

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

LPA No. 837 of 2017 (O & M)

Date of decision: 19.05.2022

223

Jayant Garg

Versus

....Appellant(s)

PUNSUP-Punjab State Civil Supplies Corporation Ltd. and another

....Respondent(s)

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

Present: Mr. Abhay Gupta, Advocate,
for Mr. Amar Vivek, Advocate,
for the appellant.

Ms. Deepali Puri, Advocate,
for respondent No.1.

Ms. Monica Chhibber, Sr. DAG, Punjab,
for respondent No.2.

G.S.SANDHAWALIA, J. (Oral)

The present appeal is directed against the order dated 27.03.2017 passed by the learned Single Judge in CWP No. 19649 of 2011 whereby, the claim as such for consideration and appointment of the writ petitioner to the post of Inspector Grade-II and Senior Assistant Accounts against the reserved post for a person in the category of visually impaired/totally blind person was denied in spite of having cleared the written test.

The learned Single Judge came to the conclusion that since Government of India had not identified the post mentioned suitable for blind persons and it being the prerogative of the Union of India to identify,

no fault can be found in not issuing the appointment letter to the writ petitioner.

We are of the considered opinion that the learned Single Judge as such has failed to exercise jurisdiction vested in him in view of the settled law and has led to the frustration of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short 'the Act') as such. It is not disputed that vide advertisement dated 03.04.2011 (Annexure P-2), the respondent-Corporation had advertised various posts including 11 posts of Deputy/District Manager, 143 posts of Inspector Grade-II and 61 posts of Senior Assistant (Accounts). All the said posts had a reservation for the physically handicapped with blindness or low vision, which would be clear from the advertisement (Annexure P-2). The only strength upon which the Corporation has relied upon was clause 3 of the advertisement which provided that the reservation was to be as per the policy of the Punjab Government.

It is the case of the writ petitioner that in pursuance of the advertisement, he applied and qualified the written test, which would be clear from the result Annexure P-7, which shows that he secured 59.44 marks. On account of not been given appointment as such, representation was filed on 08.10.2011 (Annexure P-8) complaining of discrimination that persons who had secured less marks had been granted the benefit and, therefore, prayed for the selection as such.

The stand before the learned Single Judge of the respondent-Corporation was that there was a mistake and that respondent was not in the knowledge of job identification list. Further, it was said that the matter was

referred by the Corporation for further clarification and only ortho

handicapped persons were to be appointed for the posts as per the category by the job identification. It was further admitted that other handicapped persons were also appointed who were having hearing impairment or were ortho handicapped but they were not 100% handicapped and, therefore, no blind person as such had been selected for the post.

The stand of the State also is to the same extent that posts identified were not suitable for blind persons as per the notification (Annexure R-1).

Counsel has relied upon the judgment of the Apex Court in ***Government of India through Secretary and another vs. Ravi Prakash Gupta and another, (2010) 7 SCC 626*** to submit that under the provisions of Section 33 of the Act, the appropriate Government as such had to identify the posts in the establishment which could be held by respective category of persons with benchmarked disabilities. Therefore, an Expert Committee as such with representation of persons had to take a periodical review of the identified posts and update the list taking into consideration the developments in technology not exceeding 3 years. The Apex Court came to the conclusion while noticing that there is 1% reservation for blindness or low vision, hearing impairment and locomotor disability or cerebral palsy and dependency upon the Government as such to make appointments cannot be to the extent that the purpose of making reservation would be frustrated on the ground that the posts are not identified.

The issue before the Apex Court was whereby a visually handicapped person was suffering from 100% blindness appeared in the civil services examination conducted by the Union Public Service

Commission and came at Sr. No.5 of the merit list. He was not given

appointment since only one post was offered under the said category. Resultantly, claim was made that there was a statutory mandate for reservation of 3% and the Tribunal was moved for the benefit of appointment and the original application had been dismissed by the Tribunal. The matter was taken to the Delhi High Court and appropriate directions were issued that appointment letter be issued since it was the case of the petitioner that sufficient number of vacancies were there keeping in view the fact that reservation was to be of 3%. There were thus seven posts which were to be filled up in the year 2006 but only one post had been filled up.

The matter was thus taken to the Apex Court where plea was taken of non-identification of the post and the defence of Section 33 of the Act was put up, which was rejected on the ground that the dependency and identification of post could not be permissible. It was accordingly held that the Legislature never intended the provisions of Section 33 of the Act to be used as a tool to deny the benefits for the disabled persons mentioned therein. The relevant portion from *Ravi Prakash Gupta (supra)* read thus:-

“23. That the Respondent No.1 is eligible for appointment in the Civil Services after having been declared successful and having been placed at serial no.5 in the disabled category of visually impaired candidates, cannot be denied. The only question which is relevant for our purpose is whether on account of the failure of the Petitioners to identify posts for persons falling within the ambit of Section 33 of the Disabilities Act, 1995, the Respondent No.1 should be deprived of the benefit of his selection purportedly on the ground that there were no available vacancies in the said category.

