

C.W.P No. 1223 of 2014

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 1223 of 2014

DATE OF DECISION: 27.09.2016

Avtar Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Kapil Kakkar, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Punjab.

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of certiorari for quashing order dated 1.11.2012 (Annexure P-16), whereby, the claim of the petitioner for appointment to the post of Teaching Fellow against the seats reserved for physically handicapped candidates has been rejected on the ground that he did not apply in the said category and his case was considered in SC (R&O) category.

Briefly the facts of the case, as made out in the petition, are that an advertisement was issued on 5.9.2007 for filling up 9998 posts of Teaching Fellows on a consolidated pay against JBT/ETT posts in the Department of School Education (Primary Wing), Punjab with last date for submission of applications as 30.9.2007. The petitioner also applied for the aforesaid post by mentioning his category as physically

handicapped/scheduled caste. Out of total posts, 11 posts were filled up in male handicapped category, whereas, the case of the petitioner was considered in the category of Scheduled Caste on the basis of amount of fee deposited by him while submitting the application. Subsequently, the petitioner made a representation for considering his case in the category of physically handicapped quota as 8 seats were lying vacant but no action was taken thereupon. Thereafter, the petitioner filed C.W.P. No. 16377 of 2012, which was disposed of by this Court with a direction to the respondents to decide the representation made by the petitioner by passing a speaking order within a period of two months. Aggrieved by the inaction on the part of the respondents, the petitioner filed COCP No. 3487 of 2012 but during the pendency of the contempt petition, claim of the petitioner was rejected by passing a speaking order dated 1.11.2012 on the ground that he applied in the category of SC (R&O) and not in the category of physically handicapped and accordingly, the contempt was rendered infructuous with a liberty to challenge order dated 1.11.2012, which is now subject matter of challenge in the present petition.

Learned counsel for the petitioner contends that the petitioner applied in physically handicapped category also but his case was wrongly considered in the category of Scheduled Caste. It was specifically mentioned by the petitioner in his application that he belongs to physically handicapped and Scheduled Caste category. Learned counsel further contends that posts of physically handicapped category are still lying vacant. The action of the respondents is not only illegal, arbitrary and unjust but also contrary to Articles 14 and 16 of the Constitution of India. Learned counsel also submits that action of the respondents is also against

the provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation), Act, 1995 (hereinafter referred to as 'the Act, 1995'), which has been enacted to spell out the responsibility of the States towards the prevention of disability, protection of rights and rehabilitation of persons with disability to remove discrimination. At the end learned counsel for the petitioner submits that as per instructions dated 2.5.1997, 3% vacancies are to be reserved for physically handicapped category candidates and the vacancies at point No. 11,40 and 71 are reserved for them. The case of the petitioner is squarely covered by the decisions of this Court in C.W.P. No. 23921 of 2011 titled as **Gurpreet Singh Vs. State of Punjab and others** decided on 21.12.2011 and C.W.P. No. 15017 of 2012 titled as **Neeru Dhingra Vs. State of Punjab and others** decided on 7.8.2012, Annexures P-20 and P-21, respectively.

Learned counsel for respondent-State opposes the submissions made by learned counsel for the petitioner. He contends that the petitioner was to apply only in one category but in the application form, he himself mentioned as belonging to Scheduled Caste as well as physically handicapped category and by considering the fee deposited by him, he was considered in the category of Scheduled Caste. The merit points of the petitioner were calculated in Scheduled Caste category as 45.795, whereas, the last candidate in Scheduled Caste category was having merit points of 48.969. The petitioner deposited fee of ₹ 25/- with his application by considering himself in Scheduled Caste category, whereas, he was required to deposit an amount of ₹ 100/- in other categories except ex-serviceman category. At the end, learned State counsel submits that the process of selection has already completed and the petitioner is not entitled for

consideration after a long delay.

Heard the arguments advanced by learned counsel for the parties and have also gone through the impugned order as well as other documents available on file.

