

IN THE HIGH COURT OF PUNJAB & HARYANA,
CHANDIGARH

Sr. No.: 143

Civil Writ Petition No.-18496 of 2023

Date of Decision: August 23, 2023

The Director, Pandit Bhagwat Dayal Sharma Post Graduate Institute of Medical Sciences, Rohtak and others

..... *PETITIONER(S)*

VERSUS

Deepak Kumar and another

..... *RESPONDENT(S)*

. . .

CORAM: **HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

. . .

PRESENT: - Mr. Nilesh Bhardwaj, Advocate
for the petitioners.

Mr. Ravinder Singh Budhwar, Addl. A.G. Haryana.

. . .

Tribhuvan Dahiya, J (Oral)

This petition has been filed seeking a writ of *certiorari* quashing the order dated 13.06.2023 (Annexure P-18) passed by the State Commissioner for Persons with Disabilities, Haryana (hereinafter referred to as, 'the Commissioner').

2. The impugned order, dated 13.06.2023, has been passed on petition no.529 of 2021 filed by the complainant (respondent no.1 herein) under the Right of Persons with Disabilities Act, 2016 (hereinafter referred to as, 'the Act of 2016') seeking direction to the respondents (petitioners herein) to promote him in the cadre of stenography. While allowing the petition, the Commissioner has granted the following relief:

Relief

In view of the detailed discussion, the present complaint is hereby partly allowed and it is recommended to the respondents under the

provisions of Section 40 of RPwD Act, 2016, to provide the deem date promotion to the post of Junior Scale Stenographer w.e.f. 01.11.1999 i.e. on completion of 1 year experience of Steno Typist, hence he was required to be promoted accordingly. As the rules of 1961 prevalent at the time of the eligibility for the promotion, hence there was no requirement of further passing of the typing test, hence he was entitled for the grant of Senior Scale Stenographer at roster point No.1 w.e.f. 01.11.2000 on successful completion of 1 year experience as Junior Scale Stenographer and further Personal Assistant w.e.f. 01.11.2002 at roster point 1 in cycle 1 on completion of 2 years as Senior Scale Stenographer, however, the complainant shall not be entitled for the grant of reservation to the post of Private Secretary and Secretary to vice Chancellor as both are single cadre posts, whereupon the reservation in promotion is not allowed as per the aforesaid instructions.

24. The respondents shall submit the compliance report in accordance with Section 81 of RPwD Act, 2016 within the period of three months from today with a copy to the complainant. The file be consigned in the record room.

3. Learned counsel for the petitioners contends that the aforesaid relief has been granted under Section 80 of the Act of 2016, though Section 40 has been mentioned therein which is a typing error and, therefore, needs to be ignored. He contends that the Commissioner has wrongly issued the direction for giving certain benefits to respondent no.1 which is contrary to law. The issue pertains to service dispute of respondent no.1 with the petitioner-University, and the Commissioner should not have gone into it, nor was he permitted to issue any direction for compliance.

4. Heard.

5. Relevant provisions of the Act of 2016 under which the Commissioner has passed the impugned order read as under:

80. Functions of State Commissioner.- The State commissioner

shall-

- (a) identify, *suo motu* or otherwise, provision of any law or policy, programme and procedures, which are in consistent with this Act, and recommend necessary corrective steps;
- (b) inquire, *suo motu* or otherwise deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for which the State Government is the appropriate Government and take up the matter with appropriate authorities for corrective action;
- (c) review the safeguards provided by or under this Act or any other law for the time being in force for the protection of rights of persons with disabilities and recommend measures for their effective implementation;
- (d) review the factors that inhibit the enjoyment of rights of persons with disabilities and recommend appropriate remedial measures;
- (e) undertake and promote research in the field of the rights of persons with disabilities;
- (f) promote awareness of the rights of persons with disabilities and the safeguards available for their protection;
- (g) monitor implementation of the provisions of this Act and schemes, programmes meant for persons with disabilities;
- (h) monitor utilisation of funds disbursed by the State Government for the benefits of persons with disabilities; and
- (i) perform such other functions as the State Government may assign.

81. Action by appropriate authorities on recommendation of State Commissioner.-

Whenever the State Commissioner makes a recommendation to an authority in pursuance of clause (b) of Section 80, that authority shall take necessary action on it, and inform the State Commissioner of the action taken within three months from the date of receipt of the recommendation:

Provided that where an authority does not accept a recommendation, it shall convey reasons for non-acceptance to the State Commissioner for Persons with Disabilities within the

period of three months, and shall also inform the aggrieved person.

6. It is apparent from provisions of Section 80 (b) of the Act of 2016 that the Commissioner is empowered to inquire into deprivation of rights of persons with disabilities in respect of matters concerning the State Government or any establishment substantially financed by it, and take up the matters with appropriate authorities for corrective action. It is in exercise of these powers that the Commissioner granted the aforesaid relief to respondent no.1 by recommending the petitioners/University to take action in terms thereof. Further, Section 81 of the Act of 2016 provides, whenever a State Commissioner makes recommendation to an authority under Section 80 (b) of the Act of 2016, the authority shall take necessary action on it and inform the Commissioner about the same within three months from receiving the recommendation. Provided, if the authority does not accept the recommendation, it shall convey reasons for non-acceptance to the Commissioner within three months, and shall also inform the aggrieved person.

7. Since the Commissioner has recommended certain actions to be taken with regard to service issues of respondent no.1 in terms of the relief granted, vide the impugned order dated 13.6.2023, the University is required to act upon the same under section 81 of the Act of 2016 by taking necessary action. In case the recommendation is not acceptable, the University is within its rights to convey the reasons for non-acceptance to the Commissioner as well as respondent no.1. Therefore, no cause of action accrues to the petitioners to invoke extra-ordinary jurisdiction of this Court for quashing of the Commissioner's order.

8. Disposed of.

(TRIBHUVAN DAHIYA)
JUDGE

August 23, 2023
Mahima/Ashwani

Whether Speaking/ Reasoned:	Yes/ No
Whether Reportable:	Yes/ No