates in the ratio of 1 : 3 were short listed for interview on the basis of merit with minimum cut off marks for each category. The candidates who could not secure minimum cut off marks in their respective category, overage candidates and those having physical disability different from the specified category were disqualified and their applications were rejected.

4. The petitioner's application was not rejected and he was called for interview. The select list was published on 07.03.2020 and only one candidate was selected in the category of persons with disability and thus, petitioner's candidature was rejected.

5. Feeling aggrieved, petitioner filed Writ Petition No. 11085/SS/2020, which was disposed of by judgement and order dated 24.03.2021 with a direction to the Respondent No. 1 to decide the petitioner's representation by a reasoned and speaking order. The representation made by the petitioner came to be rejected by order dated 11.06.2021, *interalia* on the ground that physical disability of the petitioner (PB Category) was only 20% whereas, those with minimum disability of 40%, were eligible for the benefit of reservation and as the petitioner did not fall within the merit of O.B.C. candidates, he was not accorded appointment.

6. Feeling aggrieved, Writ A No. 13611 of 2021, came to be filed. Counter to the writ petition was filed, *interalia* indicating that the disability certificate filed by the petitioner with the writ petition clearly reflects his disability at 20% only and in terms of definition given in the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (in short 'the Act, 1995') person with

not less than 40% of any disability was not eligible for reservation. It was submitted that the writ petition be dismissed.

7. Learned Single Judge by the impugned judgement, noted further contentions on behalf of respondents, that the selection was of the year 2018 and the same was completed in the year 2020, whereafter with reference to the certificate issued to the petitioner indicating his disability at 20% and referring to Clause B of Schedule under Section 2(e) of the Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993 as amended in the year 2018 (in short 'the Act, 1993') came to the conclusion that case of the petitioner does not fall within the measurable limits as provided under Clause B(b) (i) of the Schedule and as the impairment was found to be 20% in the certificate issued by the Doctor, the petitioner was not liable to be considered as physically handicapped, consequently, dismissed the writ petition.

8. Learned counsel for the appellant made vehement submissions that the learned Single Judge failed to consider the purport of the provision pertaining to the Amendment Act, 2018, which is in consonance with the provision of the Rights Of Persons With Disability Act, 2016 (in short 'the Act, 2016'). Submissions have been made that under Section 2(r) of Chapter I, under the Act, 2016, 'persons with benchmark disability' have been defined, whereby a person with disability, where specified disability has been defined in measurable terms, as certified by the certifying authority, is included in the said definition and for the said person, it is not necessary that his disability should be not less than 40%.

9. It was emphasized that specified disability has been defined under Section 2 (zc) of the Act 2016, whereby the same has been defined as disabilities as specified in the Schedule and the Schedule attached to the said Act under visual impairment has defined, 'low

vision' means a condition where a person has any of the conditions whereby his visual acuity not exceeding 6/18 or less than 20/60 upto 3/60 or upto 10/200 (Snellen) in the better eye with best possible corrections. It is submitted that the certificate produced by the petitioner indicates that the petitioner has a low vision with glass right eye 6/24 and left eye 6/18. It was submitted that the indication made regarding the right eye as 6/24 has been wrongly interpreted by the learned Single Judge as the same exceeding 6/18. In fact, in case of visual acuity, if a person has 6/24 vision, the same is worse than 6/18 and not better than 6/18, inasmuch as the said determination reflects that a disabled person has to see the object from a distance of six meters, which a person with normal vision can see from 18 meters or 24 meters and, therefore, if in one eye, the petitioner has vision, which is 6/24, in that case, his that eye is worse than the other having vision 6/18 and as the said determination has been made on incorrect understanding of the provision, the same has led to grave injustice to the petitioner.

10. Further submissions have been made that even in the Act of 1993, applicable to the State of U.P. amendment was introduced in the year 2018, which came into force on 23.07.2018 whereby, the definition as indicated in the Act, 2016 qua 'low vision' has been introduced as part of the Schedule, which is identical to the Act, 2016 and, therefore, the action of the respondents cannot be sustained.

11. Learned counsel for the State made vehement submissions that the case of the appellant would be governed by the provisions of the Act, 1993 and notifications issued therein, which requires 40% disability and as admittedly, the disability of the petitioner is 20% only, he has rightly been held ineligible to seek reservation as person with disability.

12. Further submissions have been made that as the recruitment has been closed on account of all the posts having been filled, the petitioner cannot claim any relief and, therefore, on that count also, appeal deserves dismissal.

13. We have considered the submissions made by learned counsel for the parties and have perused the material available on record.

14. The provisions of Act, 1993 came to be amended by the amendment Act, 2018 whereby the definition of ‘physically handicapped’ under Section 2(e) has been amended and same have been defined as specified in the Schedule appended to the Act wherein under the heading ‘visual impairment’, low vision has been defined as under:

*“(b) “low-vision” means a condition where a person has any of the following conditions, namely:—*

*(i) visual acuity not exceeding 6/18 or less than 20/60 upto 3/60 or upto 10/200 (Snellen) in the better eye with best possible corrections; or (ii) limitation of the field of vision subtending an angle of less than 40 degree up to 10 degree. ”*

15. The certificate produced by the petitioner (Page 31 of the Writ Petition), described his disability as under:

*“Certify that He/She is a case of Low Vision with Glass Right Eye 6/24 & Left Eye 6/18.*

