

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

Date of decision: 18.01.2022

1. CWP No. 7138 of 2017 (O&M)

Vikas and others	versus	...Petitioners
The State of Haryana and another		...Respondents

2. CWP No. 9997 of 2017 (O&M)

Anil and others	versus	...Petitioners
State of Haryana and another		...Respondents

Coram : Hon'ble Mr. Justice Arun Monga

Present : Mr. Rajiv Atma Ram, Senior Advocate assisted by
Mr. Brijesh Khosla, Advocate, for the petitioners
in CWP No. 7138 of 2017.

Mr. D. S. Rawat, Advocate, for the petitioners
in CWP No. 9997 of 2017.

Ms. Shruti Jain Goyal, Deputy Advocate General, Haryana.

Mr. R. K. Malik, Senior Advocate, assisted by
Mr. Sandeep Dhull, Advocate, for the intervenors.

Arun Monga, J.

Grievance of the petitioners, general category job aspirants, seeking equal opportunity in public employment, is qua alleged excessive preference given to group rights of reserved category hopefuls under Article 16(4) of the Constitution of India vis-a-vis violation of their individual rights envisaged under Article 16(1) *ibid*. They claim that reservation beyond permissible limit of 50% has been accorded to the reserved categories. Above titled two writ petitions are being disposed of vide this common order and judgment as issues involved therein are similar, if not the same.

2. Petitioners *inter alia* seek issuance of a writ in the nature of mandamus to hold/ direct that reservation in direct recruitment on the posts of Veterinary Livestock Development Assistant (VLDA) beyond 50% is illegal. Further direction has also been sought commanding the respondents to consider the candidature of the petitioners for appointment in General Category against vacant posts, which have remained un-filled in the reserved category of physically handicapped persons, on account of non-availability of reserved category candidates.
3. Clipped factual narrative, shorn of unnecessary details, as well as record/ annexures referred herein, is from CWP No. 7138 of 2017.
4. Vide advertisement (Annexure P-2) dated 10.07.2015, total 797 posts (though petitioners claim it to be 797+68, but more of it later) of Veterinary Livestock Development Assistants (VLDA) were advertised. Category wise break up of entire lot of 797 is extracted here in below:

“Cat. No. 14 :

797 posts of Veterinary Livestock Development Assistant (Re-advertised).

GEN = 198, SC = 133, BCA = 106, BCB = 58, SBC = 78, EPBG = 79, ESM Gen = 61 (5 backlog), ESM SC = 20 (4 backlog), ESM BCA = 17 (1 backlog), ESM BCB = 24, OSP GEN = 7, OSP SC = 8, OSP BCA = 4, OSP BCB = 4;

Total = 797

PHC VH = 23 (15 backlog), OH = 22 (15 backlog), HH = 23 (15 backlog).”

5. Petitioners, being eligible, applied in the open General category. Written examination/ interviews were conducted and respondent No. 2 declared the final result (Annexure P/5) on 24.03.2017. They remained unsuccessful. Though 19 out of the 32 petitioners were already working on contractual basis on same posts, yet they did not make it. Hence the writ petitions.
6. Succinctly, material assertions of petitioners are that total reservation beyond 50% was impermissible, unconstitutional and contrary to the statutory Service Rules and the law laid down by the Supreme Court of

India; there could not have been 10% reservation for SBC (78 seats) and 10% EBPB (79 seats); that it is not possible for a physically handicapped person to perform the duties of VLDA; that the vacancies reserved for Physically Handicapped category should be filled up from the General category candidates and that the petitioners who have rendered contractual service on same post are entitled to preferential consideration for their selection.

7. In the return, it is pleaded that petitioners have miscalculated the number of posts advertised. Hence their assertion that reservation is beyond permissible limit is false. The reservations are as per the notification dated 15.07.2014 (Annexure P/10). The said notification has not been questioned/ assailed by the petitioners. It is conceded that in the final result (Annexure P/10), 71 posts (out of 79) of Economically Backward Persons in General category (EBPG) remained vacant due to non-availability of suitable candidates. 10% reservation in EBPG is under challenge before Division Bench of this Court in a bunch of writ petitions, lead case being CWP No. 18514/2016 titled Kalindi Vashishtha v. State of Haryana and others. The Division Bench vide an order dated 07.12.2017, has stayed the implementation of notification dated 27.09.2013, whereby 10% reservation was introduced for EBPG. No appointments under the EBPG category were actually made after passing of the stay order dated 07.12.2017, except 8 candidates out of 79, whose result was declared prior to 07.12.2017. Later, the remaining 71 vacant posts initially reserved for EPBG category came under the General Pool due to reservation for Economically Weaker Sections. These were added to the fresh requisition sent to and advertised by the HSSC in the year 2019 under EWS category. These 71 posts now thus stand actually filled up by selection/appointment of candidates from the EWS reserved category. As regards the 78 posts reserved for SBC

category, vide instructions dated 05.06.2019 Annexure R-2, these posts were later treated under the General/Unreserved Category and filled up accordingly. The contractual employees have no preferential right for appointment on regular basis as claimed by the petitioners. Writ petitions have been thus opposed.

8. I have heard the rival contentions and gone through the record.
9. Mr. Rajiv Atma Ram, learned Senior Advocate would foremost emphatically canvass that entire selection could not have been proceeded with after 10.10.2017 i.e. the day a coordinate bench then seized of this matter had granted status quo order. Therefore, any selection after that date is liable to be set aside on that ground alone, being in violation and contempt of court order.
10. Next, learned counsel for the petitioners would contend that, as per advertisement, apart from 797 posts, there were 68 post for physically handicapped candidates making a total of 865 posts. Thus maximum 398 posts being 50% of out of $797+68=865$ posts could only have been filled up on the basis of reservation. However, only 198 posts were kept for general category. The reservation of 599 posts $[(797+68)-198]$ i.e. 77% of total advertised posts was/is illegal, the same being beyond the 50% ceiling laid down by the Supreme Court. That apart, 50% cap of reservation has statutorily been prescribed under Rule 19 of the Haryana Veterinary Headquarters and Field (Group 'C') Service Rules, 1999. SBC reservation was struck down by the Supreme Court in Ram Singh and others vs Union of India and others reported as 2015(2) SCT 424. The reservation of 78 posts for SBC in the Advertisement (Annexure P-2) is vitiated. Similarly, the EBPB reservation of 79 posts was illegally made as Article 16(6) of the Constitution of India was amended only on 14.01.2019 to permit the State to make reservation in favour of Economically Weaker Sections of citizens

other than those mentioned in Clause (4) thereof (viz. Backward Classes of citizens). Thus, prior to 14.01.2019, it was impermissible and the State was not legislatively competent to make reservation for Economically Backward persons.

