

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

C.W.P. No.14695 of 2001 (O&M)
DATE OF DECISION : 21.1.2015

Rajinder Singh

PETITIONER

VERSUS

State of Punjab and others

RESPONDENTS

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

1. Whether reporters of Local Newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present:- Shri Anil Rathee, Advocate for the petitioner.

Shri Nilesh Bhardwaj, D.A.G. Punjab.

MAHESH GROVER, J.

The petitioner who is physically challenged being virtually blind, has filed the instant petition praying for appointment as Panchayat Secretary pursuant to the advertisement dated 9.3.2001 (Anneuxre P-5). The appointment was denied to him solely on the ground of his physical incapacity and particularly, in view of the instructions of the Personnel Department, Punjab by which such posts were to be taken out from the purview of consideration for blind aspirants.

Learned counsel for the petitioner contends that the issue is no longer *res integra* as this Court has already answered this question in **Balwinder Singh v. State of Punjab** 2004(2) R.S.J. 216 where this Court observed as follows :-

“4. Learned counsel for the petitioner has raised two-fold contentions. Firstly, learned counsel contended that the policy instructions dated 2.3.2001 cannot be made applicable to the case of the petitioner primarily on account of the fact that respondent No.2 expressly invited applications from amongst low vision/blind candidates through advertisement dated 9.3.2001 i.e. after the aforesaid instructions. The second contention of learned counsel for the petitioner is based on the proviso to Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955 (for short “the Act of 1955”). Section 33 of the Act is being extracted hereunder for facility of reference :-

“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 :-

- (i) blindness or low vision ;
- (ii) hearing impairment ;
- (iii) locomotor disability or cerebral palsy.

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 provision of this section.”

A perusal of the proviso to the aforesaid provision reveals that the government has a right to exclude through a notification appointment by way of reservation permissible under the Act of 1995. It is contended that no notification has till date been issued by the respondent-State and as such there cannot be an exemption from the mandate of the provisions of the Act of 1995.

5. Having considered the arguments addressed at the bar, we are satisfied that the claim of the petitioner is fully justified. Instructions dated 2.3.2001 are clearly contrary to the mandate of Section 33 of the Act of 1995. An exemption from the provisions of the Act of 1995 can only be made by a notification at the hands of the government. No such notification is stated to have been issued as per pleadings filed in the instant case. Since in terms of the provisions of Section 33 of the Act of 1995, the State Government had issued an advertisement dated 9.3.2001 expressly indicating that the vacancies will be filled from amongst handicapped candidates, *inter alia*, lower vision/blind candidates, it is not permissible now for the respondent-State to deny appointment to the petitioner in accordance with the merit obtained by the petitioner in the process of selection.

6. We accordingly allow the writ petition and direct respondents No.1 and 2 to appoint the petitioner to the post of

Panchayat Secretary. The petitioner shall not be entitled to the wages for the period he did not discharge his duties. He shall, however, be placed in the seniority list at the position he is entitled to on the basis of his rank determined as per Marks obtained in the selection process.”

Keeping in view the aforesaid observations, I am of the view that the petition deserves to be allowed in the ratio of the decision in **Balwinder Singh v. State of Punjab** (supra). Ordered accordingly.

Consequently, the petitioner shall be entitled for consideration for appointment to the post of Panchayat Secretary. The needful be done as expeditiously as possible, preferably within a period of two months from the date of receipt of a certified copy of this order.

January 21, 2015
GD

(MAHESH GROVER)
JUDGE