

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 4470 of 2011

Date of Decision : February 25, 2016

Rakesh Petitioner
vs.
State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. V. K. Vashishta, Advocate
for the petitioner.

Mr. Harish Rathee, Senior DAG, Haryana.

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DEEPAK SIBAL, J. :

The petitioner, who is Deaf and Dumb, seeks appointment as a Junior Basic Teacher (JBT) in the State of Haryana.

A few facts may be noticed.

Through advertisement dated 13.08.2009, the Haryana Staff Selection Commission (hereinafter referred to as – the Commission) advertised 9647 posts of JBTs. As per the advertisement, there was no post reserved for the Physically Handicapped Category (Deaf & Dumb and Blind) as posts under the Physically Handicapped Category (PHC) were only reserved for the Orthopaedically Handicapped persons (Male and

Female). The reservation was also for the Backward Class – B Category (BC-B Category). The petitioner applied under the BC-B Category, as also under the PHC.

After the selection process was over, the petitioner secured 52.2% marks and since the last person selected and appointed under the BC-B Category secured 52% marks and under the PHC (Orthopaedically Handicapped), got 41.64% marks, the petitioner staked claim for appointment as a JBT, on the denial of which, the present petition has been filed.

I have heard learned counsel for the parties at some length.

There are two categories, under which the petitioner stakes his claim for appointment as a JBT – the Physically Handicapped quota and the BC-B quota.

As per the advertisement, the reservation for the posts under that Category, was only for Orthopaedically Handicapped persons. Resultantly, there was no post reserved for PHC (Deaf and Dumb), a category, to which the petitioner belongs. For being Orthopaedically Handicapped, the petitioner admittedly does not fall within the applicable definition, to be considered for appointment as an Orthopaedically Handicapped person. He could, thus, not be considered under that quota.

As noticed earlier, the advertisement, in pursuance to which the petitioner had applied, did not make any reservation for Physically Handicapped (Deaf and Dumb) as the posts were only reserved for Orthopaedically Handicapped persons. The petitioner very well knew of

the same, but chose not to challenge it. He rather took part in the selection process held in pursuance thereto. That being so, on the ground of estoppel as well, his claim under the Physically Handicapped quota is not maintainable.

In this regard, reference may further be made to a letter dated 23.01.2012 issued by the Director General, Social Justice and Empowerment, Haryana to The Director, Elementary Education, Haryana, wherein it has been specifically provided that reservation under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Participation) Act, 1995 (hereinafter referred to as – the 1995 Act), for making the appointment as a JBT is to be made from the candidates, who can sit, stand, walk, lift, see, read, write, hear and communicate. While adopting the Government of India notification, exemption under Section 33 of the 1995 Act was granted from reserving posts of JBTs for the Deaf and Dumb candidates under the Physically Handicapped quota. It was as per this letter that the respondents did not reserve any post in the impugned advertisement under the Physically Handicapped Category for the Deaf, Dumb and Blind candidates. There is no challenge to this letter by the petitioner.

Even otherwise, being Deaf and Dumb, it would not be possible for the petitioner to communicate and teach young students and this would not only be against his interest, but also against the interest and safety of young students. Thus, no direction can be issued to appoint the petitioner as a JBT either under the Physically Handicapped or BC-B

Category. This view of mine finds support from a judgment of Division Bench of this Court passed in Saral Kumari and others vs. State of Haryana – 2007 (5) S. L. R. 305, in which it has been held as under :-

“We have considered the case of the petitioners and are of the view that taking into account the stand of the Department as mentioned above in Annexure P9, the paramount consideration before the Department is to impart the best possible education to the innocent children of primary classes. To discipline such a group of children, a teacher must be able to see and hear any disturbance and movement in the class where a blind or deaf and dumb teacher may prove to be failure to teach the students of the Primary Classes.”

In view of the above, finding no merit in the present petition, the same is ordered to be dismissed with no order as to costs.

(DEEPAK SIBAL)
JUDGE

February 25, 2016
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