Admittedly, the petitioner applied for the post of Teaching Fellow in pursuance of advertisement published in the newspapers on 5.9.2007. As per the terms and conditions of the advertisement, the candidates can apply only from one District of their choice and only one application was to be considered in case more applications were submitted. It is also not disputed that the petitioner mentioned his category as physically handicapped/Scheduled Caste and deposited fee of ₹ 25/-. The case of the petitioner was considered in the category of Scheduled Caste on the basis of amount of fee deposited by him while submitting the application. The petitioner made representation for considering his case in the category of physically handicapped quota as 8 seats were lying vacant but no action was taken thereupon. Thereafter, the petitioner filed C.W.P. No. 16377 of 2012, which was disposed of by this Court with a direction to the respondents to decide the representation made by the petitioner by passing a speaking order within a period of two months. Still aggrieved, the petitioner filed COCP No. 3487 of 2012 but during pendency of the contempt petition, claim of the petitioner was rejected by passing a speaking order dated 1.11.2012. It has been mentioned in the rejection order that the case of the petitioner was considered in the category of Scheduled Caste as he deposited fee of ₹ 25/- and did not deposit the fee meant for physically handicapped category. It was also mentioned in the impugned order that the merit points of the petitioner were calculated in Scheduled Caste

category as 45.795, whereas, the last candidate, namely, Tejinderpal Singh in Scheduled Caste category was having merit points of 48.969.

On perusal of relevant record of the selection and especially the application form filled up by the petitioner, it is apparent that the category of the petitioner has been mentioned as physically handicapped/Scheduled caste. It is not disputed that the petitioner deposited fee of ₹ 25/- at the time of submitting application, which was meant for Scheduled Caste category. Undisputedly, the petitioner also belongs to Scheduled Caste category and concession in fee is given to the candidates of Scheduled Caste. The petitioner is also physically handicapped and in the application form, the category 'Physically Handicapped' was mentioned first and thereafter category 'Scheduled Caste' was mentioned. It cannot be interpreted in any manner that the petitioner has applied in Scheduled Caste category. No doubt, the petitioner does not come in the merit, if he is considered as a Scheduled Caste category and due to this reason, his claim has been rejected by the respondent-authorities. It is not disputed that posts of physically handicapped categories are still lying vacant. This is the third round of litigation as earlier the claim of the petitioner was not considered as no action was taken on the representation made by him. The petitioner had to file C.W.P. No. 16377 of 2012, which was disposed of with a direction to respondent-authorities to decide the representation made by the petitioner by passing a speaking order. The respondent-authorities did not bother to decide the representation of the petitioner inspite of the fact that two months time was given. Thereafter, the petitioner had to file COCP No. 3487 of 2012 as the order passed by this Court in writ petition was not complied with. Only during pendency of the contempt petition, the claim of the

petitioner was rejected on the ground that the petitioner did not come in the merit in the category of Scheduled Caste.

The information was sought under RTI and it was informed that 16 posts are still lying vacant and this fact has not been disputed by the respondents in the written statement as well. Even it has also been informed that the petitioner had applied in physically handicapped category also so the submission made by learned State counsel that the petitioner has not applied in physically handicapped category cannot be accepted.

The preference is given to the first mentioned category i.e. “physically handicapped”. The argument of learned State counsel that as the petitioner had deposited fee of ₹ 25,-, which was meant for Scheduled Caste category, therefore, he was considered in that category, cannot be accepted as the petitioner also belongs to “physically handicapped” category also and when he had applied in “physically handicapped” category, he cannot be deprived of his right due to deposit of less fee. It has been held in various judgments that the Act of States should be fair and impartial. Article 14 of the Constitution of India strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory. It must not be guided by any extraneous or irrelevant consideration because that would be denial of equality. The principle of reasonableness and rationality is legally as well as philosophically an essential element of equality or non-arbitrariness if projected by Article 14. This view has also been taken by Hon'ble the Apex Court in the cases of **R.D. Shetty Vs. The Internatioal Airport Authority of India and others** AIR 1979 SC 1628, **E.P. Royappa Vs.**

State of Tamil Nadu AIR 1974 SC 555 and **Maneka Gandhi Vs. Union of India** AIR 1978 SC 597.

