

**THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

**WRIT PETITION No.1329 of 2019**

**ORDER:**

With the consent of both the parties, this Writ Petition is disposed of at the admission stage.

This Writ Petition is filed for the following relief:

- “(a) call for the records pertaining to proceedings dated 28.2.2018 issued by the 1<sup>st</sup> respondent and set it aside as bad, illegal, arbitrary, discriminatory and unconstitutional
- (b) and consequently direct the 1<sup>st</sup> respondent to continue the petitioner in service as Clerk-Single Window Operator ‘A’ with all consequential benefits.....
- (c) by issuance of Writ of Mandamus.....”

Heard Sri J.Sudheer, learned counsel for the petitioner and Dr.Sri.K.Lakshmi Narayana, learned Standing counsel for respondents.

It has been contended by the petitioner that she is an Orthopaedically Challenged person and the competent authority had also issued a certificate dated 17.12.2011 to that effect. The petitioner further contends that the 2<sup>nd</sup> respondent had issued a Notification dated 06.07.2017 to fill up the posts of Clerks in the vacancies earmarked for the year 2018-19 in various banks in the entire country and in pursuance of the said notification, she applied for the said post, as she is fully eligible and qualified to be appointed as a Clerk. As per the breakup of indent, for the State of Telangana, in all 181 posts were notified, out of which, two posts were earmarked for Orthopaedically Challenged (OC) persons, two posts were earmarked for Visually Impaired (VI) persons; and two posts for Intellectually Disabled (ID) persons. The petitioner

further contends that she applied for the said post online and as Orthopaedically Handicapped (OH) option is not given in the application form, she got confused and filled up the application, opting for "ID and others". At the time of submission of application, petitioner also submitted OH certificate and after undergoing the selection process, she was selected and appointed in the clerical cadre vide order dated 24.05.2018. The petitioner further contends, while she was discharging her duties, she was issued a show cause notice dated 22.10.2018 contending that the disability certificate submitted by her discloses that her disability is 'Orthopaedically Handicapped' but not "Intellectual Disability". Pursuant to the said show cause notice, the petitioner has submitted her explanation on 03.12.2018 bringing to the notice of the respondents that since there was no column in the online application form in respect of OH category, she was under the impression that she falls under Intellectual Disability (ID) category and erroneously filled up the online application as "ID and others". The petitioner also contends that she was given appointment only after verifying her entire certificates. Be that as it may, the petitioner also contends that the respondents have not considered the contentions raised by her in the explanation submitted by her and terminated her services vide order 28.12.2018. The petitioner further contends that originally two posts were earmarked for 'OC' (Orthopaedically Challenged) category and during the selection process, two more vacancies were added under 'OC' category and, in all, the respondents have notified four vacancies and against said four vacancies, only two candidates got selected and reported

to the posts of Clerk. As there are two more existing vacancies under 'OC' category, the case of the petitioner case can be considered for accommodating in any one of the existing 'OC' category vacancies, which are lying vacant, and she can be continued as a Clerk under 'OC' category. Since the abbreviation 'OC' is normally used for Open Category, she got confused and could not opt for OC i.e, Orthopaedically Challenged category.

Learned counsel for the petitioner contends that appropriate orders be passed in the writ petition by setting aside the impugned termination order dated 28.12.2018, thereby continue the petitioner as a Clerk under 'OC' category. Learned Standing counsel appearing for the respondents had contended that petitioner has secured 37.79 marks and the last candidate, who got selected under Orthopaedically Challenged category, had secured 50.00 marks. As per the marks secured, since the petitioner is not coming within the zone of consideration under "Orthopaedically Challenged" category, the case of the petitioner cannot be considered for appointment under the "Orthopaedically Challenged" category. Apart from that, the learned Standing counsel has also brought to the notice of this Court, the guidelines issued by the Government of India, Ministry of Personnel, Public Grievances & Pensions Department of Personnel & Training vide Office Memorandum dated 15.01.2018 and guideline No.8.1 of the said guidelines reads as follows:

**"8.Inter se Exchange and Carry Forward of Reservation In Case of Direct Recruitment:**

8.1 Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient

reason, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the following four categories of disabilities, at one percent each to each category:

- (a) blindness and low vision
- (b) deaf and hard of hearing
- (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
- (d) autism, intellectual disability, specific learning disability and mental illness;
- (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness.”

A perusal of the aforesaid guideline makes it abundantly clear that the Banks cannot interchange the slots meant for disabled persons and since the petitioner was appointed in the slot meant for Intellectual Disability, the Bank cannot interchange the category “Intellectual Disability” with that of “Orthopaedically Challenged” category. The learned Standing counsel, therefore, contends that there are no merits in the writ petition and the same is liable to be dismissed.

This Court, having considered the rival submissions made by the learned counsel on either side, is of the considered view that, firstly, the abbreviations used in the application form are not expanded in full form and option “Orthopaedically Challenged” is spelt out as ‘OC’ and secondly, abbreviation ‘OC’ in any recruitment process is identified as “Open Category”. Since there is no abbreviation as ‘OH’ in the online application, the petitioner got confused and had erroneously opted for “ID and others”. Be that as it may, petitioner had submitted Orthopaedically

Challenged Certificate along with application form and after verification of certificates by the respondents, the petitioner was given appointment as a Clerk in the respondent Bank. Moreover, the Government of India issued guidelines on 15.01.2018, whereas the notification issued by the 2<sup>nd</sup> respondent was on 06.09.2017. Any guidelines issued after issuance of the notification dated 06.09.2017 will not have any retrospective effect. Therefore, the said guidelines have no application to the notification dated 06.09.2017. Admittedly, as there are two unfilled vacancies under “Orthopaedically Challenged” category, the petitioner can be accommodated in any one of the said vacant posts. Therefore, the impugned termination order dated 28.12.2018 is liable to be set aside and it is accordingly set aside with a specific finding that the petitioner has not mis-represented the facts while securing employment as a Clerk in the respondent-Bank

With the above observations, the Writ Petition is allowed. No order as to costs.

As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

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**ABHINAND KUMAR SHAVILI, J**

19.07.2019  
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