



201

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA-480-2023 (O&M)

Date of Decision: 16th September, 2025

HARYANA PUBLIC SERVICE COMMISSION AND ANOTHER

.....Appellant(s)

V/s.

SURESH KUMAR AND ANOTHER

.....Respondent(s)

CORAM: **HON'BLE MR. JUSTICE ASHWANI KUMAR MISHRA**
 HON'BLE MR. JUSTICE ROHIT KAPOOR

Present Mr. Kanwal Goyal, Advocate
 Ms. Komal Klana, Advocate and
 Ms. Varsha Chaudhary, Advocate, for the appellants.

Mr. Ashwani Verma, Advocate for respondent No.1.

Mr. Pankaj Mulwani, Senior DAG, Haryana.

ASHWANI KUMAR MISHRA, J. (Oral)

1. This Appeal is by the appellants-Haryana Public Service Commission (hereinafter referred to as "Commission"), challenging the order dated 09.02.2023 passed by the learned Single Judge, whereby Writ Petition bearing No. CWP-2280-2018, filed by respondent No.1-Suresh Kumar, has been disposed of with the directions to the appellants-Commission to call respondent No.1 for interview and to consider his candidature on merits viz-a-viz the other candidates.

2. It is undisputed that a post of Assistant Professor (College Cadre) in Economics under the Orthopedically Handicapped category, was advertised by the Commission. By way of advertisement, the Commission has invited applications on the specified format/form, requiring all the candidates, who are employed in Government/Public Sector Undertaking, to

submit “No Objection Certificate” from their respective employer(s) at the time of interview. The petitioner/respondent No.1 also applied against the said post and he also qualified the written examination held on 23.10.2017. The shortlisted candidates, including respondent No.1, were called for scrutiny of documents for interview on 01.12.2017. Respondent No.1 could not submit his “No Objection Certificate” from his employer i.e. Government Primary School, University Campus, Kurukshetra and it is for this reason that the claim of respondent No.1 was not considered by the Commission.

3. Thus aggrieved, respondent No.1 approached this Court by filing Writ Petition bearing No.CWP-2280-2018. In the Writ Petition, it was contended that the advertisement contained no stipulation requiring the candidates to submit “No Objection Certificate” from their employer(s). It was only on 20.11.2017 that respondent No.1 was called upon by the appellants-Commission to submit such certificate. Respondent No.1 applied for “No Objection Certificate” and ultimately, it has been issued to him on 16.01.2018, but by then the interview process itself was over. Respondent No.1 also submitted that he is a 100% physically handicapped person and there was no conscious failure on his part to comply with the conditions of advertisement and therefore, the Commission had acted arbitrarily in discarding his claim.

4. The claim of respondent No.1 was contested by the appellants before the Writ Court, stating that the requirement of obtaining “No Objection Certificate” from the employer, was specifically mentioned in the application form.

5. In the reply filed by the appellants-Commission before the learned Single Bench, it was also pointed out that against the solitary advertised post, one person has already been recommended and in such circumstances, no relief could be granted to respondent No.1.

6. Learned Single Bench took note of the facts brought on record and proceeded to dispose of the Writ Petition, by observing as under:-

“Though it was mentioned in the application form that all the documents will be required to produce in original at the time of scrutiny and vide interview letter dated 20.11.2017 (Annexure P-7) the petitioner was specifically asked to produce the ‘No Objection Certificate’, But the fact remains that the petitioner is a 100% handicapped person because of which he applied for ‘NOC’, on 29.11.2017, which was forwarded by the Headmaster of the School to Block Elementary Education Officer (BEEO), Thanesar, who in turn forwarded it to District Elementary Education Officer (DEEO), Kurukshetra, on 30.11.2017. This was also explained by the petitioner before the Scrutiny Committee on 01.12.2017. The requisite certificate was issued by the competent authority to the petitioner on 16.01.2018 (Annexure P-11).

In view of the above, the petitioner without wasting any time applied for the requisite ‘No Objection Certificate’ from the competent authority, thus, there is no fault on the part of petitioner.

The petition is disposed of with a direction to the Haryana Public Service Commission, to call the petitioner for interview and consider his candidature on merits viz-a-viz the other candidates.”

7. Learned counsel for the appellants-Commission submits that only one post was advertised and since selection has already been completed by the Commission, and recommendation was made in favour of

one Vinay Kumar Pathak, as such, no post survived against which the claim of respondent No.1 could be considered. It is also urged that the said selected person has otherwise not been impleaded as a party nor was his appointment under challenge and therefore, at this late stage, no relief can be granted to him.

8. Taking note of such facts, this Appeal was entertained and following orders were passed on 30.05.2023 by this Court, staying the impugned judgement of the learned Single Judge:-

“Contends, inter alia, that pursuant to the advertisement dated 16.02.2016, respondent No.1 competed for selection to the post of Assistant Professor (Economics) (College Cadre), HES-II. Though, he qualified the written examination and was even called for interview and scrutiny of documents, but his candidature was rejected, as he failed to obtain a ‘No Objection Certificate’ from his employer. It is urged that the learned Single Judge, in reference to letter dated November 20, 2017 (P-7), observed that the authorities, for the first time, vide said letter, required respondent No.1 to obtain NOC from the appointing authority, failing which, he would not be interviewed. And, since he immediately applied for the NOC on 29.11.2017, which was released to him on 16.01.2018, there was neither any delay, nor he could be said to be remiss in pursuing his cause. Accordingly, the appellant-Commission has been directed to interview respondent No.1 and consider his candidature.

Whereas, he asserts that the application form, dated 13.03.2016, submitted by respondent No.1 himself, required all the candidates, employed in Government/Public Sector Undertaking, to submit NOC from their employer(s), at the time of interview. Therefore, he submits that respondent No.1 was conscious of the said requirement as early as on 13.03.2016. And, the letter dated November 20, 2017 (ibid)

was just a sequel thereto. Further, the selection process had already been carried out and one, Vinay Kumar Pathak, was appointed against the only vacancy that was advertised, prior to filing of the petition. Thus, in the absence of the selected candidate, the relief prayed for ought not to have been granted on account of non-joinder of necessary parties. In any case, the select list was not even questioned in the writ petition. And, consideration of the candidature of respondent No.1, at this stage, would have serious ramifications/repercussions and would vitiate the sanctity of the entire selection/appointment process.

Notice in the application for condonation of delay as well as in the main appeal, returnable by 18.08.2023.

Notice re: stay, as well.

Till the adjourned date, operation of the impugned order and judgment dated 09.02.2023, rendered by the learned Single Judge, shall remain stayed.”

9. It is contended on behalf of respondent No. 1 that apart from the post advertised, there are other vacancies available in the Department and therefore, a direction can be issued to the appellants-Commission for considering the claim of respondent No.1 against such vacancies.

10. We have heard learned counsel for the parties and perused the materials on record.

11. The primary cause raised before the learned Single Judge was with regard to the non-consideration of respondent No.1's candidature as he had not been able to produce "No Objection Certificate" from his employer at the time of interview. It was the case of the writ petitioner that such a condition was not mentioned in the advertisement.

12. The application form contained the following queries to be answered by the candidates:

- (i) *Are you working as Teacher in Education Department?*
- (ii) *Are you employed in Govt./Public Sector Undertaking? If Yes and you are in regular service then give details and have to submit NOC from the employer at the time of interview)*

13. In response to query No.(i) in the application form, respondent No.1 has stated in affirmative and in response to query No.(ii), he has stated in negative.

14. It is undisputed that respondent No.1 was working as Primary Teacher in a Government Institution since 05.01.2011. The response submitted by him was apparently incorrect as he was already in employment of the Education Department of the State of Haryana.

15. The claim of respondent No.1 was that while working as Teacher in the Education Department, Haryana, he was distinct from someone who was employed in Govt./Public Sector Undertaking and therefore, the clause requiring “No Objection Certificate” from the employer was not intended to be applicable on him.

16. The claim of respondent No.1 in that regard cannot be accepted inasmuch as the employment in the Education Department of the State of Haryana would amount to employment in “Government”. Therefore, the requirement of submission of “No Objection Certificate” by respondent No.1 from the employer was mandatory.

17. Learned Single Judge, while deciding the Writ Petition filed by respondent No.1, was swayed by the fact that respondent No.1 is a 100% physically handicapped person. We, too feel that being a person who is

100% physically handicapped, the Court would be justified in extending equity in his favour.

18. Though, we have come to the conclusion that respondent No.1 was required to submit “No Objection Certificate” from the employer, but we are also of the view that possibility exists that respondent No.1 may not have correctly understood the requirement on his part of submitting the “No Objection Certificate”. It has otherwise been shown that the “No Objection Certificate” was applied by respondent No.1 when he was specifically communicated vide letter dated 20.11.2017 to produce the same.

19. Since learned Single Bench had exercised equity jurisdiction in aid of a person who is 100% physically handicapped, as such we may have thought of not interfering in the matter, but for the reasons stated hereinafter.

20. It is undisputed that there was only one post advertised by the Commission. This post stands filled with the appointment of one Vinay Kumar Pathak, who is not a party before us and his appointment is also not under challenge. Such appointment, otherwise, was made in the year 2017. After expiry of nearly eight years, and particularly when the solitary post advertised stands already filled, we find ourselves helpless in extending any relief to respondent No.1.

21. The contention of the learned counsel for respondent No.1 that there are other vacant posts available against which respondent No.1 could be considered, is not an argument which appeals to us. The law is settled that recruitment can be directed only against the post which is duly advertised. This is essential for any valid appointment to be made against a

public post consistent with the Article 16 of the Constitution of India. A post which has not been advertised cannot be directed to be filled with the appointment of respondent No.1. In the facts of the present case, we are of the view that no relief can thus be granted to respondent No.1.

22. Subject to the observations made hereinabove, the present Appeal stands **disposed of.**

23. It goes without saying that if any fresh advertisement is issued by the appellants-Commission, respondent No.1 shall be at liberty to apply and the same shall be considered as per his qualifications etc.

24. All pending applications, if any, in this case are disposed of accordingly.

[ASHWANI KUMAR MISHRA]
JUDGE

[ROHIT KAPOOR]
JUDGE

September 16, 2025
Ess Kay

<i>Whether speaking / reasoned</i>	:	<i>Yes</i>	/	<i>No</i>
<i>Whether Reportable</i>	:	<i>Yes</i>	/	<i>No</i>