11. Learned senior counsel would also argue that it is not possible for Physically Handicapped persons to perform the duties of VLDA as enumerated in the petition. Therefore, direction ought to be issued to the respondent State to re-consider whether physically handicapped persons are suitable for appointment to the posts of Veterinary Livestock Development Assistant, which are field jobs.

12. Mr. D.S. Rawat learned advocate appearing for the petitioners in CWP 9997 of 2017 adopted the arguments of Mr. Rajiv Atma Ram. In addition, he would strenuously lay emphasis on para 19 of his petition to contend that there is specific averment that physically handicapped persons are barred from applying for admission in educational courses in Veterinary sciences. The same has not been denied in the corresponding para of the written statement. In view of the said candid admission, his argument is that as a necessary corollary, physically handicapped persons ought to be barred from applying on the post of VLDA. All the PHP posts must be thus diverted to general category.

13. Per contra, Ms. Shruti Jain Goyal, learned Deputy Advocate General would canvass that the claim of the petitioners regarding treating the SBC posts (78) as General Category posts stands satisfied in view of Instructions dated 05.06.2019 (Annexure R-4). Pursuant to said Instructions, 78 SBC reserved posts were diverted to General Category and filled up from the candidates in the General Category. One petitioner in CWP No.9997/2017 and 16 Petitioners in CWP No. 7138 of 2017 have also been selected. Under the reservation policy for Economically Weaker Sections (EWS), 71 unfilled

posts initially reserved for EPBG have been rightly filled up by selection/ appointment of candidates from the EWS reserved category. None of the selected candidates have been impleaded as a party, though their selection has been challenged. The prayer to that extent, in both the petitions, cannot be accepted without hearing all the necessary parties. The claim that it is not possible for Physically Handicapped persons to perform the duties of VLDA is also based on conjectures and surmises and is thus untenable. In any case, both the writ petitions have been filed by candidates after unsuccessful participation in the selection process, which had attained finality after declaration of the final result, and on this ground alone the same ought to be dismissed.

14. I shall now proceed to render my opinion on rival submissions with reasons therefor.

15. No doubt, the petitioners participated in the process for selection and having remained unsuccessful filed the instant writ petition. In the normal course, the petitioners may though ordinarily be precluded from challenging the process for selection, but it does not necessarily mean that the Court must on that count alone keep its eyes shut to a patent wrong in a given case. If satisfied, court can still exercise its discretion of judicial review to see if there is any legal infirmity and pass an appropriate order to set it right.

16. Let us first see if, as contended by the learned senior Advocate, the entire selection could not have been proceeded with after 10.10.2017 i.e. the day a coordinate bench seized of this matter had granted status quo order and/or any selection after that date is liable to be set aside on that ground alone, being in violation and contempt of court order.

16.1 During pendency of the petition, CM applications No. 8744, 8745 and 8765-66 of 2017 were filed seeking interim relief. My learned brother,

Amol Rattan Singh, J. vide an order dated 10.10.2017 directed status quo, that was to enure till the next date. Said order is as below:-

“C.M. No.8744-8745-8765-8766-2017

Mr. Atma Ram, learned counsel for the petitioners, points out to the instructions of the Haryana Government dated 15.7.2014(Annexure P-14), in para 6 of which it has been stipulated that other than the posts reserved for Scheduled Castes categories, if other reserved category posts remained unfilled in any particular selection due to want of eligible candidates, two attempts at recruitment shall be made to get eligible candidates, after which the posts will be de-reserved in the subsequent recruitment process with appointments to be made from the general category on merits. (If no eligible candidate from these reserved categories is available in the subsequent recruitment process also, thereafter the de-reservation qua those categories would be permanent).

Notice in the applications.

Mr. Hitesh Pandit, Addl.AG, Haryana, accepts notice on behalf of the respondents and seeks time to file replies to the applications. Reply to the applications be filed before the next date of hearing.

In the meanwhile, status quo would enure till that date only.

To be shown in the urgent list.

Main case

Learned counsel for the State has filed a reply on behalf of respondent No.2 in CWP No.7138 of 2017, a copy of which has been given to learned counsel for the petitioner and is consequently, taken on record.

Adjourned to 15.11.2017.

Reply of the Government be positively filed by that date, in order to determine as to whether or not the interim stay granted today should continue or not. Advance copy of the reply be given to learned counsel for the petitioner.

A photocopy of this order be placed on the files of the other connected cases.”

16.2 It appears that on the adjourned date i.e. 15.11.2017 and even on subsequent few adjourned dates i.e. 11.12.2017, 03.07.2018, 17.08.2018 and so on and so forth until December- 2021, the case was not taken up for hearing or perhaps the turn did not come. Be that as it

may, there was no determination by the bench on 15.11.2017 or thereafter, as to whether interim order should continue or not. On the other hand it was specifically made clear in the order dated 10.10.2017 that said order was to enure only up to 15.11.2017. None of the parties either filed any application or otherwise made any prayer for interim order to be confirmed during the entire interregnum. That apart, a Division Bench of this Court, in a bunch of writ petitions, including the lead case CWP No. 18514/2016 titled Kalindi Vashishtha v. State of Haryana and others, vide an order dated 07.12.2017, had initially stayed the implementation of notification dated 27.09.2013, whereby 10% reservation was introduced for EBPG. However, subsequently in the same proceedings, vide an order dated 18.05.2018, State was given a go ahead to complete the selection under the EBPG category, the process for which had though been already initiated before the passing of the order dated 07.12.2017, but no appointments under the EBPG category were actually made after passing of the said court order.

16.3 Later on, as noted above, due to reservation policy for Economically Weaker Sections (EWS), the remaining 71 vacant posts initially reserved for EPBG were added to the fresh requisition sent to and advertised by the HSSC in 2019 under EWS category and recruitment test had been taken by the HSSC. It is not disputed that these 71 posts thus reserved for Economically Weaker Sections(EWS) now stand actually filled up by selection/appointment of candidates from the EWS reserved category. As regards 78 SBC posts, selection was concededly not made. In any case, same were later diverted to general category. Seen in totality, there is thus no substance in the argument of

the learned senior counsel that there has been any violation of the court order, either in letter or spirit.

17. Adverting now to the contention of the learned counsel for the petitioners that reservation for Physically Handicapped persons is bad in law and that it is not possible for them to perform the duties of VLDA's, as more specifically enumerated in para 12 (vii) of CWP 7138/2017. In the connected CWP No. 9997 of 2017 - "Anil and others Versus State of Haryana and others", it is also pleaded that as per Veterinary Council of India Rules, Physically Handicapped persons are not eligible to seek admission in 2 years Veterinary Livestock Development Assistants Diploma Course. Resultantly, they are not even eligible for applying on the post of VLDA.

