

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

303 (10 cases)

CWP-14773-2022
Date of Decision: 24.04.2025

Vikram and others

...Petitioners

Versus

State of Haryana and others

...Respondents

With

Sr. No.	Case No.	Petitioner(s)	Respondent(s)
2.	CWP-12714-2022	Rishu and others	State of Haryana and another
3.	CWP-1137-2023	Ashok Kumar and another	State of Haryana and others
4.	CWP-12848-2022	Harvinder Joon	State of Haryana and others
5.	CWP-12898-2022 (O&M)	Vikram Singh	Haryana Staff Selection Commission and another
6.	CWP-13023-2022 (O&M)	Naresh Kumar	State of Haryana and others
7.	CWP-14301-2022	Satish	State of Haryana and others
8.	CWP-15279-2022	Gourav and others	State of Haryana and others
9.	CWP-23349-2022	Sonu Kumar	State of Haryana and others
10.	CWP-8345-2024	Sunder Ram	State of Haryana and others
11.	CWP-9622-2023	Malkeet Singh	Uttar Haryana Bijli Vitran Nigam Limited and others

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Sunil Kumar Nehra (Sirsa), Advocate
for the petitioners (in CWP-12848-2022 & CWP-23349-2022)

Ms. Alka Chatrath, Advocate with
Ms. Dhamanpreet Kaur, Advocate and
Mr. Nikhil Singh, Advocate for the petitioner
(in CWP-9622-2023)



Mr. Raj Kapoor Malik, Advocate for the petitioner
(in CWP-14773-2022 & CWP-8345-2024)

Mr. Ravinder Malik (Ravi), Advocate and
Mr. Ritender Rathee, Advocate for the petitioner
(in CWP-12898-2022)

Mr. Jasbir Mor, Advocate and
Mr. Virender Gill, Advocate for the petitioner
(in CWP Nos.13023, 15279 and 14301 of 2022)

Mr. Aazam Khan, Advocate for
Mr. Sanjeev Kumar, Advocate for the petitioner
(in CWP-1137-2023)

Ms. Anjali Sheoran, Advocate for the petitioner
(in CWP-12714-2022)

Ms. Palika Monga, DAG, Haryana.

Ms. Nikita Goel, Advocate
for respondents-UHBVN in CWP-12898-2022.

Mr. Udit Garg, Advocate
for respondent No.2 in CWP- 14773-2022 & CWP-13023-2022
for respondent No.3 in CWP-12848-2022, CWP-23349-2022,
CWP-14301-2022, CWP-1137-2023 and CWP-8345-2024.

Mr. Nikhil Lather, Advocate for
Mr. Anurag Goyal, Advocate, for the applicant
in CM-11123-CWP-2024 in CWP-13023-2022.

JAGMOHAN BANSAL, J. (Oral)

1. As common issues are involved in the captioned petitions, with the consent of both sides, the same are hereby disposed of by this common order. For the sake of brevity and convenience, facts are borrowed from *CWP-14773-2022*.

2. There are five petitioners in this petition who under Articles 226/227 of the Constitution of India are seeking setting aside of Advertisement No.11/2019 (Category No.21) dated 25.07.2019 (Annexure P-1) to the extent posts of Assistant Lineman under Persons with Disability



(‘PWD’) Category have been confined to deaf and to persons suffering from hard of hearing.

3. Haryana Staff Selection Commission-respondent No.2 vide advertisement dated 25.07.2019 invited applications for different posts with different Power Utilities of State of Haryana. The advertised posts included 1307 posts of Assistant Lineman with Uttar Haryana Bijli Vitran Nigam Limited (‘UHBVNL’). The reservation policy was followed and as per the policy, 52 posts were reserved for deaf and for persons suffering from hard of hearing.

4. The petitioners are suffering from benchmark disabilities and fall under PWD Category. They pursuant to aforesaid advertisement filed application under PWD Category. In the application form, they pointed that they are physically handicap. The respondent conducted written test on 14.11.2021. Final result, after scrutiny of documents, was declared on 14.05.2022. The name of the petitioners did not figure in the list of successful candidates.

