

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

LPA No.1772 of 2014 (O&M)

Date of Decision: 07.05.2015

Pradip Kumar & Ors.

... Appellants

vs.

State of Punjab & Ors.

... Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE P.B. BAJANTHRI**

1. Whether Reporters of local papers 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: Ms. Veena Kumari, Advocate for the appellants

Mr. Aman Bahri, Addl. AG Punjab

Mr. Vikas Chatrath, Advocate for respondent No.3

Mr. Puneet Gupta, Advocate for respondent No.5

SURYA KANT, J. (Oral)

(1) Five thousand posts of Lineman were advertised in April, 2011. There was, however, a Court stay against filling up 4000 posts. Consequently, the selection process was initiated for 1000 posts out of which 30 posts were reserved for differently-abled persons.

(2) It is not in dispute that out of those 30 posts, only one has been filled up and the remaining posts could not be filled up allegedly on account of non-availability of suitable differently-abled candidates .

(3) Three appellants before us are differently-abled persons (orthopaedically). Their disability is to the extent of 40%

to 50%. They admittedly possess two years' National Trade Certificate in the Trade of Lineman and have successfully completed two years apprenticeship also. During the apprenticeship, they were required to perform the duties of Lineman and Sub-Station Attendant which is an equivalent post and part of the same cadre. There is nothing on record to suggest that they were wanting in any manner in the performance of duties.

(4) We find no logic, rationality, legality and justifiability in the action of the authorities in not considering the appellants eligible and suitable for the post of Lineman/SSA. As an abundant precaution, we may mention here that both the above-mentioned posts are interchangeable and the incumbents can be asked to perform either the duties of Lineman or SSA.

(5) Mr. Chatrath as well as learned State counsel have shown concern about the safety of the differently-abled persons if they are appointed as Lineman. Firstly, there is no factual basis for such an apprehension. Suffice it to say that since the appellants have shown their worth for the posts of Lineman during apprenticeship for a period of two years, they deserve to be granted fair opportunity to prove their suitability. In any case, if the authorities are so concerned, the appellants can be posted/assigned the duties of Sub Station Attendants where movements are almost restricted.

(6) Since the vacancies meant for differently-abled persons are available and those are required to be filled up as per the eligibility or suitability criteria prescribed in the year 2011 when the posts were advertised, there can be no quarrel that the re-formulation, if any, in the guidelines in the year 2013 will not apply, retrospectively.

(7) That apart, we cannot be oblivious of the fact that the Parliament through the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 has voiced the cause of differently-abled persons. It is incumbent upon all the stakeholders to identify the posts against which such persons can be appointed and make all-out efforts for such appointments so as to bring them in the mainstream. Here is a case where vacancies were advertised in the year 2011. While the appellants are before us, we are not sure as to how many other differently-abled persons had applied and competed but were not considered due to the same misconception that they cannot perform the duties. The respondents are directed to re-consider the claim of such candidates in the light of the observations made hereinabove without compelling them to approach this Court.

(8) For the reasons afore-stated, we allow this appeal; set aside the order passed by learned Single Judge and while allowing the writ petition, the respondents are directed to offer

appointment to the appellants and other similarly-placed differently-abled persons within two weeks from the date of receipt of a certified copy of this order. The appellants shall be entitled to seniority and pay fixation notionally from the date when other candidates were appointed though without payment of any backwages.

(Surya Kant)
Judge

07.05.2015
vishal shonkar

(P.B. Bajanthri)
Judge