17.1 I am unable to accept the aforesaid contention.

17.2 The posts of VLDA are governed by Haryana Veterinary Headquarter and Field (Group-C) Service Rules, 1999. The relevant provisions of the Rules are reproduced hereunder:-

“Rule 7 :
No person shall be appointed to any post in the Service, unless he is in possession of qualifications and experience specified in column 3 of Appendix B to these rules in the case of direct recruitment and those specified in column 4 of the aforesaid Appendix, in the case of persons appointed other than by direct recruit.
Provided that the case of appointment by direct recruitment, the qualifications regarding experience shall be relaxable to the extent of 50 percent at the discretion of the commission in case sufficient number of candidates belonging to Scheduled Castes, Backward Classes, Ex-Serviceman and Physical handicapped categories possession the requisite experience are not available to fill up the vacancies reserved for them after recording reasons for so doing in writing.”

**Appendix ‘B’
(See Rule 7)**

27	Veterinary Livestock Development Assistant	By Direct Recruitment (i) Matric or its equivalent from any recognized university/ Board/ Institution.	By Promotion: i) Matric or its equivalent from any recognized university/ Board/
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		(ii) Two years Veterinary Livestock Development Assistant Diploma course from any recognized university; (iii) Knowledge of Hindi upto Matric standard.	Institution. (ii) Two years Veterinary Livestock Development Assistant Diploma course from Haryana Agriculture, Hisar or any recognized university; (iii) Five years experience as Group 'D' employee. By transfer/ deputation Matric or its equivalent from any recognized university/ Board/ Institution. (ii) Two years Veterinary Livestock Development Assistant diploma course from Haryana Agriculture, Hisar or any recognized university; (iii) Knowledge of Hindi upto Matric standard (iv) Five years experience as Veterinary Livestock Development Assistant.
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It may thus be noted that prescribed qualification for VLDA is Matric with diploma.

17.3 Regulation 7(9) of the Veterinary Council of India (Minimum standards of Veterinary Education) Regulations reads as under:-

“Regulation 7(9) :

A candidate shall not be allowed admission to B.V.Sc. & A.H. Degree Course including those admitted under 15% reserved quota of Veterinary Council of India, if he/she suffers disabilities in physical fitness as listed below:-

- (a) *Disability of total body including disability of chest/spine more than 50%.*
- (b) *Disability of lower limb of more than 50%.*
- (c) *Disability of upper limb.*
- (d) *Visually handicapped candidates and those with hearing disability.*
- (e) *Candidates with progressive diseases like myopathies etc.*
- (f) *Disabilities which otherwise would interfere in the performance of the duties of a veterinarian.”*

17.4 Perusal of Regulation 7(9) *ibid* would reveal that it is applicable only for admission to B.V.Sc. & A.H. Degree Course. It does not help the petitioners in their claim to the effect that Physically Handicapped persons are *per se* not eligible to seek admission in 2 –year Diploma Course for Veterinary Livestock Development Assistants. Petitioners’ reliance thereon is thus wholly misplaced. Prescribed qualification for VLDA is not degree but Matric with diploma.

17.5 It is best left to the competent Rule making administrative authorities to prescribe the qualifications and eligibility criteria for appointment to various posts. It is of course expected of them to take into consideration the nature of the job and duties attached to the post and other relevant circumstances and then decide whether or not physically handicapped persons are capable of performing those duties/ functions and what duties to be assigned to them in accordance with their special abilities. The relevant rules applicable herein and framed by the competent authority do not prohibit appointment of physically handicapped persons to the post of Veterinary Livestock Development Assistants. It implies the satisfaction of the competent Rule making authority that physically handicapped persons are also competent and capable of performing the functions/duties of the post in question, though may be with some difficulty in some out of them, nonetheless, they still can be hired. Rules in any case are not under

challenge. I find no justifiable reason for taking a contrary view and substitute the same for the decision of the competent Rule making authority. No judicial intervention is thus warranted qua the same, so as to give any direction to the contrary.

18. Let us now come to the core issue and examine whether reservation in all categories has indeed exceeded or can it exceed 50% of the total number of vacancies. In order to do so, one would have to first resolve the conflict qua the total number of posts advertised vide advertisement dated 10.07.2015 (P/2).

18.1 Learned senior counsel strenuously argued that total 797 posts, plus 68 posts for PHP were advertised. Out of 797+68, only 198 posts were kept for open general category candidates. Meaning thereby, rest of 667 posts were specifically reserved for various categories. To be noted here that the genesis of the advertisement is requisition letter for recruitment sent by the department to HSSC vide memo 6019 dated 25.06.2015 (R/1). The relevant part of said requisition letter is as below:-

“Requisition for the Recruitment of candidates for Appointment to the Post (s) of Veterinary & Livestock Development Assistant :

1.	(a)	Designation of the post	Veterinary & Livestock Development Assistant	
	(b)	Number of posts to be filled	787 + (10 Backlog) = 797	
2. to 17	xx	xxx	Xxx	
18.	Are any vacancies reserved for members of Scheduled Castes, etc. of Haryana, which is not adequately represented in service, if so, how many are reserved for: (i) Scheduled Castes: (ii) Scheduled Tribes: (iii) Other Backward Classes declared as such in the letters/ memoranda issued by government from time to time.	Gen		198
		SC		133
		BC-A		106
		BC-B		58
		Special BC		78
		EBP in Gen Cate.		79
		ESM-Gen	56+(5 backlog) =	61
		ESM-SC	16+(4 backlog) =	20
		ESM-BC-A	16+ (1 backlog) =	17
		ESM-BC-B		24
		OSP-Gen		7
		OSP-SC		8

	<i>b) Are any vacancies reserved for Ex-servicemen.</i>	<i>OSP-BC-A</i>	<i>4</i>
		<i>OSP-BC-B</i>	<i>4</i>
		<i>Total =</i>	<i>787+(10 backlog) = 797</i>
		<i>PHC-Visually</i>	<i>8+(15 backlog) = 23</i>
		<i>PHC-Orthopedically</i>	<i>7 +(15 backlog) = 22</i>
		<i>PHC-Hearing Impartment</i>	<i>8+ (15 backlog) = 23</i>
		<i>Note : Please, while considering candidates for reservation with Disabilities also look into Govt. instruction issued vide No. 22/10/2013 – IGSIII, dated 15.07.2014.</i>	
<i>19 and 20 xxx</i>		<i>xxx</i>	

Note :- This also includes 25 vacancies arising between 01.07.2015 to 31.12.2015 and 3% of vacancies shall be reserved horizontally for persons with disabilities suffering from (i) Blind or low vision (ii) Hearing impairment (iii) Locomotor disability or cerebral palsy and these post are included in total Number of posts.”

