

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.16895 of 2014
Date of Decision: 2.09.2015**

Sukhvir Singh ... Petitioner

Versus

State of Punjab & anr. ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Kanishk Lakhanpal, Advocate,
for the petitioner.

Ms. Puneet Sekhon, Addl. A.G., Punjab.

1. To be referred to the Reporters or not? Yes.
2. Whether the judgment should be reported in the Digest? Yes

RAJIV NARAIN RAINA, J.(Oral)

1. The petitioner is present in person with his counsel. He has amply demonstrated in Court that he can write even though both his arms are amputated below the elbow joints. I asked him to write on paper supplied before the Court. He has written clearly, legibly and of quality good enough, if not better than many than would in a government office. The evidence of his stump-writing skills is taken on record on paper Mark 'A'.

2. The medical certificate countersigned by the Medical Superintendent, CMO/Head of Hospital, Civil Hospital, Sangrur, has certified him suffering from one hundred percent physical disability. Therein it is indicated that the petitioner can perform 11 functions by manipulating his stumps. He can pull, push, lift, kneel and crouch. He can perform work by bending, by sitting, by standing, by walking, by seeing and has no hearing impairment or speaking disability. He can

easily perform work by reading and writing. The Civil Surgeon, Sangrur by a separate document has certified that the petitioner can write with both his amputated upper limbs joined and can hold a pen to write with both his amputated upper arms/limbs joined together. His adversity has not deterred him and appears self confident and at peace with the world. His abilities to carry out activities functionally has been certified by none others than the Civil Surgeon, Sangrur who is a responsible medical doctor of the Punjab Government. These three documents are not on record and have been produced by Mr. Lakhanpal at the time of hearing. Photocopies of the same are taken on record as Mark 'B', 'C' and 'D' with no objection from the State since the documents are official papers.

3. The only reason to deny appointment to the petitioner is that he be not able to cope with the work of the post of clerk to which he has been selected in open competition against advertised posts meant for regular recruitment. The Subordinate Services Selection Board, Punjab has recommended his name. But the department is acting cussed refusing to offer him letter of appointment which has compelled him to approach this Court seeking a mandamus to the respondents to consider him for appointment.

4. The reason for denial of appointment based on ipse dixit is found not tenable in view of the opinion of medical expert of the Punjab Government certifying him fit to serve.

5. In brief, the facts are that the Punjab Government sent a requisition to the Punjab Subordinate Services Selection Board to make recommendations of eligible and suitable candidates for appointment to

as many as 1192 posts of Clerks advertised by Public Notice calling applications from persons desirous of working in government departments out of which 3% of the posts were reserved in the quota of the physically handicapped category under the policy of the Punjab Government framed in the light of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 identifying posts where such employment is available. These rights have been recognized and created under Section 33 of the Act for a special class of persons. The reserved quota for physically handicapped persons was 34 vacancies in the advertisement. On merit, the petitioner has been ranked at 31st position which brings him within the zone of consideration for appointment as Clerk.

6. Having Heard Mr. Lakhanpal and Dr. Puneet Sekhon, Learned Additional Advocate general, Punjab I have no doubt in my mind that the claim of the petitioner for appointment is genuine and has been wrongly denied by the State Government despite his merit position and his ability tested at the Board. He can eminently perform the duties of a Clerk. If he is disadvantaged by a quirk of destiny he is at the same has come out stronger as a differently-abled person and in this he does not show that his spirit is subjugated or circumscribed by any sense of defeat or surrender to fate. The man has admirably overcome adversity. But the respondents are apathetic to his rights and have acted in the most unfair and insensitive manner to put his case file on a dusty shelf of inhumanity, denuding him of his labour in winning merit rank in his category high enough to bring at arm's length of appointment. Alas, his name in the list

of successful candidates is left unattended in the drawer of the office table of the appointing authority refraining from issuing offer letter because he thinks he cannot do the job. It is even sadder that the appointing authority has paid scant heed to the medical certificates Mark 'B' to 'D' issued by the Civil Surgeon, Sangrur/Medical Board countersigned by the Medical Superintendent, CMO/Head of Hospital, Civil Hospital, Sangrur a person who serves the very government he serves and is the prescribed authority and the final arbiter of the medical condition of the petitioner in relation to fitness in performance of activities of a clerical nature in a government office.

7. In the World Report on Disability released by the World Health Organization the famous British theoretical physicist Stephen Hawking, who has amyotrophic lateral sclerosis, in his Foreword to the Report stated:-

"We have a moral duty to remove the barriers to participation for people with disabilities, and to invest sufficient funding and expertise to unlock their vast potential. It is my hope this century will mark a turning point for inclusion of people with disabilities in the lives of their societies"

8. As a result of the above discussion, this petition is allowed. A mandamus is issued to the respondents to consider offering appointment to the petitioner within two weeks from the date of receipt of a certified copy of this order after completion of necessary formalities required as per rules in the light of this order.

9. Since the petitioner has been forced to approach this Court to undo the deliberate and intentional wrongdoing committed by the

respondents flying in the face of the medical opinion of the experts in the Government speaking in his favour, this Court imposes costs quantified at Rs. 25,000/- on the respondents to compensate him for legal and sundry expenses which he must have incurred in the litigation. The costs will be paid to the petitioner by the respondents but will remain recoverable from the defaulting functionaries of State found responsible for callously withholding appointment for an unreasonably long time without valid cause or legal justification. On appointment, the seniority of the petitioner will relate back to his batch and will be fixed as per his merit determined by the Board.

10. The petitioner is also held entitled to full salary and allowances from the date of filing of the petition or from the date the appointments offered and when the successful candidates joined service as Clerks in the quota earmarked for the physically handicapped category for illegally withholding appointment for no rhyme or reason and by applying the principles stated by me in CWP 14610 of 2012, **Sarabdeep Kaur v. State of Punjab and another**, decided on December 16, 2014 where retrospective salary was granted from the date of filing of the petition by reason of denial of appointment to the post of Headmistress to an aggrieved candidate, which had been unlawfully withheld and was ultimately granted by court orders. The Punjab Government has implemented the order as per statement made in COCP 600 of 2015 decided on April 30, 2015 arising out of CWP 14610 of 2012.

2.09.2015
monika

(RAJIV NARAIN RAINA)
JUDGE