

2023:PHHC:102250

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

**CWP No.1838 of 2014
Date of Decision: 08.08.2023**

Malkit Singh

.... Petitioners

Versus

State of Punjab and others.

... Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. P.K.S.Phoolka, Advocate for the petitioner.

Mr.M.L.Saggar, Sr. Advocate with
Mr. Armaan Saggar, Advocate for respondents
No. 2 to 4.

Mr.D.K.Singal, Addl. A.G., Punjab

SANJEEV PRAKASH SHARMA, J (ORAL)

1. The relief sought in the present writ petition is as to whether a person who has acquired disability while in service should be left out from consideration for promotion under their disabled quota merely because at the time of initial recruitment he or she was not disabled.

2. Case of the petitioner is that he was appointed as Beldar on 16.7.1992. In 2005, he suffered an accident and was declared disabled with more than 40% disability. He continued to serve with the respondent/ University and applied for promotion to the post of Budder, Plant Observer/ fieldman under the handicapped quota available for promotion. However, his case was not considered and his application was rejected vide impugned order dated 9.1.2013. Referring to a decision taken by the University Board of Management in its 250th meeting held on 17.8.2011 provided for promotion quota only to those candidates who were initially engaged by direct recruitment against the physically handicapped quota. Since the

petitioner had become disabled while in service, he was treated as not eligible to be considered against the disabled quota.

3. Learned counsel for the petitioner submits that the reservation is provided for disabled persons and all the disabled persons who are engaged or in service with the University and eligible for promotion, ought to be considered under the reserved post meant for disabled persons.

4. Learned counsel further submits that the scheme of reservation as provided under provisions of Rule 33 of Persons With Disabilities (Equal Opportunities, Protection) Act, 1995 (hereinafter referred to as the Disabilities Act of 1995) is meant for all disabled persons. The rule framed by the University is whether they are disabled initially or during the course of employment. Thus the decision taken by the University on 09.01.2013 is ultra vires to the provisions of Rule 33 of the Disabilities Act of 1995 and also seeks to create discrimination between similarly situated persons. It would further be violative of Article 14 of Constitution of India. The learned Counsel for the petitioner, thus prays for quashing of the said condition of the University along with the rejection letter as conveyed to the petitioner.

5. Learned counsel appearing for the University has stated that it is required to maintain the quota for disabled persons. Since, there is a said quota available for direct recruitment, similar quota has to be maintained for promotion too. However, on pointed query raised by the Court with regard to the fact of the persons who may have become disabled during the pendency of the service, learned senior counsel states that the matter requires to be re-examined by the university.

6. The counsel appearing for the State does not support the decision taken by the University and states that it is an independent decision of the university.

7. I have examined the matter with great care having regard to the nature of the issue involved in relation to the intention of the legislature to provide non-discrimination of persons who acquired disability while in service. If a logical corollary is taken from the decision of the University, that any person who may become disabled while in service would be dis-entitled for promotion under the disabled quota, then even those disabled persons who may have been selected on their own merit under the general quota would be dis-entitled for the further promotion under the disabled quota. Such cannot be the intention of the rule making authorities while framing Disabilities Act of 1995 as well as the New Rules which have come into force from 2016. The decision of the University to only allow those physically handicapped persons for consideration of promotion who were appointed by direct recruitment against the physically handicapped quota is found to be violative of Article 14 of Constitution of India as well as the Disabilities Act of 1995, as it creates discrimination per-se, between all the disabled eligible persons and are entitled for promotion.

The Persons with disabilities in Disabilities Act of 1995 provides for 3% reservation to disabled persons. They have further divided them in class of those who were appointed by way of direct recruitment initially and those who became disabled subsequently. In this regard, Section 47 of the Disabilities Act of 1995 has been laid down and read as under:-

"47. Non-discrimination in Government employment. (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a

disability during his service: Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits: Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. (2) No promotion shall be denied to a person merely on the ground of his disability."

8. I have considered the matter from the said angle to ensure that the object of the Disabilities Act, 1995, which is to give effect to the proclamation on the full participation and equality of the people with disabilities in the India, is fulfilled. Section 47 of the Disabilities Act of 1995, has to be construed independently without reference to the other provisions of the said Act. There is a clear distinction between the words "with disability" found in various provisions under Chapters IV to VII of the Act and the words "acquiring disability" that found place only in Section 47 of the Disabilities Act of 1995. It is to be noted further that the disability which has been defined under Section 2(i) of the Act is not exhaustive, especially when Section 2 starts with a phrase "Unless the context otherwise requires" which means that the 7th category mentioned in Clause 2(i) alone need not be construed as disability.

9. The scope of Section 47 was also considered by Supreme Court in ***Kunal Singh v. Union of India, (2003) 4 SCC 524 Section 47***, of the PWD Act, 1995 which deals with an employee, who is already in service and acquires a disability during his service. In this case, the Supreme Court adopted a very humane approach and remarked with anguish that it must be remembered that a person does not acquire or suffer disability by choice. An

employee who acquired disability during his service is sought to be

protected under Section 47 of the Act specifically. Such an employee acquiring disability if not protected would not only suffer himself, but possibly all those who depend on him would also suffer.

10. In the present case, while the petitioner and similarly situated persons may be eligible on their own merit, for promotion they would also have a right of consideration for promotion under the disabled quota.

11. In view of the above discussions, the decision taken by the Punjab Agricultural University, Ludhiana in its 250th meeting held on 17.08.2011 with regard to allowing only those physically handicapped persons to be considered for promotion who have been appointed by direct recruitment against the physically handicapped quota is found to be discriminatory and arbitrary and is accordingly quashed and set aside. Consequently, the order rejecting the application of the petitioner for consideration for promotion dated 28.12.12 is quashed and set aside. The petitioner shall now be considered for promotion against the then available disabled quota and shall be granted promotion from the date similarly situated other persons who have been so appointed. Since the denial has been found to be illegal and unjustified, the petitioner would be entitled to all consequential benefits including the actual salary for the higher promotion posts.

12. The present petition is accordingly allowed.

(SANJEEV PRAKASH SHARMA)
JUDGE

08.08.2023

Raman

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