5. As per respondent, candidature of the petitioners has been rejected on the ground that posts reserved for PWD Category were earmarked for ‘deaf and hard of hearing’ persons. The petitioners are neither deaf nor hard of hearing, thus, despite being PWD, are not eligible for the posts.

6. A battery of Lawyers addressed arguments on behalf of the petitioners. They pleaded that Government of India in terms of provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (for short ‘1995 Act’) has identified posts which may be held by persons with disabilities. The Government of India vide



notification dated 29.07.2013 has notified posts, physical requirements, categories of disabled suitable for the job, nature of job and working conditions. The post of Assistant Lineman is notified at Serial No.1475. As per said notification, persons with disability of loss of one leg and hard of hearing are eligible for the post of Assistant Lineman. The respondent has confined reservation for persons with disability of hearing. As per notification issued by Government of India, persons with disability of one leg are also eligible. The State Government vide instructions dated 17.04.2017 has adopted notification dated 29.07.2013 issued by Government of India. As the State Government has adopted notification issued by Government of India, there is no reason to confine reservation for persons with disability of hearing. The Government has further appointed persons with disability of one leg in the selection process of 2023. The respondent had also made similar appointments in 2008. The respondent has arbitrarily denied benefit of reservation to persons with disabilities other than hearing.

7. *Per contra*, learned counsel for the respondent submits that as per proviso to Section 33 of 1995 Act, an establishment of Government may be exempted from applicability of the Act. The respondent- UHBVNL vide letter dated 19.01.2006 requested Social Justice and Empowerment Department to grant exemption in terms of Section 33 of 1995 Act. The Social Justice and Empowerment Department vide communication dated 14.03.2006 (Annexure R-3/2) granted exemption from applicability of provisions of 1995 Act, thus, provisions of 1995 Act are not applicable to respondent. As per notification dated 29.07.2013 (Annexure P-5) issued by Government of India as adopted by State Government vide notification dated 03.02.2017 read with instructions dated 17.04.2017 (Annexure P-6), at the most, persons with disability of one leg may be considered. The



petitioners are suffering from other disabilities, thus, they cannot be appointed on the post of Assistant Lineman. The nature of job of Assistant Lineman is such that persons with disabilities other than hearing cannot be selected. They cannot perform duties of Assistant Lineman.

The petitioners without any protest or demur participated in the selection process and at this belated stage cannot be permitted to doubt advertisement itself. It is a settled proposition of law that a candidate having been declared unsuccessful cannot challenge selection process or advertisement. As per judgment of Supreme Court in ***Tajvir Singh Sodhi and others vs. State of Jammu and Kashmir and others, 2023 SCC OnLine SC 344***, the petitioners cannot assail terms and conditions of the advertisement after participating in the selection process.

8. I have heard the arguments of learned counsel for both sides and perused the record with their able assistance.

9. A two Judge Bench of Apex Court in ***Tajvir Singh Sodhi (supra)*** has held that candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. A candidate cannot allege that selection process was unfair or there was some lacuna in the process just because selection process was not palatable to a candidate.

10. In ***Ramesh Chandra Shah v. Anil Joshi, (2013) 11 SCC 309***, after referring to catena of judgments on the principle of waiver and estoppel, Supreme Court did not entertain challenge to the advertisement for the reason that the same would not be maintainable after participating in the selection process. The relevant extracts of the judgment read as:



“24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.”

