

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

CWP No. 1650 of 2012.

Date of Decision: 14.11.2018.

Seema Goyal

... Petitioner

Versus

Punjab State Civil Supplies Corporation Limited and another

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Gurminder Singh, Sr. Advocate with
Mr. J.S. Gill, Advocate,
for the petitioner.

Mr. ADS Jattana, Advocate,
for respondent No.1.

Mr. Vikas Mohan Gupta, Addl. AG Punjab.

JITENDRA CHAUHAN.J.

Through the instant civil writ petition, the petitioner seeks quashing of the order dated 23.12.2011 (Annexure P-10) vide which the claim of the petitioner for appointment to the post of Deputy/District Manager and Field Officer was rejected. The petitioner also seeks issuance of a writ in the nature of mandamus directing the respondents to appoint the petitioner either as Deputy/District Manager or Field Officer.

As per the disability certificate issued by Civil Surgeon, Sangrur, the petitioner is having permanent 40% disability of low vision. The respondents had advertised 11 posts of Deputy/District Manager and 24 posts of Field Officer vide advertisement Annexure

P-2. The educational qualification required was post graduation with 50% marks. The petitioner had applied for both the posts. A written test was held and the petitioner cleared both the examinations. The claim of the petitioner for appointment was rejected vide order dated 23.12.2011 (Annexure P-10) on the ground that keeping in view the duties/responsibilities of the Deputy/District Manager and Field Officer, it is not possible for a physically handicapped (blind or low vision) candidate to perform the said duties in the field. It is contended that despite the petitioner having cleared the written tests, has been denied the posts which is in violation of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

On the other hand, it is contended that as per the Social Security and Women and Child Development Punjab, posts of Deputy/District Manager, Assistant Manager/Deputy District Manager (Field), Field Officer cannot be filled up from the candidates of low vision/blind category in view of the instructions dated 02.05.1997. Therefore, it was recommended by the Recruitment Committee that the result of the candidates from visually handicapped categories who have passed the written test may not be declared. The matter was referred by PUNSUP to the said department for further clarification in pursuance of the recommendations of the Selection Committee regarding visually handicapped candidates. In response, it has been clarified that category wise job identification list was issued by the Department in the year

1999. The following handicapped persons could only be appointed on the said posts:-

Sr. No.	Name of Post	Categories of disable
1.	Deputy Manager/District Manager	Ortho: one leg affected or one Arm affected (Mobility not to be restricted) Hearing: Partially deaf
2.	Field Officer	Ortho: One leg affected or one Arm affected (Mobility not to be restricted) Hearing Partially deaf.

It is asserted that the visually handicapped candidates are not included in the category of physically handicapped for the post of Deputy Manager/District Manager and Field Officer as per the reservation policy of the Government of Punjab. The instructions of the Government were not in the knowledge of PUNSUP at the time of issuance of advertisement dated 03.04.2011. The PUNSUP was not aware of the category-wise job identification list which resulted in issuance of the said advertisement. The category of physically handicapped (blindness or low vision) was inadvertently included in the advertisement. The posts of Deputy Manager/District Manager are not administrative in nature rather these entail rigorous duties which requires strict inspection and physical verification of the stock.

Heard.

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short “the Act”) seeks to make the barrier-free situations as a measure of non-

discrimination for persons with disabilities. Sections 32 and 33 of the Act are reproduced as under:-

“32. Appropriate Governments shall-- (a) Identify posts, in the establishments, which can be reserved for the persons with disability; (b) At periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the developments in technology.

33. 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) Bearing impairment; (iii) Loco motor 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.”

In *Amit Ganeriwala vs. State of Haryana and*

others 2010(2) SLR 320, it was held as under:-

“7. What would, thus, emerge from the reading of Section 33 of the Act is that it is a mandate of the statute and requirement of law that every appropriate Government has to appoint in every establishment such percentage of vacancies, not less than 3% for person or class of persons with disability. If the appropriate Government is of the view not on account of any whims or fancies but having regard to the type of work carried by the Department or establishment, then it may exempt any such establishment from the purview of this mandate as is contained in Section 33. A very fine example can be found from the notification issued by the Central Government exempting all categories of posts of combatant personnels. Obviously a person with disability like blindness or low vision or hearing impairment or locomotor disability etc. can not be able to perform the combat duties and hence, the need to exempt appointment from the purview of reservation on such posts. Such exemption, however, can only be through a notification and may be subject to certain conditions.”

It is to be seen that the petitioner is in the merit zone.

She has been denied the appointment only on the ground that she being low vision candidate would not be able to perform her duties satisfactorily. It has been fairly stated by the learned counsel for the respondents that while discharging duties of Field Officer, she would be provided with assisting staff. It has also not been explained by the

respondents that how a candidate, who has qualified the written examination will not be able to perform her duties. In the circumstances, this Court feels that with the able assistance of assisting staff, the petitioner would be able to discharge her duties satisfactorily. Consequently, the present civil writ petition is allowed. The respondents are directed to appoint the petitioner on the post of Field Officer. The necessary exercise be done within a period of two months from the date of receipt of certified copy of the judgment.

14.11.2018.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No