18.2 In the return filed by respondents, to which no replication has been preferred, it has been specifically averred that 68 posts which were reserved for physically handicapped category candidates have already been merged into 797 posts amongst all categories proportionately. The same were not again advertised and are not beyond 797 posts.

18.3 Overall perusal of the requisition letter vis-à-vis “note” given therein shows that petitioners have actually miscalculated the total of advertised posts. HSSC being recruitment agency of the department could not have gone against the mandate given as per requisition letter, which clearly states the total posts as 797.

19. Adverting now to the extent of reservation. At this juncture, it will first be apposite to look at the Haryana Government instructions dated 15.07.2014 Annexure P-14, of which the relevant parts are extracted below:

“xxxx The State Government on reconsideration has now decided to give reservation in direct recruitment as well as in promotion under Government/Government Undertakings & Local Bodies and in admission in Government/Government Aided Educational/Technical/Professional Institutions to the following categories as per details given below:-
xxx xxx

In case of direct recruitment in class III and IV posts:

<i>Sr.No.</i>	<i>Category</i>	<i>Quantum of reservation</i>	<i>Roster points</i>
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(a)	Scheduled Castes	20%	5-10-15-20-25-30-35-40-45-50-55-60-65-70-75-80-85-90-95 and 100
(b)	Backward Classes (A)	16%	6-12-19-26-32-38-44-49-56-62-68-74-79-86-92 and 99
(c)	Backward Classes (B)	11%	9-18-27-36-46-54-63-72-81-89 and 98
(d)	Special Backward Classes	10%	7-17-29-39-48-59-69-78-88 and 97
(e)	Economically Backward Persons in General Castes Category	10%	4-14-24-34-43-53-66-76-83 and 94

2. There will be horizontal reservation for ex-servicemen/freedom fighters/outstanding sports persons as under:-

In case of direct recruitment in class III & IV posts:

Sr.No.	Category	Quantum of reservation	Roster points
(a)	Ex-servicemen (SC)	2%	20 and 60
(b)	Ex-servicemen (BC 'A')	2%	19 and 44
(c)	Ex-servicemen (BC 'B')	3%	27-54 and 81
(d)	Ex-servicemen (General)	7%	8-16-37-52-64-73 and 84
(e)	Outstanding Sports Persons (SC)	1%	25
(f)	Outstanding Sports Persons (BC 'A' & 'B')	1%	32 in the first block of 100 posts and 63 in the next block of 100 posts
(g)	Outstanding Sports Persons (General)	1%	91
(h)	Freedom fighters and their children/grand children	2%	Xxxx

Xxx

xxx

6. xxxx In case of the class II, III and IV posts of Scheduled Castes category, no de-reservation is allowed and all unfilled vacancies will be carried forward to be filled up in future recruitment. If the General category posts of roster points subsequent to the roster points of these Scheduled Castes category posts have been filled up, then these Scheduled Castes category vacancies will be called the backlog vacancies.

In case of all other reserved categories, if two attempts of recruitment failed to get eligible candidates, these posts shall be de-reserved and will be filled up in the subsequent recruitment process from general category on merit if no eligible candidate from these reserved categories is available in the subsequent recruitment process also. Such de-reservation will be permanent and no recouping of posts will be done in case of such de-reservation.

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13. As per provisions contained in the Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995 and clarifying certain issues including procedural matters, the following provisions are made with regard to reservation for persons swith disabilities (physically handicapped persons) in posts and service under the Government of Haryana.

These instructions shall supersede all previous instructions issued on the subject so far.

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L) INTER SE EXCHANGE AND CARRY FORWARD OF RESERVATION IN CASE OF DIRECT RECRUITMENT:

- a) Reservation for each of the three categories of persons with disabilities shall be made separately. But if the nature of the vacancies in an establishment is such that a person of a specific category of disability cannot be employed, the vacancies may be interchanged among the three categories with the approval of the Department of Social Justice & Empowerment and reservation may be determined and vacancies filled accordingly.
- b) if any vacancy reserved for any category of disability cannot be filled due to non-availability of a suitable person with that disability or, for any other sufficient reason, such vacancy shall not be filled and shall be carried forward as a 'backlog' reserved vacancy to the subsequent recruitment year.
- c) **In the subsequent recruitment year, the 'backlog' reserved vacancy shall be treated as reserved for the category of disability for which it was kept reserved in the initial year of recruitment. However, if a suitable person with that disability is not available, it may be filled up by interchange among the three categories of disabilities. In case no suitable person with disability is available, for filling up the post in the subsequent year also, the employer may fill up the vacancy by appointment of a person other than a person with disability. If the vacancy is filled up by a person with disability of the category for which it was reserved or by a person of other category of disability by inter se exchange in the subsequent recruitment year, it will be treated to have been filled by reservation. But if the vacancy is filled by a person other than a person with disability in the subsequent recruitment year, reservation shall be carried forward for a further period upto two recruitment years, whereafter the reservation shall lapse. In these two subsequent years, if situation so arises, the procedure for filling up the reserved vacancy shall be the same as followed in the first subsequent recruitment year.**

In order to ensure that cases of lapse of reservation are kept to the minimum, any recruitment of the disabled candidates shall first be counted against the additional quota brought forward from previous years, if any, in their chronological order. If candidates are not available for all vacancies, the older carried forward reservation would be filled first and the relatively later carried forward reservation would be further carried forward.

Xxxx

xxxxx” (Emphasis supplied)

19.1As per advertisement in question, in all 797 posts were advertised, the vertical and horizontal bifurcation thereof is under :-

Sr. No.	Main Category/ Open Category and Vertical Reservation	Horizontal Reservation / Bifurcation
1.	General Category	Main – 198

	<i>Total : 266 posts</i>	<i>Ex-Servicemen : 61 (5 backlog) Outstanding Sports Persons: 7</i>
2.	<i>SC Category Total : 161 posts</i>	<i>Main -133 Ex-Servicemen : 20 (4 backlog) Outstanding Sports Persons : 8</i>
3.	<i>BC-A Category Total : 127 posts</i>	<i>Main : 106 Ex-Servicemen : 17 (1 backlog) Outstanding Sports Persons: 4</i>
4.	<i>BC-B Category Total : 86 posts</i>	<i>Main : 58 Ex-Servicemen: 24 Outstanding Sports Persons: 4</i>
5.	<i>Special Backward Class Total : 78 posts</i>	<i>78 posts</i>
6.	<i>Economically Backward Persons in General Category Total : 79 posts</i>	<i>79 posts</i>

