

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RA-CW-345-2018 in

CWP-17330-2010

Reserved on: 13.04.2023

Date of decision: 03.05.2023

DHIRAJ KUMAR

...Petitioner

VERSUS

HPSC AND OTHERS

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Puneet Jindal, Senior Advocate with
Mr. Samarth Sagar, Advocate
for the applicant-respondent No.3.

Mr. R. N. Lohan, Advocate
for the petitioner.

JAISHREE THAKUR, J.

1. The present application has been filed seeking recalling/review of judgment dated 22.12.2017 passed by the Coordinate Bench of this Court in CWP No.17330 of 2010.

2. In brief, the facts are that the petitioner herein approached this Court by way of filing CWP No.17330 of 2010 under Articles 226/227 of the Constitution of India, seeking issuance of a writ in the nature of mandamus, directing the respondents to appoint him on the post of Assistant Engineer (Electrical) under the category of physically handicapped with effect from the date when similarly situated candidates were selected, along with all consequential benefits.

3. Notice of motion was issued in the said matter and reply was filed by the respondents. The Coordinate Bench of this Court, vide judgment dated 22.12.2017, allowed the writ petition filed by the petitioner herein and directed the respondents to give him appointment on the post under Orthopedically handicapped category in UHBVNL with all consequential benefits from the year 2009 except actual arrears of salary. Respondent No.3 herein challenged the said judgment before the LPA Bench and the Division Bench of this Court disposed of the appeal on 27.08.2018, with liberty to the UHBVNL to approach the learned Single Judge, by moving an appropriate application for redressal of the grievances raised in the appeal.

4. Learned Senior Advocate appearing on behalf of respondent No.3 would contend that the Coordinate Bench of this Court failed to appreciate the relevant Government instructions dated 22.10.2007 for giving reservation to the handicapped persons. Vide the said instructions, it has been clarified that *‘where in any recruitment year any vacancy under Section 33 of this Act, 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 in 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 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 inter changed*

among the three categories with the prior approval of the appropriate Government’. It is submitted that Haryana Public Service Commission, Panchkula invited applications for filling up 339 posts of Assistant Engineer (Electrical) vide advertisement No.2 of 2009, wherein 10 posts were kept reserved for physically handicapped category i.e. 06 posts were kept for orthopaedically handicapped category persons and 04 posts for partially deaf category persons. It is argued that 06 posts of orthopaedically handicapped persons were filled up and 04 posts of partially deaf persons remained unfilled and it is not the case of the petitioner that he belongs to a deaf category. It is further argued that the Coordinate Bench also failed to take into consideration the reply of respondent No.1-HPSC, wherein a specific stand was taken that the petitioner had failed to mention as to under which category of physically handicapped persons he belonged i.e. orthopaedically handicapped persons or partially deaf persons. Further, the certificate of disability (Annexure P-4) submitted by the petitioner did not mention the category of physically handicapped he belonged to and, therefore, the claim of the petitioner was rejected by the respondent-HPSC. It is further submitted that the petitioner had neither mentioned his category in the writ petition and had also not claimed in the prayer clause that under which category he was claiming his right for selection. Thus, from the perusal of the writ petition as well as prayer clause and from the physically handicapped certificate, it was not clear as to under which category the petitioner belongs or under which category he was claiming his right for appointment. It is contended that even if it is presumed that the petitioner belonged to orthopaedically handicapped category, though not

admitted, then also there were 06 posts under the said category and all these posts were filled up by selecting the suitable candidates and it is not the case of the petitioner that he was higher in merit to the said selected candidates. It is further contended that the Coordinate Bench also failed to take into account that the non-applicant/petitioner, who was claiming appointment under physically handicapped quota, produced incomplete disability certificate, as it did not specify under which category of physically disabled category he belonged and also failed to give any proof before the respondent-HPSC.

5. Learned counsel for the petitioner would contend that there is no mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, cannot be termed as an error apparent on the face of the record. It is submitted that the merit of the case cannot be reopened and reconsidered with a view to find out apparent error for justifying the invocation of review powers. It is further submitted that the review application filed by respondent No.3 is frivolous and there was no error in the judgment as passed by the Coordinate Bench on 22.12.2017. He would argue that the petitioner herein being physically handicapped, applied for the post of Assistant Engineer (Electrical) and was also considered under the category of physically handicapped by the Haryana Public Service Commission, as per category wise list supplied to him by the HPSC under the RTI Act, 2005 (Annexure P-10). It is further argued that there were 02 posts, which were advertised for UHBVNL and none was recommended for UHBVNL from the handicapped category either from orthopedically handicapped category or from partially deaf category and, therefore, writ

petition filed by the petitioner was allowed by the Coordinate Bench merely on the ground that the HPSC has not recommended any candidate of handicapped category to UHBVNL. It is further submitted that respondent No.3 had never raised the aforesaid plea in the writ petition before the Coordinate Bench and the same is now being raised for the first time in the review application, which cannot be permitted and the right accrued to the handicapped person cannot be defeated merely on the ground of technicalities. He would contend that the instructions/rules as relied upon by respondent No.3 are subsequent to the result and the selection process and cannot be considered in any way. It is submitted that the candidature of the petitioner was never rejected by the HPSC and in fact, he was considered eligible and qualified under the category of physically handicapped and, therefore, the judgment passed by the Coordinate Bench of this Court on 22.12.2017 is speaking and well reasoned. There is no error apparent on the face of the record and thus, the review application is not sustainable and liable to be dismissed.

6. I have heard learned counsel for the parties, and with their able assistance, have gone through the pleadings of the case.

7. Order 47 of the Code of Civil Procedure, 1908 provides for an application to be filed for review of a judgment, if the judgment so passed or an order has been made on account of some mistake or error apparent on the face of the record or for any other sufficient reason. In the instant case, the Coordinate Bench of this Court while allowing the writ petition held *'that being so, the single post advertised in the orthopaedically handicapped category in the UHBVNL not having been filled up in the selection process in the year 2009*

and the petitioner being a candidate of that category in that selection process, with that fact not denied, nor that he possesses all the eligibility qualifications, this petition is allowed and it is directed that he be given an appointment to the said post within a period of two months from the date of receipt of a certified copy of this order.' With the said direction, the petitioner herein, who was orthopaedically handicapped was directed to be given appointment to the said post while holding that there was no denial to the fact that the petitioner being a candidate of the orthopaedically handicapped category possessed all the eligibility qualifications.

8. These observations are factually incorrect as the advertisement itself clearly specified that two posts to be filled up in UHBVNL were for the persons, who were physically handicapped i.e. one post for candidate with disability of one leg and one post for candidate being partially deaf. Interestingly enough, the detailed written statement filed by respondent No.3 would reflect that the petitioner did not fulfill the criteria. Once there was a denial in the written statement that the petitioner did not have necessary eligibility, there could be no admission as far as the Commission is concerned regarding his eligibility as has been construed by the Coordinate Bench. Moreover, a perusal of the handicap certificate, as appended with the writ petition, would itself reflect that there is no mention as to the nature of disability suffered by the petitioner. The advertisement itself is very clear that two posts were kept reserved for physically handicapped category i.e. one to be filled up by a person who had a disability of one leg and the other to be filled up

by a person who was partially deaf. The disability certificate (Annexure P-4) of the petitioner is silent as to the nature of disability.

9. The argument as raised by learned counsel for the petitioner that there was no error apparent on the face of the record is not sustainable in view of the fact that the Coordinate Bench has not taken into account the advertisement, which allowed for a person with disability of one leg and being partially deaf, to be eligible for appointment, whereas the petitioner has not been able to justify his eligibility and that itself would tantamount to failure on the part of the Court to take into consideration the material on the record. In a judgment rendered by this Court in *Keshav Kaushik versus State of Haryana and others, 2012 (2) SCT 197*, it has been held that the High Court while exercising jurisdiction under Article 226 of the Constitution of India is a Court of plenary jurisdiction as well as Court of record and it possesses inherent power to correct its own record and also to exercise the review jurisdiction in appropriate cases.

10. Consequently, finding that there is an error apparent on the face of the record, the instant review application stands allowed and the judgment dated 22.12.2017, passed in CWP No.17330 of 2010, is hereby recalled.

11. List CWP No.17330 of 2010 for hearing on 26.09.2023.

03.05.2023
Chetan Thakur

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No