

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

CWP No.924 OF 2014
DATE OF DECISION : 27th MAY, 2016

Deva Nand

.... Petitioner

Versus

State of Haryana & others

.... Respondents

CORAM : HON'BLE MS. JUSTICE RITU BAHRI

* * * *

Present : None for the petitioners.

Mr. Ravi Partap Singh, AAG Haryana.

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RITU BAHRI, J. (ORAL)

The petitioner is seeking direction to the respondents to promote him as Assistant Revenue Clerk against the roster point reserved for physically handicapped category from the post of Canal Patwari.

The petitioner is physically handicapped and suffers from permanent disability to the extent of 40% as per the medical certificate of permanent disability (Annexure P-2). Petitioner was appointed as Canal Patwari on 03.10.1997 vide appointment letter (Annexure P-1). His seniority is at serial No.1234 and 192 persons have been promoted to the post of Assistant Revenue Clerks till serial No.705 in the seniority list of Canal Patwaris as on 01.11.2007. This fact is clear from order dated 04.12.2007 (Annexure P-3). As per the provisions of Section 33 of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (in short, 'the Disability Act') a minimum of 3%

reservation is to be provided to the persons with disability in which 1% each suffering from blindness, hearing impairment and/or locomotor disability. The relevant provisions of Section 33 of the Disability Act are reproduced as under:

“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, in the posts identified for each disability;

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 provisions of this section.”

The Government of India, vide instructions dated 27.02.1996 (Annexure P-4), has laid down that minimum degree of disability under the locomotor disability is 40 degrees. Government of India, Ministry of Personnel, Public Grievance and Pension Department of Personnel Training vide letter dated 04.07.1997 (Annexure P-5) has reserved a roster of 100 posts out of which the posts at point No.1, 34 and 67 have to be made available to the physically handicapped category. The Government of Haryana vide circular dated 16.12.1980 decided to reserve 3% posts, in

direct recruitment, for handicapped persons. Thereafter, the Government vide letter dated 28.04.1993 stressed that posts considered suitable for physically handicapped persons be identified and minimum degree of disability was at 40%. The State issued instructions dated 07.01.2000 for compliance of the provisions of the above said Act. Thereafter, the Government reiterated same instructions vide letter dated 30.01.2003.

The grievance of the petitioner is that department has promoted 90 Kanal Patwaris to the rank of Assistant Revenue Clerks vide order dated 27.07.2010 and no reservation has been given to handicapped employees. The petitioner filed CWP No.4266 of 2008, which was withdrawn to file with better particulars and hence the present petition has been filed.

On notice, reply has been filed by Superintending Engineer on behalf of respondents No.2 to 4 admitting that directions given by this Court in ***Civil Writ Petition No.12741 of 2009*** titled as ***Viklang Sangh Haryana versus State of Haryana & others*** decided on 18.03.2010, has not been implemented by the State Government as SLP No.15929 of 2010 is pending against the said judgment in Hon'ble the Supreme Court. The matter being sub judice hence the present writ petition is not maintainable being premature. Further it is admitted that in the year 2007, 192 Canal Patwaris were promoted as Assistant Revenue Clerks and in this promotion order reservation was given to SC candidates.

A perusal of Division Bench judgment passed in CWP No.12741 of 2009, shows that this Court had examined all the instructions issued by the Government of India with respect to the reservation for physically handicapped candidates. The instructions issued for reservation of the physically handicapped candidates are as per Section 47 of the

Disability Act. As per the provisions of Disability Act the State is required to provide employment to disable persons and the reservation has been made for giving equal opportunities at the initial stage of recruitment. Hon'ble Supreme Court in the case of ***Ajit Singh and others Vs. State of Punjab and others, 1999(7) SCC 209*** has held that the word 'employment' includes promotion. The writ petition was allowed and directions were given to the respondents to reserve 3% posts for promotion for the disabled persons by giving them promotions as per directions and guidelines issued by the Ministry of Personnel dated 20.11.1989. It is not the case of the respondent that in the SLP the operation of the impugned judgment has been stayed.

The writ petition is being allowed and direction is being given to the respondents to consider the case of the petitioner for promotion to the post of Assistant Revenue Clerk in view of the above said judgment, within a period of three months.

27TH MAY, 2016
'raj'

(RITU BAHRI)
JUDGE