19.2.HORIZONTALITY OF RSRVATION FOR PERSONS WITH DISABILITIES:

Reservation for backward classes of citizens (SCs and BCs) is what we call as vertical reservation, whereas the reservation for categories such as persons with disabilities and ex-servicemen is called horizontal reservation. Horizontal reservation cuts across vertical reservation (in what is called inter-locking reservation). Persons selected against the quota for persons with disabilities have to be placed in the appropriate category viz. SC/BC/General candidates depending upon the category to which they belong in the roster meant for reservations of SCs/BCs. Illustratively, if in a given year there are two vacancies reserved for persons with disabilities and of those two appointed, one belongs to a Scheduled Caste and the other to general category, then the disabled SC candidate shall be adjusted against the SC point in the reservation roster and the general candidate against unreserved point in the relevant reservation roster. In case, none of the vacancies falls on point reserved for the SCs, the disabled candidate belonging to SC shall be adjusted in future against the next available vacancy reserved for SCs.

Since the persons with disabilities have to be placed in the appropriate category viz. SC/BC/General in the roster meant for reservation of SCs/BCs, their application form must indicate whether they belong to SC/BC or General category.

19.3 Reservation for ESM, OSP and PHC is horizontal. Posts in these categories are taken out proportionately from the overall common pool of vacancies and diverted vertically for reserved categories i.e. SC, BC-A and BC-B. Horizontal reservation is thus interlocking and cuts across into bigger lot of overall common pool of vacancies, being integral part and parcel thereof. The posts under horizontal reservation, if remain unfilled, revert to the same very main category i.e. open or reserved within which they are initially interlocked. Illustratively, ESM-GEN posts, if remained vacant, will revert to General Category and ESM-SC, if remained vacant, will revert to SC category. All posts under horizontal reservation cannot thus be diverted towards General Category. Reservation for ESM and OSP has been provided by the State Government by issuing administrative instructions. Diversion thereof likewise is also governed by instructions issued by the State Government in this regard.

19.4 Likewise, other Horizontal reservations for categories like Ex-Servicemen and Outstanding Sports Persons also cut across vertical reservation (inter-locking reservation). Persons selected against such other horizontal reservation quota have also to be placed in the appropriate category viz. SC/BC/ General candidates depending upon the category to which they belong in the roster meant for reservations of SCs/BCs.

19.5 In this context one must also keep in mind the following authoritative relevant dicta of Apex court in case titled **Anil Kumar Gupta and others v. State of U. P. and others** – 1995 (5) SCC 173, wherein, by explaining/ illustrating the concept of overall reservation as against compartmentalized reservation, detailed steps to be undertaken while filling up seats for vertical and horizontal reservation have been laid down as under:-

“17. On a careful consideration of the revised notification of December 17, 1994 and the aforementioned corrigendum issued by the Lucknow University, we are of the opinion that in view of the ambiguous language employed therein, it is not possible to give a definite answer to the question whether the horizontal reservations are overall reservations or compartmentalised reservations. We may explain these two expressions. Where the seats reserved for horizontal reservations are proportionately divided among the vertical (social) reservations and are not inter-transferable, it would be a case of compartmentalised reservations. We may illustrate what we say: Take this very case; out of the total 746 seats, 112 seats (representing fifteen per cent) should be filled by special reservation candidates; at the same time, the social reservation in favour of Other Backward Classes is 27% which means 201 seats for O.B.Cs; if the 112 special reservation seats are also divided proportionately as between O.C., O.B.C., S.C. and S.T., 30 seats would be allocated to the O.B.C. category; in other words, thirty special category students can be accommodated in the O.B.C. category; but say only ten special reservation candidates belonging to O.B.C. are available, then these ten candidates will, of course, be allocated among O.B.C. quota but the remaining twenty seats cannot be transferred to O.C. category (they will be available for O.B.C. candidates only) or for that matter, to any other category; this would be so whether requisite number of special reservation candidates (56 out of 373) are available in O.C. category or not; the special reservation would be a water tight compartment in each of the vertical reservation classes (O.C., O.B.C, S.C. and S.T.). As against this, what happens in the overall reservation is that while allocating the special reservation students to their respective social reservation category, the overall reservation in favour of special reservation categories has yet to be honoured. This means that in the above illustration, the twenty remaining seats would be transferred to O.C. category which means that the number of special reservation candidates in O.C. category would be $56+20=76$. Further, if no special reservation candidate belonging to S.C. and S.T. is available then the proportionate number of seats meant for special reservation candidates in S.C. and S.T. also get transferred to O.C. category. The result would be that 102 special reservation candidates have to be accommodated in the O.C. category to complete their quota of 112. The converse may also happen, which will prejudice the candidates in the reserved categories. It is, of course, obvious that the inter se quota between O.C., O.B.C., S.C and S.T. will not be altered.

18. Now coming to the revised notification of December 17, 1994, it says that "horizontal reservation be granted in all medical colleges on total seats of all the courses..." These words are being interpreted in two different ways by the parties: one says it is overall reservation while other says it is compartmentalised. Paragraph 2 says that the candidates

selected under the aforesaid special categories "would be kept under the categories of Scheduled Castes/ Scheduled Tribes/Other Backward Classes/ General to which they belong. For example, if a candidate dependant on a freedom fighter selected on the basis of reservation belongs to Scheduled Castes, he will be adjusted against the seat reserved for Scheduled Castes". This is sought to be read by the petitioners as affirming that it is a case of compartmentalised reservation. May be or may not be. It appears that while issuing the said notification, the Government was not conscious of the distinction between overall horizontal reservation and compartmentalised horizontal reservation. At any rate, it may not have had in its contemplation the situation like the one which has arisen now. This is probably the reason that this aspect has not been stated in clear terms.

19. It would have been better - and the respondents may note this for their future guidance - that while providing horizontal reservations, they should specify whether the horizontal reservation is a compartmental one or an overall one. As a matter of fact, it may not be totally correct to presume that the Uttar Pradesh Government was not aware of this distinction between "overall horizontal reservation" and "compartmentalised horizontal reservation", since it appears from the judgment in Swati Gupta that in the first notification issued by the Government of Uttar Pradesh on May 17, 1994, the thirty percent reservation for ladies was split up into each of the other reservations. For example, it was stated against backward classes that the percentage of reservation in their favour was twenty seven per cent but at the same time it was stated that thirty per cent of those seats were reserved for ladies. Against every vertical reservation, a similar provision was made, which meant that the said horizontal reservation in favour of ladies was to be a "compartmentalised horizontal reservation". We are of the opinion that in the interest of avoiding any complications and intractable problems, it would be better that in future the horizontal reservations are compartmentalised in the sense explained above. In other words, the notification inviting applications should itself state not only the percentage of horizontal reservation(s) but should also specify the number of seats reserved for them in each of the social reservation categories, viz., S.T., S.C., O.B.C. and O.C. If this is not done there is always a possibility of one or the other vertical reservation category suffering prejudice as has happened in this case. As pointed out hereinabove, 110 seats out of 112 seats meant for special reservations have been taken away from the O.C. category alone - and none from the O.B.C. or for that matter, from S.C. or S.T. It can well happen the other way also in a given year." (emphasis supplied).

