

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

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Civil Writ Petition No.12168 of 2013
Date of Decision: January 7th, 2020

Parveen Lata

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vishal R. Lamba, Advocate
for the petitioner.

Ms. Anu Pal, Deputy Advocate General, Punjab.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court praying for issuance of a writ of mandamus directing the respondents-authorities to consider and appoint the petitioner, who belongs to an Orthopaedically Handicapped category by converting the posts, which fall although in the handicapped category but to the visually impaired and blindness or low vision category or hearing impairment, which had been unfilled and on conversion of those posts into that of Locomotor Disability category and petitioner be issued the appointment letter to the post of Math Mistress.

2. It is the contention of learned counsel for the petitioner that as per the advertisement which had been issued, 39 posts were kept reserved for the disabled persons. The sub categorization was that for the orthopaedically handicapped there were 13 posts, for visually handicapped it was 13 posts and for hearing impaired 13 posts, totalling 39. The posts which have been filled are 13 orthopaedically handicapped, 3 visually handicapped and 4 hearing impaired leaving behind 19 posts, which are unfilled. The prayer primarily of the petitioner is for converting these unfilled 19 posts into Orthopaedically Handicapped category and consider

the claim of the petitioner for appointment as Math Mistress in the light of the Punjab Government Instructions dated 02.05.1997 (Annexure P-2), which was in continuation and reiteration of the basic/initial Instructions dated 24.11.1982. He asserts that on the basis of these Instructions, the interchangeability of the posts is permissible irrespective of the fact whether the said vacancies have been carried forward for even a single year. He asserts that since the initial instructions are of the year 1982, the said Instructions would be protected by the provisions of Section 72 of The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as '1995 Act'). He on this basis contends that the provisions of Section 36 of the 1995 Act shall have no bearing in the light of the Instructions dated 24.11.1982 and the respondents would have the jurisdiction and power to convert the posts into the Orthopaedically Handicapped category and fill up the post of Math Mistress. Prayer has thus been made for allowing the present writ petition by issuing a direction to the respondents to do the same.

3. Learned counsel for the respondents, on the other hand, has relied upon the provisions of Section 36 of the 1995 Act to contend that the provisions of Section 36 mandate that in case of non-availability of a suitable person with disability of a particular sub category, the same has to be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with disability is not available then resort to interchangeability of the said posts could be done and not prior thereto. She, therefore, contends that the prayer of the petitioner cannot be accepted. That apart, she asserts that the Instructions which had been issued in the year 1982, on which reliance has been placed

by the counsel for the petitioner, would be contrary to the provisions of the statute and the said benefit cannot be granted to the petitioner as the provisions of the statute would override the Instructions. Reliance has also been placed upon the Division Bench judgment of this Court in *LPA No.1898 of 2017* titled as *Hardeep Singh Versus State of Punjab and another* decided on 14.03.2016, wherein this aspect and a similar claim of a candidate has been, on consideration, rejected. It has also been pointed out that the Special Leave Petition preferred against the said judgment has also been dismissed by the Supreme Court in Special Leave to Appeal (Civil) No.33021 of 2016 vide order dated 08.07.2019.

4. I have considered the submissions made by the counsel for the parties and with their assistance, have gone through the pleadings.

5. The facts which are not in dispute are that the petitioner applied for the post of Math Mistress under the Orthopaedically Handicapped category. The total number of posts which were advertised for the handicapped category were 39 in number with each category of candidate having 13 posts each. The break-up of the posts and the posts which were filled are as follows:-

<i>Sr. No.</i>	<i>Sub-Category</i>	<i>Total Posts</i>	<i>Filled Posts</i>	<i>Vacant Posts</i>
1.	<i>Orthopedically Handicapped,</i>	<i>13</i>	<i>13</i>	<i>0</i>
2.	<i>Visually Handicapped</i>	<i>13</i>	<i>3</i>	<i>10</i>
3.	<i>Hearing Impaired</i>	<i>13</i>	<i>4</i>	<i>9</i>
	<i>Total</i>	<i>39</i>	<i>20</i>	<i>19</i>

6. Admittedly petitioner was not selected being lower in merit in the Orthopaedically Handicapped category. All posts which were advertised for Orthopaedically Handicapped category were filled up. 10 posts of

Visually Handicapped and 9 post of Hearing Impaired totalling 19 posts remained unfilled.

7. Petitioner wants conversion of these posts into the Orthopaedically Handicapped category from Visually Impaired and Hearing Impaired sub category and thereafter filling up the said posts from Orthopaedically Handicapped category including the petitioner. For this claim, reliance has been placed upon the Instructions issued by the Punjab Government initially on 24.11.1982, which has been reiterated subsequently in the Instructions dated 30.12.1996, 16.01.1997 and 02.05.1997 (Annexure P-2). Although these Instructions do not bar conversion of the posts at the very first instance also when the candidates are not available but keeping in view the provisions of Section 36 of the 1995 Act, the said Instructions will have to give way to the statutory provisions as it has specifically been said in Section 36 that in case of non-availability of candidate(s) of any sub-category, the said posts have to be carried forward for a subsequent year of recruitment. It is thereafter if again a candidate is not available of that sub category that the posts can be interchanged to the other sub category. If that be so, the prayer of the petitioner cannot be accepted.

8. As regards the contention of learned counsel for the petitioner that the Instructions dated 24.11.1982 will have to be given force and effect in the light of the provisions of Section 72 of the 1995 Act which is a saving clause, suffice it to say that the said Section 72 only saved the rights which have accrued to a person prior to coming into force of the 1995 Act and not to a person, who has not yet got any right under the earlier Act.

Same would be the status with regard to the Instructions, which had been

issued under the earlier Act.

9. The posts, which are the subject matter of the present writ petition, were advertised in the year 2009 and if that be so, the 1995 Act had already come into force and, therefore, will have full force and applicability for appointment and selection of the posts so advertised. Instructions of the year 1982 shall have to give way to the statutory provisions of the 1995 Act, which clearly bars the interchangeability of the vacancies in the first year of non-availability of a sub category candidate. In the subsequent year if again the same very sub-category candidate is not available, the discretion has been given to the competent authority to convert it to a different sub-category by applying the principle of interchangeability. The claim of the petitioner thus, as pointed out above cannot be accepted.

10. Further in the light of the judgment passed by the Division Bench of this Court in LPA No.1898 of 2014 in Hardeep Singh's case (supra), wherein similar issue, as in the present case, on due consideration, stands rejected, which order has attained finality with the dismissal of the Special Leave to Appeal (Civil) No.33021 of 2016 on 08.07.2019 by the Supreme Court, the claim of the petitioner deserves rejection.

11. In view of the above, finding no merit in the present writ petition, the same stands dismissed.

January 7th, 2020
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No