

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

LPA No. 1436 of 2019 (O & M)

Date of decision: 25.05.2022

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Pepsu Road Transport Corporation and others

....Appellant(s)

Versus

Manjit and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Anupam Singla, Advocate,
for the appellants.

Mr. Naresh Kumar, Advocate,
for Mr. K.S. Dadwal, Advocate,
for respondent No.1.

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab.

G.S.SANDHAWALIA, J.

Challenge in the present letters patent appeal is to the order dated 15.05.2019 passed by the learned Single Judge passed in CWP No. 26046 of 2016, Manjit vs. State of Punjab and others. The writ petition was allowed and the appellant-Corporation was directed to consider the case of the writ petitioner without insisting upon the submission of the medical certificate in accordance with the merit list maintained by the Corporation.

The reasoning given therein by the learned Single Judge to grant the necessary relief is that the writ petitioner was entitled to similar treatment in the hearing handicap category (HH category) as granted to other candidates who had been suffering from similar disability and were granted exemption from the typing test for the posts of Clerks, which were 10 in number advertised for handicapped employees.

Counsel for the appellants has submitted that the writ petitioner (respondent herein) had appeared in the test and did not disclose so in his writ petition that he had failed in the same. It is submitted that he had then approached the Court and, therefore, his conduct as such would not entitle him for the benefit of appointment. It is submitted that similarly situated persons had applied for exemption by getting the necessary certificate and, therefore, the writ petitioner could not be granted the said benefit having failed to furnish the requisite certificate, which was the requirement as per the public notice (Annexure R-2/1).

Mr. Dadwal, on the other hand, justified the order of the learned Single Judge and submitted that the respondent was 100% handicapped as per the medical certificate dated 19.03.1998 (Annexure R-1) issued by the civil surgeon, Gurdaspur and there was a clause of relaxation and, therefore, the learned Single Judge as such was justified to grant the necessary relief.

A perusal of the writ petition would go on to show that the writ petitioner as such sought directions for issuance of appointment letter for appointment on the basis of merit which was meant for the reserved category of HH. Same was on account of the fact that the respondents had deviated from the terms and conditions of the advertisement (Annexure P-2) and that they had short listed candidates for appointment who were below in merit.

It is not disputed that the advertisement dated 14.08.2016 (Annexure P-2) was issued for filling up 10 posts of clerks for handicapped employees in the Head Office of the appellant-Corporation. 6 posts were for orthopedically handicapped and 4 were for HH category. The said

advertisement contained a note whereby instructions dated 02.11.1989 (Annexure P-1) provided for relaxation from the typing test. The said instructions as such provide that a civil surgeon of the district would have to certify that the person was physically handicapped of the type writing and, therefore, exemption may be granted from proficiency in type writing.

The respondents (appellants herein) had issued a notice that the typing test was to be scheduled for 11.11.2016 at 9.00 a.m. at Thappar University, Patiala (Annexure R-2/1). Any candidates who wished to claim exemption from the same as per the instructions issued by the Government of Punjab were to appear in the office alongwith the certificate issued by the competent authority. Apparently, similarly situated persons had got the said certificate issued and counsel for the Corporation has placed on record the certificate dated 11.11.2016 in favour of one Gurmej Singh, who was also an applicant in the same category for the post of the Clerk and a handicap of hearing and had secured 58.375 in merit in contrast to the respondent, who secured 61.555 marks (Annexure P-3). Apparently, the test was held on 11.11.2016 and at that point of time, the writ petitioner did not have the requisite certificate which was to be issued from the civil surgeon.

It was, thus, the objection as such of the Corporation that exemption from the type test could have only been granted if the requisite medical certificate was issued by the civil surgeon of the district concerned. It is, thus, their case that other similarly situated candidates had also submitted the certificates including Gurmej Singh and Tejinder Singh. Certificate in favour of one Rassal Singh was appended as Annexur R-2/2. Plea taken was that after appearing in the typing test which had been conducted and after failing to qualify, the writ petition had been filed.

This aspect as such was not noticed by the learned Single Judge that the interest of another candidate was involved who would also be entitled for consideration on account of the fact that he had furnished the requisite certificate and was immediately below the writ petitioner. The appellant-Corporation had also taken the objection that the said candidate had not been impleaded.

Thus, we are of the considered opinion that the learned Single Judge was not correct as such to grant the benefit to the writ petitioner, though he might be having an handicap of hearing, but there was nothing to show that he was physically handicapped in any manner from type writing since the appointment is to the post of clerk. He was bound by the terms of the advertisement and, therefore, the requisite certificate having not been furnished prior to the holding of the typing test as per the notice dated 29.10.2016, would thus not give him a right to steal march over persons who had complied with the said notice and were entitled for consideration. The Apex Court in ***Karnataka State Seeds Development Corporation Ltd. and another vs. Smt. H.L. Kaveri and others, (2020) 3 SCC 108*** allowed the appeal against the judgment passed by the Division Bench which had granted the benefit to applicant who had secured higher marks in the qualifying examination but had not enclosed the experience certificate at the requisite time, which was the condition of eligibility. It was accordingly held that the interference in the order of the learned Single Judge is not justified since 106 applications were rejected by the Corporation for non-enclosing the self attested copies. Merely by approaching the writ Court, would not be a ground for the Court to exercise jurisdiction under Article 226 of the Constitution of India affecting the rights of candidates who were

otherwise eligible for appointment. The said facts would thus be applicable as it is at the cost of Gurmej Singh, the petitioner would steal the march over him.

In such circumstances, we allow the appeal with a condition that the first option would be given to Gurmej Singh, who is next in merit as per Annexure P-3, since he had enclosed the requisite certificate. However, counsel for respondent No.1 stated that he has been employed elsewhere and would not be interested any longer. In that case if he is not interested to take up the employment on account of the period which has gone by and does not take up the offer within a period of two months, the Corporation will thereafter implement the judgment of the learned Single Judge for the benefit of the respondent-writ petitioner.

The said benefit is being granted on the ground that the writ petitioner is a handicapped person and the post would go vacant as such and it cannot be filled up by any other category and the purpose of advertising and filling up would thus be frustrated if it is allowed to go vacant at this point of time.

The appeal is accordingly partly allowed.

(G.S. SANDHAWALIA)
JUDGE

25.05.2022
shivani

(VIKAS SURI)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No