

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-23541-2023 (O&M)
Date of decision: 17.10.2023

Naresh Kumar

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Sandeep Thakan, 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* quashing the impugned para No.XIII (A) & (B) of the Instructions No.22/59/2020-IGS-III dated 25.03.2022 (Annexure P1); para 14.1 & 14.2 of the Instructions No.22/59/2020-IGS-III dated 01.07.2022 (Annexure P2) and para No.XIII(A) & (B) of Instructions No.22/59/2020-IGS-III dated 11.07.2023 (Annexure P3) being against the provision of Section 34 of the Rights of Persons with Disabilities Act, 2016 as well as judgment passed by the Apex Court in Civil Appeal No.1567 of 2017 (Annexure P9) and further directing the respondents to comply with the order dated 31.05.2023 (Annexure P6) vide CD No.383 of 2022 passed by Disability Commissioner, Haryana.

(2). The petitioner is stated to be 40% locomotor differently-abled person, who has filed the present petition raising the objection against the word "Lapse" used in Instructions dated 25.03.2022, 01.07.2022 & 11.07.2023 (Annexures P1 to P3, respectively) to grant 3% reservation in promotion to employees under Section 33 of the Persons with Disabilities

(Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PwD Act, 1995).

(3). It is contended that as per the impugned instructions which provides for 3% and 4% reservation in promotion to employees under Section 34 of the Right of Persons with Disabilities Act, 2016, it is mentioned that after a period of four years, the vacancy shall get lapsed if no suitable person with benchmark disabilities is found and the same is in violation Sections 34 and 34.2 of 2016 Act. The petitioner has also placed reliance on Section 36 of PwD Act, 1995 and contended that Govt. of Haryana is providing the benefit of reservation in promotion w.e.f. 01.01.1996 only during the year 2022, hence if post reserved for persons with disabilities get lapsed after three years, it shall reduce the percentage of disability and thus same shall be a violation of Section 33 of PWD Act 1995 and Section 34.2 of RPWD Act 2016 itself, and as such, the word 'lapse' is sought to be deleted from the Instructions.

(4). Heard learned counsel for the petitioner and gone through the record.

(5). The sole issue raised by the petitioner is that the respondent has issued instructions no. 22/59/2020-IGS-III dated 25.03.2022, amended instruction dated 11.07.2023 vide which 3% horizontal reservation in promotion has been provided to disabled employees of State of Haryana in all cadres and all groups w.e.f. 01.01.1996 up to 18.04.2017. Para XIII of the aforesaid instructions is relevant for the decision of the present case, which is reproduced as under:-

“XIII. CONSIDERATION ZONE, INTER SE EXCHANGE AND CARRY FORWARD OF RESERVATION IN CASE OF PROMOTION.-

(a) Against the posts of promotion to be filled up by non-selection method, i.e. on seniority-cum-merit basis, the eligible persons with disabilities shall be considered for promotion against the reserved vacancies and in case no eligible employee of the appropriate category of disability is available, the vacancy can be exchanged with other categories of disabilities identified for it. If it is not possible to fill up the post by reservation even by exchange, the post to be filled up by reservation shall be carried forward for a period upto three subsequent recruitment years whereafter it shall lapse.

(b) Where the promotional posts are filled up by selection method, i.e. on merit basis, the disabled employees who are within the normal zone of consideration shall be considered for promotion. Where adequate number of disabled employees of the appropriate category of disability are not available within the normal zone, the zone of consideration may be extended to five times the number of vacancies and the persons with disabilities falling within the extended zone may be considered. In the event of non-availability of candidates even in the extended zone, the reservation can be exchanged so that post can be filled by a person with other category of disability, if possible. If it is not possible to fill up the post by reservation, the post may be filled by a person other than a person with disability and the reservation shall be carried forward for a period upto three subsequent recruitment years, whereafter it shall lapse.”

(6). It is the contention of the petitioner that the Govt. of Haryana has provided the benefit of reservation in promotion, after a gap of more than 26 years, and as such, the word “lapse” is not required to be inserted in the

aforesaid instructions as in that eventuality, the reservation shall get below 3%, which shall be a violation of Section 33 of PwD Act, 1995, which reads as under:-

33. 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- (1) Blindness or low vision; (ii) Bearing 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.

(7). Section 36 of PwD Act, 1995 provides the procedure in case vacancies are not filled up by the persons with benchmark disabilities, which is re-produced as under:-

“36. Where in any recruitment year any vacancy under section 33, cannot be filled up due to non-availability of a suitable person with disability or, for any other sufficient reason, such vacancy shall be carried forward in the succeeding recruitment year and if the succeeding recruitment year also suitable person with disability is not available, it may first be filled by interchange among the three categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the three

categories with the prior approval of the appropriate Government.”

(8). It is well settled proposition of law that while filling up the reserved vacancies by promotion by selection, the disabled candidates who are within the normal zone of consideration must be considered for promotion. Where adequate number of disabled candidates of the appropriate category of handicap are not available within the normal zone, the zone of consideration may be extended to five times the number of vacancies and the persons with disabilities falling within the extended zone may be considered. In the event of non-availability of candidates even in the extended zone, the reservation can be exchanged so that post can be filled by a person with other category of disability, if possible. If it is not possible to fill up the post by reservation, the post may be filled by a person other than a person with disability and the reservation shall be carried forward for upto three subsequent recruitment years, whereafter it shall lapse. In posts filled by promotion by non-selection, the eligible candidates with disabilities shall be considered for promotion against the reserved vacancies and in case no eligible candidate of the appropriate category of disability is available, the vacancy can be exchanged with other categories of disabilities identified for it. If it is not possible to fill up the post by reservation even by exchange, the reservation shall be carried forward for upto three subsequent recruitment years whereafter it shall lapse.

(9). The 1995 Act was enacted to fulfill India's obligations under the 'Proclamation on the Full Participation and Equality of the People with Disabilities in the Asia and Pacific Region'. The objective behind the 1995 Act is to integrate PWD into the society and to ensure their economic

progress. The intent is to turn PWD into ‘agents of their own destiny’. PWD are not and cannot be equated with backward classes contemplated under Article 16(4). May be, certain factors are common to both backward classes and PWD such as social attitudes and historical neglect etc

(10). A combined reading of Sections 32 and 33 of the 1995 Act explicates a fine and designed balance between requirements of administration and the imperative to provide greater opportunities to PWD and as such, the identification exercise under Section 32 is crucial. Once a post is identified, it means that a PWD is fully capable of discharging the functions associated with the identified post. Once found to be so capable, reservation under Section 33 to an extent of not less than three per cent must follow. Once the post is identified, it must be reserved for PWD irrespective of the mode of recruitment adopted by the State for filling up of the said post.

(11). Accordingly, this writ petition is dismissed however, with a direction to the respondents to extend three percent reservation to PWD in all identified posts, in all the categories, irrespective of the mode of filling up of such posts whether by promotion or by way of direct recruitment.

17.10.2023
V.Vishal

(Sandeep Moudgil)
Judge

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

Yes/No
Yes/No