11. The Supreme Court in ***Somesh Thapliyal and Another v. Vice Chancellor, H.N.B. Garhwal University and Another (2021) 10 SCC 116*** has adverted to challenge to terms and conditions of advertisement or appointment letter by a candidate after his selection. The Court has opined that employer is always in a dominating position, thus, in case of public employment, terms and conditions are subject to judicial scrutiny. The relevant extracts of the said judgment read as:

“42. The submissions of the learned counsel for the respondents that the appellants have accepted the terms and conditions contained in the letter of appointment deserves rejection for the reason that it is not open for a person appointed in public employment to ordinarily choose the terms and conditions of which he is required to serve. It goes without saying that employer is always in a dominating position and it is open to the employer to dictate the terms of employment. The employee who is at the receiving end can hardly complain of arbitrariness in the terms and conditions of employment. This Court can take judicial notice of the fact that if an employee takes initiation in questioning the terms and conditions of employment, that would cost his/her job itself.

43. The bargaining power is vested with the employer itself and the employee is left with no option but to accept the conditions dictated by the authority. If that being the



reason, it is open for the employee to challenge the conditions if it is not being in conformity with the statutory requirement under the law and he is not estopped from questioning at a stage where he finds himself aggrieved.”

12. A Two Judge Bench of Supreme Court in ***Munindra Kumar and others v. Rajiv Govil and others, (1991) 3 SCC 368*** has held that candidates who have remained unsuccessful in the selection process cannot be estopped from challenging the Rules which are arbitrary and violative of Article 14 of Constitution of India. The relevant extracts of the judgment read as:

“10. It may be noted that Rajeev Govil, Vivek Aggarwal and Gyanendra Srivastava who remained unsuccessful had filed the writ petitions after taking chance and fully knowing the percentage of marks kept for interview and group discussion. It is no doubt correct that they cannot be estopped from challenging the rule which is arbitrary and violative of Article 14 of the Constitution, but in modulating the relief, their conduct and the equities of those who have been selected are the relevant considerations.”

13. A two-Judge Bench of Supreme Court in ***Abhimeet Sinha and others vs. High Court of Judicature at Patna and others, (2024) 7 SCC 262*** has adverted to question of maintainability of writ petition after participating in the selection process. The Court has clearly held that principle of estoppel cannot override the law. To non-suit the writ petitioner at the threshold would hardly be reasonable particularly when the alleged deficiency in the process could be gauged only by participating in the selection process. The relevant extracts of the judgment read as under:-

“IV. MAINTAINABILITY



18. At the outset, it is apposite to address the issue of the maintainability of the writ petitions. It is argued by Mr. Gautam Narayan and Mr. Purvish Jitendra Malkan learned counsel that after having participated in the recruitment process, the writ petitioners having not succeeded, cannot turn around and challenge the recruitment process or the vires of the Recruitment Rules. It is submitted that all candidates knew about the prescription of minimum marks for viva voce, well before the selection process commenced and the principle of estoppel will operate against the unsuccessful challengers. On the other hand, the learned counsel representing the writ petitioners argued that the principle of estoppel would have no application when there are glaring illegalities in the selection process. Further, estoppel is not applicable when the arbitrariness affects fundamental rights under Articles 14 and 16 of the Constitution of India.

19. As argued by the learned counsel for the High Courts, the legal position is that after participating in the recruitment process, the unsuccessful candidates cannot turn around and challenge the recruitment process. However, it is also settled that the principle of estoppel cannot override the law. Such legal principle was reiterated by the Supreme Court in **Dr.(Major) Meeta Sahai Vs. Union of India (2019) 20 SCC 17** where it was observed as under:

“17. However, we must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional



scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process.”

20. *Guided by the above ratio, in matters like this, to non-suit the writ petitioners at the threshold would hardly be reasonable particularly when the alleged deficiencies in the process could be gauged only by participation in the selection process.”*

14. As per above-quoted judgments, it is evident that a candidate cannot be estopped from assailing clause(s) of advertisement which are arbitrary and violative of Article 14 of the Constitution of India. The petitioners in the present case are assailing one clause of the advertisement on the ground that it is contrary to statutory provisions as well as notifications issued by Government of India and Government of Haryana, meaning thereby, question of validity of the clause is involved. As they are assailing one clause of the advertisement which *prima facie* seems to be contrary to 2016 Act as well as notifications issued thereunder, the petitions cannot be rejected at threshold. The matter needs to be examined on merits.