19.6 Advertisement (Annexure P-2) herein inviting applications for the posts does not specify whether horizontal reservation was/is "overall horizontal reservation" and "compartmentalised horizontal reservation". Further, it does require the candidates applying under the quota of Horizontal reservation to indicate whether they belong to SC/BC or General category. Thus advertisement Annexure P-2 herein does not conform to the directions of the Apex Court in Anil

Kumar Gupta *supra* and also the object/spirit of the aforesaid own instructions Annexure P-14 issued by the State of Haryana. The conduct of the respondents in violating the aforesaid directions of the Supreme Court and their own instructions Annexure P-14 *ibid* is despicable. For future guidance, the official respondents would do better by strictly ensuring that such violation is not repeated henceforth.

19.7 As noted above, the persons appointed against the quota of horizontal reservation have to be placed in the appropriate category viz. SC/BC/General in the roster meant for reservation of SCs/BCs. It is, therefore, necessary to direct that qua the posts of horizontal reservation, the future advertisements should also require the candidates applying against the posts of horizontal reservation to indicate whether they belong to SC/BC or General category.

19.8 Reverting to the facts in hand, 198 were for open General category and remaining 599 i.e. 75.15% for various reserved categories (including the backlog of 55 posts in reserved categories). Later, however, the 78 vacancies initially reserved for SBC category were treated under the General/Unreserved Category and filled up accordingly. As regards the vacancies initially reserved for Economically Backward Persons in General category (EBPG), 71 (out of 79) remained vacant due to non-availability of suitable candidates. As already noted above, these 71 posts reserved for Economically Weaker Sections (EWS) now stand actually filled up by selection/ appointment of candidates from the EWS reserved category. Only one candidate against the 68 vacancies, in reserved category for Physically handicapped was found suitable and selected/ appointed. The single candidate selected in this reserved

category has to be treated against one of the 45 backlog/ carried forward vacancies. Resultantly, 67 vacancies reserved for Physically Handicapped persons are still unfilled, including the backlog/ carried forward 44 vacancies.

19.9 In nut-shell, the factual position emerging thus is that exclusive of the backlog of 55 reserved vacancies, the advertised total current vacancies were 742 (797-55). Out of those, 198 were for the open General category and the remaining 544 i.e. 73.31% were reserved for the various reserved categories. From the total 797 vacancies advertised, 730 stand already filled up and 67 vacancies reserved for Physically Handicapped persons remained/remain unfilled. In the 730 filled up vacancies, only 276(198+78) have been filled up from the Open General category candidates and the remaining 454 i.e. 62.19% by selection/appointment of candidates from various reserved categories.

19.10 At this stage, reference in this connection may be had to the 9-Judge Constitution Bench judgment of the Supreme Court in **Indra Sawhney vs Union of India**, reported as AIR 1993 S.C. 477 of which the relevant extract is as under:

“808. It needs no emphasis to say that the principal aim of Articles 14 and 16 is equality and equality of opportunity and that Clause (4) of Article 16 is but a means of achieving the very same objective. Clause (4) is a special provision - though not an exception to Clause (1). Both the provisions have to be harmonised keeping in mind the fact that both are but the restatements of the principle of equality enshrined in Article 14. The provision under Article 16(4) - conceived in the interest of certain sections of society - should be balanced against the guarantee of equality enshrined in clause (1) of Article 16 which is a guarantee held out to every citizen and to the entire society. It is relevant to point out that Dr. Ambedkar himself contemplated reservation being ‘confined to a minority of seats’ (see his speech in Constituent Assembly, set out in para 693). No other member of the Constituent Assembly suggested otherwise. It is, thus, clear that reservation of a majority of seats were never envisaged

by the Founding Fathers. Nor are we satisfied that the present context requires us to depart from that concept.

x-x-x

-x-x-x

881. For the sake of ready reference, we also record our answers to questions as framed by the counsel for the parties and set out in para 26. Our answers question-wise are :

xxxx (4) The reservations contemplated in Clause (4) of Article 16 should not exceed 50%. While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in far-flung and remote areas the population inhabiting those areas might, on account of their being out of the main-stream of national life and in view of the conditions peculiar to and characteristic of them need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made on.

For applying this rule, the reservations should not exceed 50% of the appointments in a grade, cadre or service in any given year. Reservation can be made in a service or category only when the State is satisfied that representation of backward class of citizens therein is not adequate.”(emphasis supplied)

19.11 Subsequently, in **M. Nagaraj & Others Vs Union of India & Others**

2006 (8) SCC 212, Constitution Bench of the Apex Court has held as under:

“xxx 124. However, in this case, as stated, the main issue concerns the "extent of reservation". In this regard the concerned State will have to show in each case the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation. As stated above, the impugned provision is an enabling provision. The State is not bound to make reservation for SC/ST in matter of promotions. However, if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance of Article 335. It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling-limit of 50% or obliterate the creamy layer or extend the reservation indefinitely. xxx”
(emphasis supplied)

19.12 Still further, as per Rule 19 of Haryana Veterinary Headquarters and Field (Group 'C') Service Rules, 1999, it is impermissible to have more than 50% reservation for SC, BC, ESM, Physically Handicapped or any other class or category of persons. Said Rule reads as under:-

“Rule 19. Nothing contained in these Rules shall effect reservations and other concessions required to be provided for Scheduled Castes, Backward Classes, Ex-Servicemen, Physically Handicapped persons or any other class or category of persons in accordance with orders issued by the State Government in this regard from time to time.

Provided that the total percentage of reservation so made shall not exceed 50% at any time.”

19.12 Heavy reliance has been placed by official respondents on administrative instructions dated 15.07.2014 (Annexure P-14) providing for 70% reservation. Respondents *inter alia* state that said instructions being not under challenge, the petitioners' challenge to reservation must fail on that count alone. Be that as it may, reliance on the said instructions is ex-facie unreasonable, legally infirm and unsustainable. The legal fragility thereof is borne out from the fact that said instructions do not, cannot and must not, negate /override the relevant statutory Service Rules and the law laid down by the Supreme Court. The State/respondents have themselves prescribed 50% ceiling for total reservation in the relevant Service Rules. It thus flies in their face to profess that this Court ought not to invoke its jurisdiction under Article 226/227 of the Constitution of India to issue an appropriate writ and/or direction in the case.

