

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

**CWP No. 19385 of 2012
Date of Decision: 06.05.2019**

Gurbachan Singh and another

...Petitioners

Vs.

Registrar General, Punjab and Haryana High Court and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. S.K. Bawa, Advocate
for the petitioners.

Mr. Ashok Bhardwaj, Advocate
for respondent Nos. 1 & 2.

RAJIV NARAIN RAINA, J. (Oral)

1. The petitioners are blind persons belonging to SC & OBC category. They applied in the physically handicapped category for the post of Peon in response to the advertisement (P-1) issued by the High Court in the year 2010. The grievance of the petitioners is that though they were fully eligible under the physically handicapped category but they were not selected.

2. Learned counsel for the petitioners argues that their case is covered by the instructions dated 02.05.1997 issued by the State of Punjab wherein it has been made incumbent upon the various departments that there should be reservation for handicapped persons. Furthermore, there is a criteria prescribed for selection of candidates from the category of physically handicapped persons. There are three categories of persons who fall under the definition of handicapped persons. These are:

- i) Orthopedically Handicapped
- ii) Deaf and Dumb
- iii) Blind persons

He further argues that it has been mentioned in the instructions that posts of handicapped persons should be divided into the above three categories in equal manner. Complains that persons from other categories of physically handicapped have been selected. However, the respondents have not selected any blind person or with low vision. Learned counsel for the petitioners argues that the respondents have not followed the above instructions dated 02.05.1997 and the selection is against the basic norms of physically handicapped persons and is liable to be quashed.

3. On the other hand, Mr. Ashok Bhardwaj, learned counsel for the High Court submits that the petitioners cannot take the benefit of the Punjab Govt. instructions dated 02.05.1997 as the appointment of Peons on the Establishment of the High Court is governed by the High Court Establishment (Appointment and Conditions of Service) Rules, 1973 (in short '1973 Rules') is governed by standalone statutory rules. He refers to Rule 23-A (1) of the 1973 Rules which provide reservation to posts, which is as devised as under:-

“10% posts on the Establishment of this Court filled in by direct recruitment shall be reserved for the members of the Scheduled Castes/Scheduled Tribes/Backward Classes and 5% posts shall be filled in from amongst the Ex-Servicemen. 3% posts shall be reserved for persons with disabilities of (i) low vision (ii) hearing impairment and (iii) Orthopedically handicapped (1% each), provided that if a physically handicapped person in a particular

category is not available, then the post will be filled from another category of handicapped persons.”

4. A perusal of the above rule makes it explicit that no vacancy is reserved for totally blind persons whereas 1% vacancies are reserved for a person suffering from low vision. It is submitted for the High Court that both the petitioners were not eligible to be appointed as they fall in the category of totally blind persons. No blind candidate with low vision has been selected due to non-availability of a suitable candidate. Mr. Bhardwaj further submits that vide notification dated 04.08.2017 an amendment in Rule 23-A of the 1973 Rules in terms of the Rights of Persons with Disabilities Act, 2016 has been carried out as under:-

“Reservation 23-A:

1. 10% posts on the Establishment of this Court filled by direct recruitment shall be reserved for the members of the Scheduled Castes/Scheduled Tribes/Backward Classes and 5% posts shall be filled in from amongst the Ex-Service men.

2. (i) 3% posts shall be reserved for persons with disabilities of (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 (1% each) and 1 % for persons with disabilities of (d) autism, intellectual disability, specific learning disability and mental illness (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each of the disabilities, respectively.”

5. It is contended that in amended Rule 23-A reservation was made applicable to the Blind persons with prospective effect. However, at the relevant time from 30.11.2010 to 04.08.2017 unamended provision of Rule 23-A was applicable in the case of the petitioners. There was no reservation for blind persons at the time of advertisement and the petitioners were not eligible and therefore, they have no accrued or vested right to claim the appointment. The Punjab Government instructions must give way to specific rules of recruitment.

6. In view of the position explained above, the petitioners were not eligible to be considered for appointment as Peons under the category of physically handicapped persons there being no reservation for blind persons. There is no challenge to the provisions of 1973 Rules. Thus, the argument of the learned counsel for the petitioners is not legally justified. There is no merit in the petition and I am constrained to dismiss it.

(RAJIV NARAIN RAINA)
JUDGE

06.05.2019

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