

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

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Civil Writ Petition No.22341 of 2017

Date of Decision: January 28th, 2020

Gursharan Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. P.C. Yadav, Advocate
for the petitioner.

Mr. Charanpreet Singh, Assistant Advocate General, Punjab.

Ms. Gursharan K. Mann, Advocate
for respondent No.3.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court praying for quashing of the order dated 07.09.2017 (Annexure P-6) vide which ignoring the claim of the petitioner, who belongs to the Visually Handicapped Category for which category Roster Point No.11 is earmarked, respondent No.3-Charanjit Kaur has been promoted, who belongs to the Orthopaedically Handicapped Category.

2. It is the contention of learned counsel for the petitioner that the post of Senior Assistant had become available, against which petitioner, who belongs to the Visually Handicapped Category, had to be considered at Roster Point No.11, which had become available. Claim of the petitioner has been rejected only on the ground that the petitioner is at seniority No.54, whereas respondent No.3-Charanjit Kaur, who belongs to Orthopaedically Handicapped Category, is at seniority No.42. This conclusion is based upon the seniority only which is stated to have been taken into consideration while relying upon para 11 (1) (vi) of the guidelines dated 24.06.2015

(Annexure R-2) issued by the Department of Social Security and Women and Child Development (Disability Cell). He contends that as per the said instructions and the paragraph referred to in the impugned order, the power has been vested with the head of the establishment to decide as to from which category of the disabled should the post be filled by accommodating such person dependent upon the nature of the post and the level of representation of a specific disabled category in the concerned grade/post etc. The consideration as has been done by the Deputy Commissioner, S.A.S. Nagar-respondent No.2 is only with regard to the aspect of seniority, which is not mentioned to be a relevant factor in the said guidelines. The requirement of consideration of the nature of the post does not even find mention in the impugned order and, therefore, the mandate of the said guidelines on which reliance has been placed, having not been fulfilled, the impugned order dated 07.09.2017 (Annexure P-6) deserves to be set aside.

3. On the other hand, learned counsel for the State as well as the respondent No.3 have asserted that there is proper consideration on the part of the Deputy Commissioner while coming to a conclusion with regard to the post to be filled up from the category of handicap (Orthopaedically Handicapped) vis-a-vis the Visually Handicapped Category. It is contended that the instructions/guidelines dated 24.06.2015 (Annexure R-2) have been specifically referred to in the impugned order and the relevant portion thereof i.e. Clause vi of para 11 (1) has been reproduced. The competent authority having the discretion with regard to the post to be filled up from the category other

than for which the post has been kept reserved at a roster point specified can be varied and in exercise of the said power, the competent authority has taken a decision to fill up the post at Roster Point No.11 through the Orthopaedically Handicapped Category. It is asserted that once the relevant instructions have been referred to and reproduced therein the requirement of consideration as per the instructions are fulfilled. It could not be disputed that the seniority aspect has been primarily taken into consideration while deciding to fill up the post from the Orthopaedically Handicapped Category. Prayer has thus been made for dismissing the writ petition being devoid of merit.

4. I have considered the submissions made by the counsel for the parties and with their assistance, have gone through the instructions/guidelines dated 24.06.2015 (Annexure R-2) as also the impugned order.

5. Para 11 (1) (vi) of the instructions, which is relevant for the purpose of decision of the present case on which reliance has been placed by the Deputy Commissioner, S.A.S. Nagar, Mohali, while passing the impugned order, reads as follows:-

“(vi) If the number of vacancies in a year is such as to cover only one block or two, discretion as to which category of the disabled should be accommodated first shall vest in the head of the establishment, who shall decide on the basis of the nature of the post, the level of representation of the specific disabled category in the concerned grade/post etc.”

6. A perusal of the above would show that in case the number

of vacancies in a year is such as to cover only one block or two blocks, the head of the establishment has been given the discretion to fill up the said post through a category of disability by accommodating any of the three categories specified therein. While doing so, it is not the sheer will/desire or discretion of the head of the establishment to take such a decision. The said discretion has been qualified and restricted to the nature of the post and the level of representation of a specific disabled category in the concerned grade/post etc.

7. It is an admitted position that none of the handicapped category employees is working on the post of Senior Assistant in the office of the Deputy Commissioner, S.A.S. Nagar, Mohali. The said aspect, therefore, is not relevant for the purpose of the present case. The other consideration as provided in the instructions is the nature of the post and obviously the suitability thereon. Not a word has been said in the impugned order with regard to such aspect i.e. the nature of the post and the work required to be performed and the reason why the petitioner, who is visually handicapped person, would not be able to perform the work of such a post i.e. Senior Assistant. In the light of this aspect being absent in the impugned order dated 07.09.2017 (Annexure P-6), the impugned order cannot be said to be fulfilling the requirement of the instructions, which are applicable to the case in hand and on which the competent authority has placed reliance upon.

8. The impugned order, thus, cannot sustain and deserves to be set aside.

9. In view of the above, the present writ petition is allowed and

the impugned order dated 07.09.2017 (Annexure P-6) is hereby quashed.

10. Direction is issued to the Deputy Commissioner, Mohali, to reconsider the claim of the petitioner for promotion to the post of Senior Assistant as per law within a period of six weeks from today.

January 28th, 2020
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No