19.14 As noted above, of the 730 filled up vacancies, only 276(198+78) have been filled up from the Open General category candidates and

the remaining 454 i.e. 62.19% by selection/appointment of candidates from various reserved categories. To that extent, filling up of 62.19% vacancies from various reserved categories was in violation of the 50% ceiling laid down by Supreme Court read with the 50% cap statutorily prescribed under Rule 19 of the Haryana Veterinary Headquarters and Field (Group 'C') Service Rules, 1999.

20. Petitioners have, however, neither sought quashing the selection /appointment of the selected candidates nor the selected candidates have been impleaded herein though both writ petitions were filed after declaration of the final result. No doubt, the discretionary powers of this Court under Article 226/227 of the Constitution of India to issue appropriate writ or direction are not circumscribed by the prayer in the petition. But this discretion has to be exercised judiciously taking into consideration all relevant facts and circumstances. If reservation notified in the advertisement, as per instructions dated 15.07.2014 (Annexure P-14), and pursuant thereto, actually given effect is to be red flagged and were to be held liable to be set aside at this stage as a consequence thereof, it may entail quashing of the entire process of the selection/appointment of as many as 730 candidates already appointed.

21. Before proceeding further, following material factors need to be taken into account to decide whether or not to proceed in the direction of quashing the selections/appointments already made in the instant case :

(a) First, writ petition was filed on 03.04.2017. By then, a large number of the candidates selected in the process had already been appointed. Rules of natural justice and fair play have to be observed before passing any order setting aside their selection/appointment. They were not/ have not been impleaded as parties to the *lis*. In all, 730

selected candidates have already been appointed. All of them will have to be impleaded as respondents and put to notice before proceeding further in the direction of quashing their selection /appointments.

(b) 78 vacancies initially reserved for SBC category were treated under the General/Unreserved Category and filled up accordingly. To that extent petitioners' claim stands satisfied.

(c) During pendency of proceedings, instructions dated 05.06.2019 (R/4) were issued to withdraw EBPG reservation and 71 unfilled vacancies out of 79 initially reserved for EBPG also now stand actually filled up by selection/appointment of candidates from the EWS reserved category vide subsequent advertisement dated 07.09.2019 (P/18). Neither were instructions dated 05.06.2019 assailed either by seeking any amendment of petition or by filing afresh, nor was selection pursuant thereto challenged and nor even selected candidates are made party herein.

(d) Upto the filing of written statement dated 18.11.2021 by respondent No. 1 and during the pendency of the petitions, 16 out of the 32 petitioners in CWP No. 7138 of 2017 and 1 out of the 3 petitioners in CWP No.9997/2017 have also been selected and appointed. These petitioners will also have to be transposed as respondents and put to notice before proceeding further to quash their selection/appointments. Awkwardly, they will then have to defend the same process which they themselves have challenged. May be, by filing independent written statement, if so advised, in order to justify their own selection/appointment.

(e) It will take quite some time to implead and secure the service/appearance of the large number of the candidates who had been

selected before the filing and also during the pendency of the writ petitions; to issue show notices to all of them as also to the 17 (16 +1) of the petitioners selected/appointed during the pendency of the petitions; to obtain, consider and to decide their representations/objections against the intended quashing of their selection/appointments.

- (f) At this stage, it is only in the realm of speculation what would be the ultimate outcome of the process to be started in contemplation of quashing of the appointment of the selected candidates. All of them will remain on tenterhooks from the start of such a process till the ultimate decision taken in this behalf. Continuous and long drawn state of uncertainty and looming fear of loss of jobs will have a demoralizing effect on their performance and efficiency.
- (g) Assuming, that ultimately the entire selection does not find acceptance, it would snatch away livelihood from a large number of the 730 already selected/appointed candidates, for absolutely no fault of theirs. All because the official respondents did not follow the correct reservation formula. In the process, 17 of the petitioners, who too have by now been selected and appointed, would also end up losing their jobs. It would be extremely harsh and unfair, apart from having devastating consequences on their families as well.
- (h) Petitioners are unlikely to get any real or tangible benefit if ultimately the selections/ appointments already made are quashed.
- (i) Quite a good number out of the large number of selected/appointed candidate and serving VLDAs might have already become over-age and/ or likely to become over-age, by the time a final judicial decision is taken for or against their selection/ appointments. If ultimately, their selection is quashed, most of them would be over-

age and thus ineligible even to apply even for any other Government job at this stage.

- (j) En bloc quashing of the selection/appointment of large number of serving VLDAs (most of whom were appointed in or about 2017) would mean loss of all those experienced hands and substantial depletion of the working strength. That would have serious adverse effect on the functioning of the department. This would be highly detrimental to and against the larger public interest.

22. In the given situation, the course of action proposed in succeeding paras seems to be a better available alternative instead of taking the drastic step of quashing entire selection and appointments at this stage.

23. As noted above, against 68 posts reserved /advertised for the Physically Handicapped persons, only one candidate was selected/appointed. The remaining 67 posts reserved for Physically Handicapped candidates could not be filled and are lying vacant for want of eligible candidates in this category.

24. It is also pertinent to note here that the communication dated 15.07.2014 (Annexure P-14 of the petition) is in fact in the nature of administrative instructions of Haryana Government. It is not a notification as wrongly claimed in the written statement.

25. Instructions (Annexure P-14) give category wise break up/ classifications of total 70% reservation and, inter alia, speaks of 3% reservation for Physically Handicapped persons. Vide para 13 (L), sub paras (a), (b) and (c) said instructions provide as under:

- a. Reservation for each of the three categories of persons with disabilities shall be made separately. But if the nature of the vacancies in an establishment is such that a person of a specific category of disability cannot be employed, the vacancies may be

interchanged among the three categories with the approval of the Department of Social Justice & Empowerment and reservation may be determined and vacancies filled accordingly.

- b. If any vacancy reserved for any category of disability cannot be filled due to non-availability of a suitable person with that disability or, for any other sufficient reason, such vacancy shall not be filled and shall be carried forward as a 'backlog' reserved vacancy to the subsequent recruitment year.
- c. In the subsequent recruitment year, the 'backlog' reserved vacancy shall be treated as reserved for the category of disability for which it was kept reserved in the initial year of recruitment. However, if a suitable person with that disability is not available, it may be filled up by interchange among the three categories of disabilities. In case no suitable person with disability is available, for filling up the post in the subsequent year also, the employer may fill up the vacancy by appointment of a person other than a person with disability. If the vacancy is filled up by a person of other category disability by inter se exchange in the subsequent recruitment year, it will be treated to have been filled by reservation. But if the vacancy is filled by a person other than a person with disability in the subsequent recruitment year, reservation shall be carried forward for a further period upto two recruitment years, whereafter the reservation shall lapse. In these two subsequent years, if situation so arises, the procedure for filling up the reserved vacancy shall be the same as followed in the first subsequent recruitment year.

