

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.12187 of 2018 (O&M)

Reserved on:21.11.2022

Date of Decision.16.12.2022

Abhishek Garg

...Petitioner

Vs

Punjab State Power Corporation Limited and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Kapil Kakkar, Advocate
for the petitioner.

Mr. Adwiteya Grover, Advocate
for PSPCL.

Mr. Sehajbir Singh Aulakh, AAG, Punjab.

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JAISHREE THAKUR J.

1. The instant writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ, order or direction especially in the nature of mandamus, directing the respondents to consider the case of the petitioner for the post of UDC (Gen) against the posts reserved for Physically Handicapped persons, in view of the notification dated 29.07.2013 (P-11) and instructions dated 10.07.2014 (P-10). Further a prayer was made for quashing advertisement dated 17.06.2015 (P-1) to the extent of considering category OL (1 Leg Affect) under Physically Handicapped category instead of BL (Both Legs), being against the spirit and object of the provisions of the Rights of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and the Rights of Persons with Disabilities Act, 2016.

2. Brief facts, as enumerated in the petition, are that respondent No.3 vide CRA No.285/15 dated 17.06.2015 issued advertisement for various posts in the Punjab State Power Corporation Ltd. (PSPCL) for filling up 236 posts of UDC/General (Office Assistant General), out of which 12 posts (6 UDC Gen.+6 backlog/unfilled) were allocated to Physically Handicapped Category. The petitioner herein being eligible applied for the said post under Physically Handicapped category and appeared for the written test. Thereafter, respondent No.3 issued a list of candidates for scrutiny of documents on 11.11.2016, wherein name of the petitioner figured at Sr. No.11. On 11.11.2016, when the petitioner reported for scrutiny of documents, he was asked to produce fresh domicile/physically handicapped disability certificate in proper format by 18.11.2016. Petitioner submitted the documents as asked for in prescribed format on 16.11.2016, however, petitioner herein was not offered appointment on the ground that he is handicapped by both legs whereas in the advertisement, in the categories of disabled under Ortho, the requirement of disability was OL (one leg) and OA (one arm). Aggrieved by the same, petitioner submitted various representations to the authorities for considering his case for appointment to the post of UDC. However, no positive response was received from the concerned quarter thereon, compelling the petitioner to knock doors of this Court by way of instant writ petition.

3. Learned counsel appearing for the petitioner would contend that the petitioner secured 43.06 marks in the written test whereas the last selected candidate, who had been called for scrutiny of documents, obtained 40.53 marks. Despite being in merit, petitioner was refused appointment on the ground that he is handicapped by both legs whereas the requirement as per

advertisement was of one leg. It is argued that representation of the petitioner regarding offer of appointment under Physically Handicapped category was referred to Social Security, Women and Child Development Department, Punjab for advice/opinion and vide letter dated 17.04.2017 issued by Directorate, Social Security, Women and Child Development Department, Punjab, the respondent-Department was directed to consider the case of the petitioner in view of instructions dated 10.07.2014 wherein reference was made to notification dated 29.07.2013 issued by the Government of India according to which a new identified list of 3% reservation for handicapped persons has been issued. It is further argued that vide instructions dated 29.07.2013 issued by the Government of India, while making recruitments for the post of Upper Division Clerk/Lower Division Clerk, categories of disabled suitable for the job include OA, OL, BL, OAL, BL, V.HH, meaning thereby, a person handicapped by both legs in ortho category is eligible/suitable for recruitment to the aforesaid posts. It is also argued that as per the RTI information received by the petitioner, the file was put up before the higher authorities for consideration of case of the petitioner and other similarly situated candidates and as per noting of Chief Engineer/HRD, direction was given that even if the candidates are not eligible for appointment as per the conditions of advertisement but are eligible as per the instructions of Government of India, which has been adopted by the Punjab Government, they are eligible and therefore, their case may be presented before Board of Directors for taking approval. However, as on date, no action has been taken by the respondent-department. The disability of petitioner is not an impediment in performing the duties of Upper Division Clerk and therefore, action of the respondents

in not offering him appointment to the post of UDC is violative of Article 14 of the Constitution of India.

4. Per contra, learned counsel appearing on behalf of the respondents would argue that till the time of publication of advertisement No.CRA-285 dated 17.06.2015 for recruitment to the posts of UDC, instructions dated 29.07.2013 were not adopted by the respondent-Corporation, though Punjab Government adopted the same vide memo dated 10.07.2014. It is submitted that as per the terms and conditions of the advertisement, only OL (one leg), OA (one arm) category candidates were to be considered under Physically Handicapped (Ortho). It is further submitted that the petitioner while applying for the post in question through online registration, mentioned his category as OL and therefore, he misrepresented and misled, which itself is a ground for cancelling his candidature. While applying online the petitioner himself certified that the particulars filled are true, correct and complete to the best of his knowledge and beliefs and nothing has been concealed. In case any of the information is found to be false, incorrect or misleading at any stage, he shall have no claim against cancellation of his candidature and/or taking other legal actions as deemed fit by PSPCL. Therefore, the action of the respondents in not offering appointment to the petitioner herein is fully justified. It is also submitted that representation submitted by the petitioner had been duly considered by Board of Directors in their 73rd meeting held on 02.02.2019 and after due deliberation, case of the petitioner stood rejected. It is argued that the petitioner despite knowing the fact that only OL category is eligible for the said post, participated in the selection process and now he cannot volte face by challenging the said condition of

the advertisement. Moreover, the validity of the panel has already expired on 31.08.2017 and therefore, the petitioner cannot be offered appointment.

5. I have heard learned counsel for the parties and have perused the paper book.

6. A perusal of the application form submitted by the petitioner would reveal that the petitioner applied under OL (one leg) category. It is only when a fresh domicile and disability certificate was asked to be produced, it came forth that the petitioner is handicapped of both legs. The petitioner applied under OL category, fully knowing that he is BL handicapped and therefore, instead of accepting the terms and conditions of the advertisement, he ought to have challenged the advertisement qua disability clause. In other words, petitioner misled and misrepresented, while mentioning in the application form that he falls under OL category. Moreover, while applying online the petitioner himself furnished an undertaking that the particulars filled by him in the application form are true, correct and complete to the best of his knowledge and beliefs and nothing has been concealed and in case, any of the information is found to be false, incorrect or misleading at any stage, he shall have no claim against cancellation of his candidature and/or taking other legal actions as deemed fit by PSPCL. Be that as it may, it is settled position of law that once a candidate participated in selection process, being fully aware of the terms and conditions of the advertisement, he cannot subsequently volte face and challenge the selection criteria. No doubt, there is a notification dated 29.07.2013 issued by the Government of India, according to which, a person with disability of both legs is entitled to be appointed on the post of UDC but the said notification, though adopted by the State Government vide memo dated 10.07.2014, was not adopted by

the respondent-Corporation at the time of publication of the advertisement dated 17.06.2015. Therefore, the advertisement was issued in terms of the notification which was in vogue in the respondent-Corporation at the time of publication of the advertisement, in which petitioner participated for appointment to the post of UDC, being fully aware of the fact that only persons with disability of one leg are eligible for participation. Moreover, case of the petitioner was also put up before the Board of Directors of respondent-Corporation for relaxation, which upon due deliberation stood rejected on 15.02.2019.

7. In view of the aforesaid facts and circumstances, there is no ground made out to issue mandamus as sought by the writ petitioner. Consequently, the instant petition stands dismissed.

(JAISHREE THAKUR)
JUDGE

December 16, 2022
Pankaj*

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No