15. It is settled proposition of law that terms and conditions of the advertisement cannot be contrary to Constitution of India, Statutory provisions and Rules. If any clause of the advertisement is contrary to law, it is liable to be ignored or read in the manner as prescribed in the law.

16. The Parliament introduced 1995 Act to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region. The Act defines Persons with Disabilities as those having not less than forty percent disability and



identified seven categories of disabilities, namely blindness, low vision, hearing impairment, locomotor disability, mental retardation, mental illness and leprosy-cured. The said Act was substituted by Rights of Persons with Disabilities Act, 2016 (for short '**2016 Act**'). 2016 Act was introduced to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto. Section 34 of 2016 Act provides for reservation for persons with benchmark disabilities. For the ready reference, Section 34 of 2016 Act is reproduced as below:

“34. Reservation.—(1) Every appropriate Government shall appoint in every Government establishment, not less than four per cent. of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:—

- (a) blindness and low vision;*
- (b) deaf and hard of hearing;*
- (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;*
- (d) autism, intellectual disability, specific learning disability and mental illness;*
- (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:*

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State



Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five 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 five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.”

[Emphasis supplied]

17. Section 33 of 2016 Act mandates that appropriate Government shall identify posts for reservation. Section 33 of 2016 Act reads as below:

“33. Identification of posts for reservation.—The appropriate Government shall—

- (i) identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of Section 34;
- (ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and

(iii) undertake periodic review of the identified posts at an interval not exceeding three years.”

It is apt to notice here that Section 33 of 2016 Act is *verbatim* replica of Section 32 of 1995 Act.

18. The Government of India vide notification dated 29.07.2013 identified posts for persons with disabilities. The said notification was issued in exercise of power conferred by Section 32 of 1995 Act. In the said notification, post of Groundsman/Assistant Lineman was also identified for persons with disability. The said post was ear-marked at Serial No.1475 which is reproduced as below:

Sl. No.	Designation	Physical Requirements	Categories of Disabled suitable for the job	Nature of job	Working condition/Remarks
1	2	3	4	5	6
XXXX	XXXX	XXXX	XXXX	XXXX	XXXX
1475	Grounds Man	SE, W, S, B	OL, HH	Assist the lineman in the various aspects of line maintenance, repair and construction. Prepare and assemble various line apparatus required for particular work being performed. Employee will be in close proximity to work area in case on emergency i.e. must be able to operate.	Work is performed inside and outside. No hazards are involved. Worker works alone and sometimes in a group. Mobility of the person should be adequate.



19. The State Government vide notification dated 03.02.2017 adopted aforesaid notification of Government of India. In the said notification, it was mentioned that nomenclature used includes any other nomenclature used for comparable posts with functions identical to the posts identified in the notification dated 29.07.2013. If a post is already held by a person with disability, it shall be deemed to have been identified. The list of posts being notified is not an exhaustive list. Notification dated 03.02.2017 is reproduced as below:

*“HARYANA GOVERNMENT
SOCIAL JUSTICE & EMPOWERMENT DEPARTMENT
Notification*

Dated: 03-02-2017

No. -SW(4)/2017- In supersession of earlier Notification No. 472-SW(4)/2011 dated 22nd December, 2011, the Governor of Haryana is pleased to adopt the posts Identified for persons with disabilities notified by the Ministry of Social Justice & Empowerment (Department of Disability Affairs), Government of India, New Delhi from time to time and vide their Notification No. 16-15/2010-DDIII dated 29th July, 2013 for Group A,B,C & D under Section-32 of the Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995 (Central Act No. 1 of 1996) here in referred to as the Act, for providing reservation under Section-33 of the Act in establishments within the meaning of Sub-Section(k) of Section-2 of the Act and pertaining to Haryana State.

2. The nomenclature used includes any other nomenclature used for comparable posts with functions Identical to the posts identified in the said notification.