*The percentage of disability is about 20%. ”*

16. In [www.myopia.com.sg](http://www.myopia.com.sg), the information on the distance test vision *interalia* indicates as under:

*“When we say that an eye has 6/24 visual acuity, we mean to say that the smallest row of letters the tested eye can discern at a distance of 6 meters is what a normal eye can discern at a greater distance of 24 meters. From this, we can see that the numerator 6 is a constant. The denominator varies and a number greater than 6 would*

*represent less than normal visual acuity. The larger the denominator number, the poorer is the vision.”*

17. In view of above, it is apparent that the requirement of ‘low vision’ in terms of Act, 1993 as amended is visual acuity not exceeding 6/18 and in petitioner’s case, his one eye is 6/24 and the other is 6/18 and, therefore, his case would be fully covered by the definition of low vision and the determination made by the learned Single Judge based on the fact that in his one eye, the petitioner had 6/24 vision and, therefore, he was not eligible to seek the benefit of his status as a person with disability, cannot be sustained.

18. The submissions made that the amended provisions would not be applicable to the case of the petitioner as the amendment was published in the Gazette on 1<sup>st</sup> September, 2018, has no substance as the amendment act indicates that it shall be deemed to have come into force on 23<sup>rd</sup> July, 2018 and as the advertisement in question with 596 seats was published on 09.08.2018 and, therefore, the plea raised in this regard has no substance.

19. So far as the plea raised by respondents that as the disability of the petitioner-appellant in the certificate in question has been indicated as 20%, in terms of the definition as the same is less than 40%, he is not eligible to be appointed, is concerned, the same is apparently baseless. Section 2 (r) of the Act, 2016 reads as under:

*“person with benchmark disability” means a person with not less than forty per cent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority.”*

The above provision defines “person with benchmark disability” and has two parts. While the first part indicates that a person with not

less than forty per cent of a specified disability where specified disability has not been defined in measurable terms would be a person with benchmark disability; the second part indicates that a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority, would also be included in the definition of person with benchmark disability. The provision pertaining to having specified disability not less than 40% is apparently confined to those cases where the specified disability has not been defined in measurable terms. However, wherever the disability has been specified in measurable terms with reference to schedule attached to the Act, disability will have to be determined in terms of the measure indicated therein.

20. In the present case, the disability ‘low vision’ has been defined in the schedule attached in measurable terms, the disability would have to be assessed based on the said parameter given in the schedule and, therefore, there is no requirement to have 40% disability, which as indicated hereinbefore for disabilities which are not in measurable terms.

21. The said aspect has been noticed by Hon’ble Supreme Court in **Vikash Kumar vs. Union Public Service Commission and others, Civil Appeal No. 273 of 2021, decided on 11.02.2021**, wherein it has been observed as under:

“25. ... ..

*Section 2(r) encompasses two categories: (i) a person with not less than 40 per cent of a specified disability, where the specified disability has not been defined in measurable terms and (ii) a person with disability where the specified disability has been defined in measurable terms, as certified by the certifying authority. In other words, Section 2(r) encompasses both a situation where a specified*

*disability has not been defined in measurable terms, in which event it means a person with not less than 40 per cent of the specified disability but also where a specified disability has been defined in measurable terms. A certification by the certifying authority is contemplated in regard to whether the person concerned does in fact meet the specified norms as quantified.”*

22. In view of the above, the plea raised in this regard by the respondents has no substance.

23. Coming to the aspect that all the posts having been filled by the respondents, the petitioner-appellant cannot be granted any relief, the said plea cannot be countenanced inasmuch as, it has been indicated that out of 17 vacancies for physically disabled, only nine candidates could succeed in the preliminary screening and as alleged by the appellant, only one candidate was accorded appointment.

24. Provision of Section 3(5) of the Act, 1993 provides that where due to non availability of suitable candidates, any of the vacancies reserved for physical disabled remains unfilled, it shall be carried over to the next recruitment. Once the respondents have reserved as many as 17 posts for physically handicapped persons, out of which eight were meant for person with partial blindness or low vision and only one person was granted appointment, and it is not the case of the respondents that the said posts were carry forward posts, the plea raised that all the posts have been filled up by the respondents on the ground of non availability of the persons with physical disability, cannot be countenanced. Even if the respondents in gross violation of statutory provisions have filled all the posts, the petitioner-appellant cannot be deprived of his rightful claim to the post meant for persons with disability.

25. Consequently, the special appeal filed by the appellant is **allowed.**

26. The order dated 18.01.2024 passed by learned Single Judge is set aside. The rejection of the petitioner's representation dated 11.06.2021 by the respondents, Annexure-2 to the writ petition, is also quashed and set aside.

27. Respondents are directed to consider the candidature of the appellant for the post of Homeopathy Medical Officer, pursuant to advertisement dated 18.05.2018 as amended on 09.08.2018 in the category of persons with disability, and in case, the petitioner is otherwise found eligible, accord him appointment.

28. The appellant would be entitled to all consequential benefits as accorded to those, who were appointed pursuant to the advertisement in question. However, the appellant shall be entitled to actual emoluments from the date he is accorded appointment.

29. The entire exercise would be completed by the respondents within a period of four weeks from the date of this order.

**Order Date :- 06.03.2024**  
SK/RK

(Attau Rahman Masoodi, J.)      (Arun Bhansali, CJ)