

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-19006-2023 (O&M)
Date of decision: 29.08.2023

Sohan Singh

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Jasbir Mor, Advocate for the petitioner

Sandeep Moudgil, J.

(1). The petitioners have filed the present writ petition invoking the jurisdiction of this Court under Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *certiorari* for quashing the letter dated 16.08.2023 (Annexure P16) and impugned speaking order dated 17.08.2023 (Annexure P19) for rejecting the claim of the petitioner for calling the petitioner for interview for the post of Scientist-B against the Advt. No.09/2022 dated 10.05.2022 (Annexure P4) by giving relaxation in selection criteria to the handicapped category persons in terms of the Govt. instructions dated 15.07.2014, 01.05.2019 and 01.07.2022 (Annexures P20 to P22, respectively). Further direction is sought to the respondent-Commission to make relaxation in the general standard/selection criteria dated 11.04.2023 (Annexure P5) for the petitioner being handicapped persons (Ortho) in terms of Govt. Instructions and consider him for the said post of Scientist B.

(2). The petitioner is B.Sc./M.Sc./M.Phil and also cleared CET, GATE having experience to his credit. He is specially-abled person and his disability is assessed as 100% by the competent authority. The petitioner

applied in pursuance to the Advt. No.09/2022 dated 10.05.2022 (Annexure P4) and cleared the screening test and Subject Knowledge test, but the petitioner including two other persons with disability (PwD) were not shortlisted for interview on the ground of non-qualification of the knowledge test. The petitioner thereafter, filed a complaint dated 14.08.2023 (Annexure P13) before the State Commission for Person with Disabilities, Haryana, who vide order dated 16.08.2023 recommended under Section 80(b) read with Section 82 of the Rights of Persons with Disabilities Act, 2016 to the respondents to consider the complainant and similarly situated other divyang candidates for the post of Scientist-B (Group-B) in Haryana Pollution Control Board in PH category and to conduct interview of the petitioner. However, the respondent-Commission vide impugned order dated 17.08.2023 rejected the recommendations of the State Commission for Disabilities on the ground that the petitioner has not secured the minimum 35% marks in the subject knowledge test. The aggrieved petitioner has approached this Court.

(3). Learned counsel for the petitioner contended that respondent-Commission has disobeyed the order/recommendations made by the Commissioner for Disabilities dated 17.08.2023 and the petitioner was not called for interview. He submitted that the respondent-Commission has no authority to pass a speaking order on the recommendations made by the Commissioner for Disabilities and that the only remedy for the respondent-Commission was to challenge the said recommendation before an appropriate forum inasmuch as, as per Section 82 of the Right of Persons with Disability Act, 2016, the State Commissioner shall, for the purpose of discharging their functions under this Act, have the same powers of a civil court as are vested

in a court under the Code of Civil Procedure, 1908 and that every proceeding before the State Commissioner shall be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code and it shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973, meaning thereby that the 'recommendations' made by the Commission are in itself 'judicial order' passed by the Civil Court which is subject to challenge before the appellate authority and cannot be overreached/ignored by the State authorities.

(4). The next argument raised by the petitioner is that as per Clause VII of advertisement, in the event of number of applications being large, the respondent-Commission will adopt short-listing criteria to restrict the number of candidates to be called for interview to a reasonable number by holding recruitment test, however, the respondent-Commission has not fixed any minimum percentage of qualifying marks in the test. He further contended that the scheme/pattern of examination was decided by the respondents on 12.04.2023 i.e. much after the advertisement issued on 10.05.2022 which in itself is illegal and arbitrary.

(5). Having heard learned counsel for the petitioner, this Court does not find any merit in this petition which deserves to be dismissed on two counts.

(6). Firstly, Section 81 provides that whenever the State Commissioner makes a recommendation to an authority in pursuance of Section 80(b), 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 recommendation. The State Commission has been given certain

powers under Section 82 to summon and enforce the attendance of witnesses, to require discovery and production of documents, to requisition public records from any court or office, to receive evidence on affidavits and to issue Commissions for examination of witnesses. A reading of Sections 80 to 83 would show that the State Disability Commissioner has power only to *'advise and make recommendations to appropriate authorities'*. However, according to the principle of *expressio unius*, because the legislature expressly made the aforementioned provisions of the CPC applicable to the proceedings relating to persons with disability, the legislature is, therefore, deemed to have intentionally excluded all other provisions of the CPC from applying to the said proceedings. The legislature, very consciously made only certain identified provisions of the CPC applicable to the proceedings under the Disability Act.

(7). Secondly, on merits of the claim of the petitioner, the impugned order unequivocally avers that the petitioner is not entitled for the relief claimed by him because he has failed to secure minimum 35% marks in the Subject Knowledge Test held on 02.08.2023 and therefore in view of the announcement dated 12.04.2023 he is not eligible to be called for interview. Once the recruiting authority itself has held the petitioner to have not secured the minimum benchmark of 35% marks in the Subject Knowledge Test to be called for the interview/viva voce, this fact itself disentitles the petitioner for the relief sought for. Even otherwise, the plea of the petitioner for relaxation in the criteria of standards for OH category is untenable as such a practice would lead to changing of the selection criteria for the purpose of

accommodating the petitioner and other such persons which would vitiate the entire selection process.

(8). Moreover, once the petitioner has participated in the entire selection process he cannot be allowed to turn around and challenge the selection criteria or the terms and conditions of the advertisement after remaining unsuccessful in the Subject Knowledge Test. The selection criteria was announced on 12.04.2023 but the petitioner did not raise any objection at that time.

(9). Be that as it may, after the enactment of the Administrative Tribunals Act, 1985 (in short, the 1985 Act), all service matters pertaining to appointment to Central Government and State Government services are to be adjudicated by the Administrative Tribunals constituted under the Act. Section 4 of the Administrative Tribunals Act, 1985 contemplates establishment of Administrative Tribunals for the States also. Its Section 15 provides that the Administrative Tribunal for a State shall exercise all the jurisdictions, powers and authority in relation to recruitment and matters concerning recruitment to any civil service of the State or to any Civil Post under the State. Section 28 states that no court except the Supreme Court or any interstate Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force shall have or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters. As such, the State Disability Commissioner, therefore, could not make an adjudication on a service matter and should have relegated the petitioner to avail such remedy provided under

the 1985 Act. The petitioner, if so required, may take recourse as
aforementioned.

(10). With these observations, the writ petition is dismissed.

29.08.2023
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No