26. Carry forward rule in horizontal reservation is not applicable as also enunciated by Supreme Court in **Jitendra Kumar and another v. State of Uttar Pradesh and others** 2010 (3) Supreme Court Cases 119, as under:-

“40. The Division Bench in the impugned judgment has traced the history of reservation at considerable length. It has also distinguished between vertical and horizontal reservations. It has also correctly concluded that in case of horizontal reservation, the carry-forward rule would not be applicable. All these issues are no longer res integra, in view of the authoritative judgment rendered in the case of Indra Sawhney. It can also be no longer disputed that reservation under Article 16 (4) of the Constitution of India aims at group backwardness. It provides for group right. Article 16 (1) of the Constitution of India guarantees equality of opportunity to all citizens in matters relating to employment. However, in implementing the reservation policy, the State has to strike a balance between the competing claims of the individual under Article 16 (1) and the reserved categories falling within Article 16(4).”

27. A co-ordinate bench of this Court rendered a judgment dated 06.08.2012 in

CWP No. 13384/2011 titled **Garima Jindal v. HVPNL and another**

(Annexure-P/15), wherein the learned single Judge *inter alia* observed as under:

“xxx xxx It is also not in dispute that three post of ESM General category on the basis of horizontal reservation are still lying vacant and the petitioner is at serial No. 1 of the waiting list in General Category. It may further be noticed at this stage that as per Annexure P-8, unfilled posts of horizontal reservation provided in the category of “Outstanding Sports Person” in General Category were to be filled up amongst the candidates of General Category of Outstanding Sports Person. Learned counsel appearing on behalf of the respondents could not dispute the fact that the aforesaid instructions Annexure P-8 are also applicable to such unfilled posts of ESM General category (reserved on the basis of horizontal reservation) and are to be filled up from the General category candidates in case of non-availability of candidates belonging to ESM General Category and thus, learned counsel for the respondents could not dispute that the petitioner was entitled to be considered for appointment being at serial No. 1 in the waiting list in the General Category candidates and there being three vacancies available belonging to ESM General category. Thus the petitioner is held entitled to be considered for appointment as Junior Accountant in the General Category on the basis of her result for the posts advertised vide Advertisement Annexure P-1.xxxx”

28. No doubt, subsequently (in CWP No.8500 of 2011 Joginder Singh v State

of Haryana) decided on 07.02.2014 my learned brother Augustine George

Masih, J. held that Garima Jindal ratio is *per-incuriam*. *De hors* the view

taken in Joginder Singh *supra* decided on 07.02.2014, as shown above, the

State is bound by its own instructions dated 15.07.2014 (Annexure P-14) issued subsequent to the judgment rendered in Joginder Singh. The said instructions, inter alia, self-profess that *in case no suitable person with disability is available, for filling up the post in the subsequent year also, the employer may fill up the vacancy by appointment of a person other than a person with disability*. In the light of subsequent policy instructions dated 15.07.2014, with utmost respect to the view taken in Joginder Singh supra, to my mind, the analogy in Garima Jindal supra has now (post-Joginder Singh) become applicable to the present case qua the available backlog of horizontally reserved 44 vacancies for Physically Handicapped Persons. Since, due to non-availability of Physically Handicapped candidates despite two attempts, these posts have remained unfilled.

29. In this connection, I may add here that in the interim order dated 10.10.2017 learned co-ordinate Bench then seized of the present case also observed that *“If no eligible candidate from these reserved categories is available in the subsequent recruitment process also, thereafter the de-reservation qua those categories would be permanent”*.

30. In the overall premise, I am of the view that 44 backlog posts reserved for Physically Handicapped candidates which remained and are still lying vacant for want of eligible candidates in this category even after the second attempt for recruitment, can and ought to be filled up from the general category candidates by appointment of persons other than persons with disability on the basis of merit/seniority in the waiting list of candidates who had competed for the posts in response to the same advertisement.

31. Even after taking out the 44 backlog vacancies from the reserved category of physically handicapped persons, total of 521 posts have already been filled up by selection/appointment of candidates from various reserved

categories out of the overall 797 advertised posts. The same is way over the maximum 50% permissible total reservation.

32. Endeavour of the Court while exercising its discretionary jurisdiction under Article 226/227 of the Constitution *inter alia* should be to minimize the inconvenience, dislocation, disruption and adverse consequences detrimental to innocent persons.

33. Taking into account the peculiarity and totality of facts and circumstances of the case, I am of the opinion that instead of treading the path of course correction by taking the extreme step of quashing the reservation or selection/ appointment of the selected candidates, it would be more appropriate, equitable, fair and in overall public interest to direct the respondents that, as a corrective measure, aforesaid 44 backlog posts lying vacant be filled up from the general category candidates. This would save any adverse consequences likely to result in the event of ultimate review of the entire selection and/or consequential large scale ouster of as many as 730 already selected and appointed, most of whom were selected/ appointed in or about 2017 and, who by now are fairly experienced hands and would also save the major disruption of work of the Department.

34. As an upshot, a writ in the nature of mandamus is hereby issued, commanding the respondents that

(a) the 44 backlog posts reserved for Physically Handicapped candidates which are currently lying vacant for want of eligible candidates in this category, even after the second attempt for recruitment, be filled up from the general category candidates by appointment of persons other than persons with disability;

(b) appointments shall be made on the basis of merit/ seniority in the waiting list of candidates (including the

- petitioners) who had competed for the posts in response to the same advertisement and such appointees' shall be placed at the bottom of seniority in the general category;
- (c) since on the one hand there is a serious shortage of VLDAAs, on the other petitioners have been deprived of their livelihood from 2017 onwards, needful be done within a period of thirty days, from the date the petitioners approach the respondents along with the certified copy of this order; and
- (d) it is also directed that in the future advertisements, the respondents shall make it mandatory for the candidates applying against the horizontally reserved posts to indicate whether they belong to SC/BC/ST or General category.

35. With the aforesaid directions, both the writ petitions are partly allowed and disposed of in above terms.

36. Pending applications, if any, also are disposed accordingly.

18.01.2022

vs

(Arun Monga)
Judge

Whether speaking/reasoned : Yes

Whether reportable : Yes