

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

CWP-19925-2014 (O&M)
Date of decision : 04.07.2018

Simranjit Kaur

...Petitioner(s)

Versus

Punjab Technical University and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Vivek Thakur, Advocate,
for the petitioner.

Mr. Nitin Kaushal, Advocate,
for respondent Nos.1 and 2.

Mr. Arihant Goyal, Advocate,
for respondent No.3.

JITENDRA CHAUHAN, J.

The petitioner seeks issuance of a writ in the nature of Certiorari quashing the appointment of respondent No.3 to the post of Assistant Registrar (Physically Handicapped).

It is contended that all the candidates who were interviewed for the post in question were orthopedically handicapped, whereas, the petitioner suffers from hearing impairment. Thus, the petitioner ought to have been given preference over the other candidates in view of instructions issued by the Government of Punjab, Department of Social Security and Development of Women & Children (Disability Branch), which provide that the percentage of reservation should be implemented by means of 100 point

roster and vacancies falling at point No.11, 40 and 71 be kept reserved for three categories viz. persons with visual impairment (1%); persons with hearing impairment (1%); and persons with Loco motor disability (1%), respectively. Thus, in the absence of any candidate with visual impairment, the petitioner, suffering from hearing impairment, ought to have been selected in place of respondent No.3, who suffered from loco motor disability.

On the other hand, learned counsel for respondent Nos.1 and 2 submits that the claim of the petitioner is based on wrong interpretation of relevant provisions of 'The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995' (for short, 'the Act'), which does not prescribe for a preferential order or hierarchy qua categories mentioned therein for the purpose of public appointments. It is submitted that written test was conducted (for screening purpose only) and thereafter, successful candidates were invited for interview. Respondent No.3, being first in the merit list, was accordingly selected.

I have heard learned counsel for the parties and perused the case filed.

Before delving further, it would be appropriate to consider the relevant provisions law on the subject. Section 33 of the Act which provides for reservation of posts in government service, reads thus:-

“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.”

A plain reading of the above provision shows that the Act does not provide for any hierarchy in the appointment of categories mentioned therein. It only provides for reservation of 3% posts for the persons or class of persons suffering from the types of disabilities mentioned therein. There is no provision of *inter se* preference or hierarchy in the said categories. Even otherwise, the wording of the instructions (Annexure P-8) does not explicitly provide for such hierarchy as claimed by the petitioner. For the sake of arguments, the instructions (Annexure P-8), even if interpreted in the manner the petitioner purports, the same cannot hold any ground in view of the fact that no such sub-categorization has been provided in the Act itself and the instructions appear to be in contravention of the spirit of the Act. It is settled law that executive instructions cannot alter or supplant the Statutory Rules.

In the instant case, respondent Nos.1 and 2 issued appointment letter to respondent No.3 as she topped the merit list. The action of the official respondents, by no stretch of imagination, can be said to be illegal

or perverse and therefore, is liable to be sustained.

In view of the above discussion, this Court is of the considered opinion that the instant petition is devoid of any merit and the same is, hereby, dismissed.

04.07.2018

atulsethi

(JITENDRA CHAUHAN)

JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No