IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.20107 of 2016 (O&M)
Date of decision:29.01.2020

Harpreet Kaur ... Petitioner

Versus

State of Punjab and others ... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. K.L.Kohli, Advocate
for the petitioner.

Mr. Vikas Mohan Gupta, Addl.A.G.Punjab.

Mr. Arvind Rajotia, Advocate
for respondent No.5.

SUVIR SEHGAL, J.

Petitioner has approached this Court seeking a writ in nature of certiorari for quashing the promotion of respondent No.5 as Senior Assistant, vide order dated 26.12.2012 (Annexure P-14) against vacancy reserved for handicapped persons and for quashing the letter dated 18.07.2014 (Annexure P-18) consigning the representation of the petitioner to record. She has further sought a writ in the nature of mandamus for directing the respondents to consider her name for appointment by promotion against the post reserved for handicapped persons.

Facts, in brief, are that the petitioner is afflicted by polio and the left side of her body is paralyzed since the age of two months as per the medical certificate dated 22.07.1997 (Annexure P-1) and she is permanently

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disabled to the extent of 85%. She graduated in the year 1999. In pursuance to advertisement, Annexure P-2, issued by respondent No.4, the petitioner applied against the two posts of Clerks reserved for handicapped persons. After interview and test, she was selected and issued appointment letter dated 28.08.2000 (Annexure P-4). Respondent No.5 was appointed as Clerk on transfer basis on 28.07.1998 (Annexure P-5). He met with an accident during his service tenure on 17.02.2003, as a result of which he suffered 50% permanent disability. On the basis of medical certificate dated 28.09.2006 (Annexure P-8), an entry regarding disability was made in his service book on 24.09.2010 (Annexure P-9). Vide application (Annexure P-10), he applied for promotion to the post of Senior Assistant against the post reserved for handicapped persons. The petitioner also applied for promotion against the aforesaid post, vide Annexure P-11. Her application was recommended by the Tehsildar Rajpura to respondent No.4 on 10.08.2011. On an advice sought by respondent No.4, vide letter dated 01.02.2012 (Annexure P-13), respondent No.2, advised that no distinction can be drawn between a person who is handicapped before joining service or who becomes handicapped during his tenure of service. Ignoring the claim of the petitioner, respondent no.4 granted promotion to respondent No.5 on 26.12.2012 (Annexure P-14) against reservation roster point no.71. However, respondent no.5 was arrested on 20.11.2013 in FIR case No.32 dated 20.11.2013 under Section 7 read with Section 13(2) of the Prevention of Corruption Act, 1988 registered at Police Station Vigilance Bureau, Patiala. He was, thereafter, convicted and sentenced to five years

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imprisonment with fine of ₹50,000/- by the Special Judge, Patiala, vide judgment dated 27.04.2015 (Annexure P-15). Respondent No.5 was subsequently dismissed from service. After his dismissal from service, petitioner submitted a representation dated 09.05.2014 (Annexure P-16) which was consigned to record and intimation in this regard was sent to the petitioner, vide letter dated 18.07.2014 (Annexure P-18). Petitioner issued a legal notice dated 11.07.2016 (Annexure P-19) which was replied to by respondent no.4, vide memo dated 05.08.2016 (Annexure P-21). She has filed the instant petition seeking quashing of Annexures P-14 and P-18.

Respondents No.1, 3 and 4 in their joint reply have admitted the factual position. It was submitted that case of promotion of petitioner and respondent no.5 had been duly considered in the light of instructions Annexure R-2, R-3 and R-4 issued by respondent no.2. They have justified their action of promoting respondent no.5 by submitting that on the basis of seniority list prepared on 12.12.2011 (Annexure R-1) by the office of respondent no.4, the name of petitioner was at serial no.127 whereas the name of respondent no.5, was at serial no.113. They have further submitted that in compliance of the order dated 27.09.2016 passed by this Court, an office order dated 11.11.2016 has already been prepared regarding the subject matter and sealed in an envelope till the final direction by this Court.

A separate short affidavit was filed by the Department of Social Security and Women & Child Development, Punjab, on behalf of respondent no.2 to the fact that the provisions of the Rights of Persons with

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Disabilities Act, 2016 is being implemented by the department. It was further submitted that the Ministry of Personnel, Public Grievances & Pension, Government of India had issued memo dated 10.06.2009 (Annexure R-1) whereby it was clarified that an employee who acquires disability after entering into service will be entitled to get the benefit of reservation as a person with disability from the date a valid certificate of disability is produced. Respondent no.5 did not file any reply and adopted the reply filed by the State-respondents No.1, 3 and 4.

Counsel for the parties have been heard and record has been perused with their able assistance.

At the preliminary hearing on 27.09.2016, this Court had passed the following order:-

> *"Learned counsel for the petitioner, inter alia, contends that as per instructions dated 10.06.2009, the candidate, who produces certificate of being physically handicapped at the time of joining of service, is to be given preference viz-a-viz the candidate who acquired disability during service.*
>
> *Notice of motion for 25.10.2016.*
>
> *Meanwhile, the respondents are directed to consider the case of the petitioner provisionally which will not create any right in her favour and the same would be subject to decision of this petition.*
>
> *However, the result for the post shall not be declared till the directions are issued by this Court."*

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In pursuance to the said order, respondent no.4, has prepared an office order bearing No.384/Estt. Dated 11.11.2016 regarding the subject matter which according to the said respondent has been kept in a sealed cover till the final decision of this Court.

In view of this situation, writ petition is disposed of with a direction to respondent No.4 to open the sealed cover and declare the result to the promotional post of Senior Assistant within a period of four weeks from the date of receipt of certified copy of this order.

Pending applications, if any, also stand disposed of.

(SUVIR SEHGAL)
JUDGE

January 29, 2020
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Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No

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