3. Persons with disabilities require some aids and appliances to overcome their disabilities. The aids and appliances may be provided to persons with disabilities on their appointment, keeping in view their requirement.

4. The list of posts being notified is not an exhaustive list. The Ministries, Departments, Public Sector Undertakings and the autonomous bodies may further supplement the list.



5. *If a post is already held by a person with disability, it shall be deemed to have been identified.*

6. *If a post is identified in the feeder grade, the post in the promotional grade should also stand identified.*

Chandigarh
The 27th Jan, 2017

(Amit Jha)
Principal Secretary to Govt. Haryana,
Social Justice & Empowerment Deptt.”

20. The State Government besides aforesaid notification dated 03.02.2017, issued instructions dated 17.04.2017. As per said instructions, the State Government has adopted notification dated 29.07.2013 issued by Government of India. There would be reservations of 3% in case of direct recruitment for Group ‘A’, ‘B’, ‘C’ and ‘D’. The reservations shall be horizontal. Instructions dated 17.04.2017 is reproduced as below:

*“Government of Haryana
General Administration Department
General Services-III Branch
No. 22/10/2013-1GSIII*

Dated Chandigarh, the 17th April, 2017.

To

- 1. All the Administrative Secretaries to Government Haryana*
- 2. All Heads of Departments in the State of Haryana.*
- 3. The Commissioners, Ambala/ Hisar/ Rohtak/ Gurugram Division.*
- 4. All the CA/MDs of all Boards/ Corporations/Public Sector Undertakings in Haryana.*
- 5. The Registrar General of Punjab & Haryana High Court, Chandigarh.*
- 6. All the Deputy Commissioners in the State of Haryana.*
- 7. The Registrars of all the Universities in the State of Haryana*

Subject: Grant of reservation to persons with disabilities in Jobs under Government/ Government



*Undertakings, Local Bodies and Universities
etc.*

Sir/Madam,

I am directed to invite your kind attention to the Government instructions issued vide letter of even number dated 15.07.2014, in which it was decided to provide 3% horizontal reservation to persons with disabilities in case of direct recruitment to Group C and D in total cadre posts and in the case of Group A and B posts reservation was to be provided only on identified posts (in direct recruitment quota).

2. In compliance of Hon'ble Supreme Court judgement dated 08.10.2013 passed in Civil Appeal No. 9096 of 2013 and order dated 23.05.2016 passed by the Commissioner for Persons with Disabilities in Case No. 165 of 2015 and 184 of 2016, the State Government on reconsideration of the matter has now decided that three (03) percent posts in case of direct recruitment for Group A, B, C and D shall be horizontally reserved for persons with disabilities on the total number of posts in the cadre strength and also in the case of promotion to Group A, B, C and D w.e.f. date of PWD Act coming into force on the posts identified for persons with disabilities notified by the Ministry of Social Justice & Empowerment (Department of Disability Affairs) Government of India, New Delhi from time to time and vide their Notification No. 16-15/2010- DDIII, dated 29th July, 2013 adopted by the Haryana Government Social Justice & Empowerment Department vide their notification dated 27.1.2017 issued vide Endst. No. 130-SW(4) 2017, dated 3.2.2017.

The above instructions may please be brought to the notice of all concerned for strict compliance,

Yours faithfully,

*Sd/-
Superintendent, GS-III Branch,
for Chief Secretary to Government Haryana”*

21. As per second proviso to Section 34(1) of 2016 Act, the appropriate Government in consultation with Chief Commissioner or the



State Commissioner may exempt any establishment from the provisions of this Section. Section 33 of 1995 Act is *pari materia* with Section 34 of 2016 Act. The respondent-UH BVNL vide application dated 19.01.2016 requested Social Justice and Empowerment Department to grant exemption from applicability of Section 33 of 1995 Act. The said application came to be rejected vide communication dated 14.03.2006 of Director, Social Justice and Empowerment Department, Haryana. The communication dated 14.03.2006 reads as under:

