

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 5084 of 2021**

Gjandra Kumar Namdev S/o Late Sh. Shyam Kumar Namdev Aged About 33 Years R/o 31, Belgiri Basti Balco Nagar, Ward No. 32, Korba Chhattisgarh.

---- Petitioner**Versus**

1. The State Of Chhattisgarh Through The Secretary, Department Of Higher Education, Mantralaya, Mahanadi Bhawan, New Raipur , District Raipur Chhattisgarh.
2. Chhattisgarh Public Service Commission Through Secretary, Shankar Nagar Road, Bhagat Singh Square, Raipur Chhattisgarh.
3. Examination Controller Chhattisgarh Public Service Commission , Shankar Nagar Road, Bhagat Singh Square, Raipur Chhattisgarh.

----Respondents

For Petitioner	:	Mr. Rahul Tamaskar, Advocate
For State	:	Mr. Amrito Das, Additional A.G.
For Respondents No.2 & 3	:	Mr. Anand Mohan Tiwari, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****22/09/2021**

1. The present writ petition has been filed seeking a relief of a direction to the respondents to consider appointment of the petitioner under the physically handicapped category as per Section 34(2) of the **Rights of Persons with Disability Act, 2016**.
2. The petitioner had participated in the recruitment process for the post of Assistant Professor in the advertisement that was issued in January, 2019 (Annexure P/1). The petitioner since he had all the eligibility criteria and also that he belongs to the person with disabilities category had applied for the post of Assistant Professor

(Geography). After the recruitment process was finalized and the final merit list was published, the name of the petitioner finds place in the waiting list and the petitioner's name appears at serial No.1 in the category of persons with disabilities and at serial No. 6 in overall waiting list.

3. The counsel for the petitioner submits that in the subject to which the petitioner had applied i.e. for the post of Assistant Professor (Geography), the respondents had reserved three posts for the physically handicapped persons, of which two posts have been filled up from among the one leg one arm category and the post which was reserved for blind/low vision remain vacant on account of non-availability of any candidate from the said category.
4. According to the petitioner, the respondent authorities therefore should now have converted the said vacancy, which stood for the blind/slow vision to the candidate from different category of physically handicapped available. In that circumstances, since the name of the petitioner appears at serial No.1 in the waiting list, he can get four chance of becoming meritorious. The claim of the petitioner has been made in the light of Section 34(2) of the Act of 2016.
5. Learned counsel for the respondents however opposing the petition submits that Section 34 would be attracted only in case of a backlog vacancy getting unfilled for non-availability of candidates of that category and not otherwise, and as far as the present recruitment the vacancy shows all to be current vacancies. In the event of non-availability of a candidate belonging to the category for which the post

is reserved from the current vacancy, the said vacancy would have to be carried forward and in the next recruitment process, the said post would have to be shown as a backlog vacancy and in case if in that recruitment process, the Department do not get a candidate belonging to the same category only then can it be converted to a different category under the quota for persons with disabilities. The claim of the petitioner therefore at this juncture would not be sustainable. The same view has also been taken by the counsel for the PSC.

6. Having heard the contentions put forth on either side and on perusal of record, admittedly when the advertisement was issued in January, 2019, the advertisement did not reflect any backlog vacancy from among the physically handicapped quota. In the absence of any backlog vacancy reflected in the advertisement, the petitioner ought to have challenge the advertisement at the first instance challenging or claiming a relief for reflecting appropriate backlog vacancies, which are lying vacant from the previous recruitment.
7. The advertisement was issued as stated above in January, 2019. The final select list was published on 17.07.2021, which by itself shows that there was a gap of more than 2½ years in between. The petitioner had sufficient time for questioning the advertisement in so far as not reserving backlog vacancy, if any. Further, what has also to be appreciated at this juncture is that the entire recruitment process from the said advertisement has since been finalized. The select list has also been issued as early as on 17.07.2021.

8. Under the circumstances, at this juncture it would not be proper for this Court to subject the entire recruitment process itself to be tested only on the ground of the alleged action on the part of the respondents in not showing any backlog vacancy when the advertisement was issued, particularly for filling up of the backlog vacancies from among the person with physically handicapped category.
9. Given the aforesaid facts, this Court does not find any strong case made out by the petitioner at this juncture calling for any interference with the select list published on 17.07.2021 or for issuance of any mandamus as has been claimed for by the petitioner.
10. The writ petition accordingly stands rejected.

Sd/-
(P. Sam Koshy)
Judge