24. *The other question which is connected with the first question and which also requires our consideration is whether the reservation provided for in Section 33 of the Disabilities Act, 1995, was dependent on identification of posts suitable for appointment in such categories, as has been sought to be contended on behalf of the Government of India in the instant case.*

25. *Although, the Delhi High Court has dealt with the aforesaid questions, we wish to add a few observations of our own in regard to the objects which the legislature intended to achieve by enacting the aforesaid Act. The submission made on behalf of the Union of India regarding the implementation of the provisions of Section 33 of the Disabilities Act, 1995, only after identification of posts suitable for such appointment, under Section 32 thereof, runs counter to the legislative intent with which the Act was enacted. To accept such a submission would amount to accepting a situation where the provisions of Section 33 of the aforesaid Act could be kept deferred indefinitely by bureaucratic inaction. Such a stand taken by the petitioners before the High Court was rightly rejected. Accordingly, the submission made on behalf of the Union of India that identification of Grade 'A' and 'B' posts in the I.A.S. was undertaken after the year 2005 is not of much substance.*

26. *As has been pointed out by the High Court, neither Section 32 nor Section 33 of the aforesaid Act makes any distinction with regard to Grade 'A', 'B', 'C' and 'D' posts. They only speak of identification and reservation of posts for people with disabilities, though the proviso to Section 33 does empower the appropriate Government to exempt any establishment from the provisions of the said Section, having regard*

to the type of work carried on in any department or establishment. No such exemption has been pleaded or brought to our notice on behalf of the petitioners.

27. It is only logical that, as provided in Section 32 of the aforesaid Act, posts have to be identified for reservation for the purposes of Section 33, but such identification was meant to be simultaneously undertaken with the coming into operation of the Act, to give effect to the provisions of Section 33. The legislature never intended the provisions of Section 32 of the Act to be used as a tool to deny the benefits of Section 33 to these categories of disabled persons indicated therein. Such a submission strikes at the foundation of the provisions relating to the duty cast upon the appropriate Government to make appointments in every establishment (emphasis added).

28. For the sake of reference, Sections 32 and 33 of the Disabilities Act, 1995, are reproduced hereinbelow :

"32. Identification of posts which can be reserved for persons with disabilities.- Appropriate Governments shall -

(a) Identify posts, in the establishments, which can be reserved for the persons with disability;

(b) At periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the developments in technology.

33. Reservation of posts.- Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering

from-

- (i) blindness or low vision;*
- (ii) hearing impairment;*
- (iii) locomotor disability or cerebral palsy, in the posts identified for each disability:*

Provided, that the appropriate Government may, having regard to the type of work carried on in any department or establishment by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

29. While it cannot be denied that unless posts are identified for the purposes of Section 33 of the aforesaid Act, no appointments from the reserved categories contained therein can be made, and that to such extent the provisions of Section 33 are dependent on Section 32 of the Act, as submitted by the learned ASG, but the extent of such dependence would be for the purpose of making appointments and not for the purpose of making reservation. In other words, reservation under Section 33 of the Act is not dependent on identification, as urged on behalf of the Union of India, though a duty has been cast upon the appropriate Government to make appointments in the number of posts reserved for the three categories mentioned in Section 33 of the Act in respect of persons suffering from the disabilities spelt out therein. In fact, a situation has also been noticed where on account of non-availability of candidates some of the reserved posts could remain vacant in a given year. For meeting such eventualities, provision was made to carry forward such vacancies for two years after which they would lapse. Since in the instant case such a situation

did not arise and posts were not reserved under Section 33 of the Disabilities Act, 1995, the question of carrying forward of vacancies or lapse thereof, does not arise.”

It is also pertinent to notice that even costs were assessed at Rs.20,000/- in the said proceedings by the Apex Court.

It is to be noticed that at the time of issuance of notice of motion, one post had been kept reserved for the appellant and in such circumstances, the vacancy still subsists. Therefore, we are of the considered opinion that the observations of the Apex Court are squarely applicable to the facts and circumstances of the present case.

Accordingly, the appeal is allowed. Judgment dated 27.03.2017 of the learned Single Judge is set aside and the writ petition is allowed.

The Corporation shall take necessary steps to consider the case of the writ petitioner for appointment to the post of Inspector Grade-II or an equivalent post, which it can identify, as suitable keeping in mind the handicap of the appellant. Needless to say that on account of the unnecessary litigation, since we are not imposing costs on the Corporation, the appellant shall be entitled for the benefit of notional seniority from the date persons from the advertisement in question were appointed.

The appeal stands allowed in the abovesaid terms.

(G.S. SANDHAWALIA)
JUDGE

19.05.2022

shivani

Whether reasoned/speaking

Whether reportable

(VIKAS SURI)
JUDGE

Yes/No

Yes/No