Undisputedly, the respondent-State deals with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences and as such their action should not be arbitrary and dependent upon sweet will like a private individual. The action must be in conformity with standard of norms, which is not arbitrary, irrational or irrelevant.

The action of the respondents is also against the provisions of the Act, 1995 as it was enacted to spell out the responsibility of the States towards the prevention of disability, protection of rights, provision of medical care, education, training, employment and rehabilitation of person with disability to remove discrimination and to lay down strategies and programmes to provides services and equal opportunities for persons with disabilities.

The issue in the present petition is also covered by the decision of this Court rendered in C.W.P. No. 12886 of 2010 titled as **Jagjit Kaur and others Vs. State of Punjab and others** as in that case, it was held that physically challenged persons were entitled to appointment by applying the principles laid down in Clause 6 of Government letter dated 2.5.1997, which entitles them to be considered against unfilled vacancies of the recruitment process initiated in the year 2007. In **Jagjit Kaur's case (supra)**, the State was directed to consider the case of the petitioners therein for appointment within a period of one month. Thereafter similar writ petitions were filed claiming the same relief, which were disposed of in the same terms.

In the present case, there were total 11 vacancies and only 8

posts were filled up. An objection was raised by respondent-State that the process was initiated in the year 2007 and same had been completed now and no candidate could be appointed at this stage. In a similar matter i.e. C.W.P. No. 14125 of 2013 titled as **Jagjit Singh Vs. State of Punjab and others** decided on 17.8.2015, it was held that that the recruitment process initiated in the year 2007 did not extinguish the right of the petitioner to appointment as it depends on availability of vacancies, which has led to legitimate expectation. It was also held that in case vacancies were kept in wraps then the petitioner cannot be blamed for inaction or delay, which was not attributable to him. The right of appointment denied to the petitioner was held unfair, discriminatory and unreasonable by holding that employer being State was expected to be a model employer in a welfare State, who owes fairness in action viz-a-viz aspirants to public posts and its employees.

Provisions of Section 47 of Act, 1995 prescribes for non-discrimination in Government employment and the same is reproduced as under:-

“47. Non-discrimination in Government employment:-

(1) No establishment shall dispense with or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding could be shifted to some other post with the same pay scale and service benefits.

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, which is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.”

It has also been held in various judgments of this Court as well as Hon’ble the Apex Court that the provisions of said Act are mandatory in nature and the exemption is exceptional. In pursuance of provisions of Section 47 of Act, 1995, the Department of Social Security, Women and Child Development of the Government of Punjab has also issued instructions dated 5.9.2002 for taking care of the difficulties of handicapped employees and for creating worry free atmosphere for them. The relevant instructions are reproduced as under:-

“(a) That it be ensured that the handicapped persons be given posting at such places where it is convenient to them to come. Their working atmosphere should be hustle free meaning thereby, there should be a barrier free atmosphere.

(b) That this be also ensured that all the employees should keep the feeling of cooperation and respect towards handicapped employees. Their physical disability be not made a matter of discussion of any kind. Strict action be taken against such employee who passes objectionable comments upon a handicapped employee.

(c) Head of the Departments should pay special attention

towards the difficulties of the handicapped employees and should made personal efforts to solve them.”

Keeping in view the facts and circumstances of the case as mentioned above, the present petition is allowed and impugned order dated 1.11.2012 (Annexure P-16) is hereby quashed. The respondents are directed to consider the case of the petitioner for appointment against the vacancy of physically handicapped if the posts are lying vacant within a period of one month from the date of receipt of copy of the order.

September 27, 2016
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes