

**CM No. 5762 of 2015 in/and
CWP No. 17330 of 2010**

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

**CM No. 5762 of 2015 in/and
CWP No. 17330 of 2010
Date of Decision: 22.12.2017**

Dhiraj Kumar

.....Petitioner

Vs.

HPSC and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.R.N.Lohan, Advocate,
for the petitioner
Mr.H.N.Mehtani, Advocate,
for respondent no.1.
Mr.Jasbir Mor, Advocate,
for respondents no.2 to 5.

AMOL RATTAN SINGH, J. (ORAL)

Pursuant to the order dated 15.11.2017, an affidavit of Smt.Promila, Under Secretary/GA, UHBVN, Panchkula, has been filed on behalf of the Chairman-cum-Managing Director, UHBVNL, Panchkula, though the direction was to the Managing Director himself to file an affidavit.

Learned counsel for respondents no.2 to 5 submits that, as a matter of fact, he is away to the USA on a study tour.

In the said affidavit, it has been firstly stated that as regards the first query made by this Court in the aforesaid order, the instructions of the Haryana Government dated 15.7.2014 have been annexed with the affidavit (which actually are not applicable to the selection process in question). However, it has also been pointed out by learned counsel that with the affidavit of the Managing Director earlier filed, dated 6.11.2017, instructions dated 22.10.2007 have also been annexed, wherein it has been clarified that in

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terms of Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, if any vacancy in any recruitment year is not filled up due to non-availability of a suitable person with disability, or for any other sufficient reason, such vacancy would be carried forward in the succeeding recruitment year and if in that recruitment year also a suitable person with the disability is not available, then it could be inter changed among the 3 categories of disability and only thereafter, with no person available at all, with any disability even in the second recruitment year, the employer would be entitled to fill up the vacancy by appointment of a person who does not have a disability.

It has further been stated in the affidavit that vide Advertisement no.2 of 2009 (i.e. the advertisement in question in the present petition), out of 339 posts of AEs/Electrical, 10 posts were kept reserved for physically handicapped persons, out of which 4 posts remained unfilled, 1 from the orthopaedically handicapped persons category and 3 from the partially deaf persons category (across the 4 power utilities in the State, as clarified by learned counsel for respondents).

It has also specifically been stated that the unfilled vacancies were carried forward by the UHBVNL and readvertised in the advertisement of 2017, a copy of which advertisement has been annexed as Annexure R3/7 with the affidavit earlier filed on 6.11.2017; and though even that selection process already stands completed, the vacancies for orthopaedically handicapped persons as also partially deaf persons remained unfilled, as no candidate was selected for the posts advertised.

In reply to the query of this Court in the order dated 15.11.2017,

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with regard to whether the same posts as were advertised in 2009 for partially deaf persons were also advertised at any earlier point of time, it is stated in the affidavit that as regards the physically handicapped category, 2 posts were advertised in the year 2004 with 2 persons selected and appointed. Thereafter in the year 2007 also, 2 posts in the orthopaedically handicapped category were advertised and selections and appointments made qua both the posts.

The query of this Court in the aforesaid order being that it be clarified whether any post for a partially deaf candidate was advertised prior to 2009 or not, has not been specifically answered, because in paragraphs 7 and 8 of the affidavit filed today, it has simply been stated that for the UHBVN only 2 posts for the physically handicapped category were advertised in the year 2004, and again in the year 2017, all of which were filled up. In paragraph 8 it is stated that no post in the physically handicapped category as had been advertised in the year 2017, was advertised in the year 2004.

In paragraph 9 of the affidavit, it is stated that the Managing Director of the HVPNL, Panchkula, has informed the Under Secretary of the UHBVNL, that 2 posts for orthopaedically handicapped, and 2 for partially deaf candidates, were also advertised in the year 2008, with that requisition withdrawn and the advertisement treated as null and void in view of the opinion received from the Law Department of the Government, and the decision of the Chief Minister, Haryana, thereupon.

These posts were readvertised in the year 2009, i.e. in the selection process in question.

Upon seeing the contents of the affidavit, as afore noticed,

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learned counsel for the respondents was directed to see from the record today itself, as to whether the posts in the physically handicapped category as were advertised in the UHBVN and the DHBVN in the year 2004/07, were for the partially deaf category or the orthopaedically handicapped category.

Having seen the record, learned counsel for respondents no. 2 to 5 submits that in the advertisement issued in the year 2007, there was no bifurcation of posts within the physically handicapped category (between orthopaedically handicapped/partially hearing impaired/visually impaired persons), as there were no instructions to that effect at that point of time.

That being so and it having been stated in paragraph 4 of the affidavit filed in Court today, that of the 10 posts advertised in the year 2009, 01 post for the orthopaedically handicapped category remained unfilled, and 03 posts of partially deaf persons remained unfilled out of 04, very obviously, the third person appointed from the orthopaedically handicapped persons category to the HPGCL, consumed one post of a partially deaf person in that Corporation, because that post was not filled in, as is admitted, whereas only 02 posts in the orthopaedically handicapped category were advertised at that time.

Thus, 01 post advertised in the orthopaedically handicapped category in the UHBVNL remained unfilled from the advertisement of 2009.

The 03 posts of the partially hearing impaired category, re-advertised in the year 2017, are stated to have again not been filled up for want of eligible candidates.

In view of the above, though otherwise correctly the 3rd orthopaedically handicapped person appointed to the HPGCL in 2009 should

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have been appointed to the UHBVNL (with that post not filled in), and the post remaining vacant in the partially hearing impaired category (in the HPGCL), should have been re-advertised in 2017, but with no candidate having been found even in the year 2017 for the remaining 03 posts of that category as were re-advertised, I see no purpose in upsetting the existent position, as explained in the affidavit, which virtually admits in effect that the post reserved for a hearing impaired person was converted and filled in by an orthopaedically handicapped person in the HPGCL, in the selection conducted in the year 2009.

That being so, the single post advertised in the orthopaedically handicapped category in the UHBVNL not having been filled up in the selection process in the year 2009 and the petitioner being a candidate of that category in that selection process, with that fact not denied, nor that he possesses all the eligibility qualifications, this petition is allowed and it is directed that he be given an appointment to the said post within a period of two months from the date of receipt of a certified copy of this order.

All consequential benefits would flow to him as if he had been appointed at the time when those selected in the year 2009 were appointed, except actual arrears of salary.

December 22, 2017
pk/nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes