

223 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH
CWP-29159-2018 (O&M)
Date of Decision:18.03.2024

1.

Kamal PanwarPetitioner
Versus

Haryana Vidut Parsaran Nigam Limited and others

.....Respondents

2.

Gurdev SinghPetitioner
CWP-24502-2021 (O&M)
Versus

Haryana Vidyut Prasaran Nigam Limited.
.....Respondent.

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Sudhanshu Makkar, Advocate for the petitioner
in CWP-29159-2018.

Mr. R.K. Malik, Sr. Advocate with
Mr. Sandeep Dhull, Advocate for the petitioner
in CWP-24502-2021.

Mr. Udit Garg, Advocate for the respondents
in CWP-29159-2018.

Mr. Padamkant Dwivedi, Advocate for the respondent
in CWP-24502-2021.

JASGURPREET SINGH PURI J.(Oral)

1. Both the petitions are taken up together for final disposal with
the consent of learned counsel for the parties as facts are common and issues
are inter-related.

2. CWP-29159-2018 titled as *Kamal Panwar Vs. Haryana Vidyut*

Parsaran Nigam Limited and others is taken up first for consideration, since the second petition bearing CWP No.24502-2021 will be dependant upon the outcome of this petition.

3. Brief facts of the present case are that the respondents-Nigam had advertised various posts including the post of Assistant Engineer (Electrical) vide Annexure P-1 in the year 2018. The bifurcation of reservations as depicted in Annexure R-3 is reproduced as under:-

Sr.No.	Name of post	Name of utility	Gen.	SC	BC		ESM			Total No. of posts	Posts reserved for eligible sports persons (ESP) already included in total posts at column No.11	Posts reserved for persons (PwD) already included in total posts at Column No.11
					A	B	Gen.	SC	BC-A			
1	2	3	4	5	6	7	8	9	10	11	12	13
1.	Assistant Engineer	HVPNL	13	6	4	2	1	1	1	28	1	4 (2-One leg (OH) & 2-Partially Deaf (HH)
Grand Total		HPGCL	9	3	3	1	1	-	-	17	1	2 (1-PD, 1-One Leg (OL)
		UHBVNL	11	3	2	-	-	-	1	17	2	3 (2-PD, 1-One Leg (OL)
		DHBVNL	25	10	7	1	1	-	-	44	1	2 (1-PD, 1-One leg (OL)
			58	22	16	4	3	1	2	106	5	11

4. The learned counsel for the petitioner submitted that the petitioner is a physically handicapped person and he is already working in the office of respondents-Corporation on the post of Grid Station Operator and he applied against the category of One Leg Ortho Handicapped which is so depicted in his application form vide Annexure P-2 in which he depicted his status of Physically Handicapped as follows:-

Physically Handicapped: Handicapped : Yes (One Leg (Ortho Handicapped)

5. Learned counsel for the petitioner submitted that since the petitioner is handicapped with one leg, he ought to have been considered for the same but he has been rendered ineligible in view of the permanent disability certificate (Annexure P-5) wherein it has been provided for the present petitioner that he was suffering from Congenital Paresis of ® Upper/Lower Limb to the extent of 40% disability. He further submitted that the petitioner is although having disability qua the upper limb as well but that would not mean that the petitioner can be non-suited only because of the reason since he was handicapped from one leg also and the reservation in the advertisement was for one leg disability and therefore he has been wrongly rendered ineligible for the selection process. Learned counsel for the petitioner has also argued that the petitioner could not have applied for stating in the application form other than what has been so stated in the advertisement itself which only provides for disability of one leg etc. He further submitted that one another candidate namely Ashwani Chahal was having two legs disability and he has been selected against the general category and therefore petitioner is also entitled for the grant of reservation for the aforesaid post.

6. On the other hand, learned counsel for the respondents-Nigam submitted that when the petitioner applied for the post of Assistant Engineer vide Annexure P-2, he specifically stated his status to be One Leg (Ortho) Handicapped as aforesaid and this was a misleading declaration made by the petitioner whereas as per the medical certificate (Annexure P-5) the petitioner was suffering from Cogenital parasis of ® upper/lower limb i.e. both upper and lower limbs and in this way he could not have been considered against the

aforesaid reserved category. He submitted that the present case is for the post of Assistant Engineer and for which it was within the prerogative of the respondent-Nigam to have looked into the parameters of reservation because for the post of Assistant Engineer only a limited reservation can be provided and in case a person is having both disability of lower and upper limbs then he/she will not be able to perform his/her duties. He further referred to Clause 14 (20) of the advertisement i.e. general information and the same is at page 34 of the paper-book that in case any information provided by the candidate is not found true then the candidature is liable to be rejected and the same is reproduced as under:-

“20 Eligibility of the candidates can be checked at any stage during/after the selection process. Candidature is liable to be rejected at any stage of recruitment/selection process or after joining, if any information provided by the candidate is not found in conformity with the eligibility criteria notified or if HPUs comes across any evidence/knowledge that the qualification, experience and any other particulars indicated in application/other forms/formats are not recognized/false/misleading and/or amounts to suppression of information/particulars which should have been brought to the notice of HPUs.

7. Learned counsel for the respondents-Nigam also submitted that rather to avoid any confusion and to seek guidance the respondents had rather sought clarification earlier from the Director, Social Justice & Empowerment Department, Haryana, Chandigarh, and it was so informed by the aforesaid

Director vide Annexure R-4 that only the categories of One Leg/Orthopedically Handicapped and Partially Deaf/Hearing Handicapped can be considered as reserved category for the purpose of appointment on the post of Assistant Engineer/Junior Engineer and Shift Attendant. The relevant portion of Annexure R-4 is reproduced as under:-

It is hereby informed that following handicap category can work on the posts of Assistant Engineer/Junior Engineer.

(i) (OL) One Leg/Orthopedically Handicapped;

(ii) (PD) Partially Deaf/Hearing Handicapped;

8. Learned counsel for the respondents further submitted that in this way the petitioner did not fall in the reserved category and there was no occasion for the respondents-Nigam to have even relaxed the qualification in view of aforesaid Annexure R-4. He also submitted that even otherwise also it was the duty of the petitioner to have disclosed true facts in the application form and which has not been done as aforesaid and his candidature otherwise also is liable to be rejected in view of the aforesaid facts and circumstances. He further submitted that the petitioner is already working in the respondent-Nigam on a different post but for the post of Assistant Engineer/Junior Engineer, if a person is having two types of disabilities i.e. on lower limb as well as upper limb then the respondents-Nigam cannot appoint him/her because of the nature of duties especially in field work. He further submitted that even otherwise also the aforesaid categorization of reservation and setting of parameters of disability has not been challenged by the petitioner in the present petition and he himself participated in the selection process in this

regard. He further submitted that so far as the contention raised by learned counsel for the petitioner regarding one person namely Ashwani Chahal is concerned who was physically handicapped with two legs is concerned, he submitted that the aforesaid contention is factually incorrect as the aforesaid Ashwani Chahal was actually physically handicapped with one leg only and the other leg he was using as compensatory and it cannot be said in the case of Ashwani Chahal, he was physically handicapped with both legs and clarification in this regard has been given by the Othopedics Surgeon, Government Hospital, Hisar vide Annexure P-7 and as such has prayed for dismissal of the present petition.

9. I have heard learned counsel for the parties.

10. It is a case when the petitioner applied in the handicapped category and in the application form he categorized himself as One Leg (Ortho) Handicapped. As per learned counsel for the petitioner there was no other option for two limbs and therefore he had filled up only the category which has been so provided in the advertisement. It is a case where as per the advertisement the reservation was meant for one leg disability in view of the functions and duties which are to be performed by a Junior Engineer/Assistant Engineer which was to be filled up by the present advertisement. However, as per Annexure P-5, the petitioner is stated to be having disability of total 40% of one leg and also of the upper limb and this was the ground on the basis of which the candidature of the petitioner was rejected. As per the learned counsel for the petitioner the petitioner satisfies the condition of one leg handicapped but as per the learned counsel for the respondents the aforesaid

disability of one leg was also coupled with the upper limb as well and therefore the duties of Junior Engineer/Assistant Engineer cannot be discharged in view of the letter at Annexure R-7. There is no challenge of reservation as stated in the advertisement.

11. After hearing learned counsel for the parties, this Court is of the view that in the absence of any challenge to the aforesaid categorization, this Court would not sit into the prerogative and perception of the respondents-department whereby considering the nature of duties to be performed, specific reservation has been mentioned. In case the duties of Assistant Engineer/Junior Engineer (Electrical) is to be performed in the field etc. and a person is physically handicapped qua both upper and lower limbs then it lies within the wisdom of the recruiting agency to see as to whether such person should be recruited to a particular job having regard to the nature of duties or not and this Court cannot sit on the judgment and wisdom of the respondents-Nigam by substituting its own opinion.

12. Therefore, this Court is of the view that the present petition is devoid of any merit and hence dismissed.

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13. The present petition has been filed whereby the petitioner had applied for the post of Assistant Engineer (Electrical) against the SC Category and after declaring the final result, the petitioner was at waiting list No.1 and admittedly one of the SC category candidate who was selected did not join and as per the advertisement, the same was to be filled up within a period of one year. The factual position is not disputed by any of the learned counsel

for the parties that one person namely Gunjan did not join and as per the advertisement within a period of one year, the post had to be filled up from the waiting list who was at Sr. No.1.

14. Mr. Padamkant Dwivedi, learned counsel for the respondents has stated that the present petitioner is at Sr. No.1 in waiting list and he could not be appointed because of the interim order passed in the aforesaid CWP No.29159-2018. He submitted that since the other connected writ petition as aforesaid has been dismissed by this Court, the petitioner would now be considered against the SC Category and his case will be processed within a period of two months from today.

15. In view of the aforesaid statement made by Mr. Padamkant Dwivedi, learned counsel for the respondents, the present petition is allowed.

16. The respondents-Nigam is directed to consider and process the case of the petitioner immediately under the SC Category for the post of Assistant Engineer (Electrical) and thereafter in case he is granted the appointment then his appointment shall be with effect from the date when the post became vacant and his date of appointment shall be notionally fixed from that date. However, it is made clear that the petitioner shall not be granted any monetary benefits in this regard but he shall certainly be granted benefits of seniority, notional increments and other consequential benefits except arrears for the time he did not work on the post.

(JASGURPREET SINGH PURI)JUDGE

18.03.2024shweta

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