“From

*Director
Social Justice & Empowerment department,
Haryana, Chandigarh*

To

*Managing Director
Uttar Haryana Bijli Vitran Nigam
Panchkula
No.8947/H-3/VK/SJE/2006
Chandigarh, Dated 14/03/2006*

*Subject:- Recruitment of person with disabilities-with
reference to exemption u/s 33*

*In reference to your office memo number 15870-71
dated 19/1/2006.*

*Government of India under Section 33 of Persons with
Disabilities (Equal Opportunities, Protection of Rights and
Full Participation) Act, 1995 issued notification Sr.No.16/25-
NII, dated 31.05.2001 wherein posts have been identified for
disabled persons.*

*You have sought exemption for filling post of
Assistant Lineman, Shift Attendant, Lower Divisional Clerk,
Upper Divisional Clerk, Meter Reader, Chowkidar, Sewadar,
Sweeper, Security Guard. You are informed that following
class of disabled persons can work on the post of Assistant
Lineman, Shift Attendant, Lower Divisional Clerk, Upper
Divisional Clerk, Meter Reader, Chowkidar, Sewadar,
Sweeper, Security Guard.*

Assistant Lineman

1 (PD) Partially Deaf



Lower Divisional Clerk/Upper Divisional Clerk

1 (OL, BL) 1 leg/1 arm/both legs

2 (PD/D) Partially Deaf/Deaf

Peon

1 (LV) Low Vision

2 (OA) 1 Arm, (OL) 1 Leg

3 (PD) Partially Deaf

Chowkidar (Chowkidar-cum-Form Mate)

1 (BL) Both Legs

Sweeper

1 (BL, OL) Both Legs/ 1 Leg

Thus, on thorough scrutiny and keeping in view Government of India notification, exemption under Section 33 cannot be granted while making appointment of Assistant Lineman, Lower Divisional Clerk, Upper Divisional Clerk, Chowkidar, Sewadar. For the post of Shift Attendant, Meter Reader, Security Guard, the exemption is being deliberated upon u/s 33 and the decision will be conveyed.

Therefore, inform this office after filling post of Assistant Lineman, Lower Divisional Clerk, Upper Divisional Clerk, Chowkidar, Sewadar, Sweeper. The said list can be accessed via internet on www.eedisabilities.nic.in.

Sd/-

Social Justice & Empowerment department,
Haryana”

[Emphasis Supplied]

22. From the perusal of communication dated 14.03.2006 of Director, Social Justice & Empowerment Department, it is evident that exemption sought by respondent was denied whereas respondent in its reply as well as during the course of hearing attempted to impress upon the Court that there is exemption under Section 33 of 1995 Act in favour of the respondent, thus, there was no need to comply with mandate of 2016 Act. The said authority has categorically asked the respondent to comply with Government of India notification dated 31.05.2001 and further denied

exemption under Section 33 while making appointment of Assistant Lineman. The Social Justice & Empowerment Department rejected application of the respondent seeking exemption under Section 33 of 1995 Act but it mis-leading this Court vehemently pleaded that there is exemption in its favour. Act of respondent is reprehensible. Both the agencies i.e. Selection Commission and Power Utility have acted in an irresponsible manner. It is apt to notice here that in 2006, notification dated 31.05.2001 of Government of India was in force and at the time of issuance of impugned advertisement notification dated 29.07.2013 was in force which has identified post of Assistant Lineman for persons with disability of one leg and hard of hearing.

23. The communication dated 14.03.2006 was based upon Government of India notification dated 31.05.2001. The Government of India in exercise of power conferred by Section 32 of 1995 Act issued another notification dated 29.07.2013 whereby scope of posts was enlarged. As per notification dated 29.07.2013, persons with disability of one leg and hard of hearing are eligible for the post of Groundsman. On being confronted with Entry No.1475 of said notification, the respondent attempted to plead that post of Assistant Lineman falls under Entry No.1206 which is reproduced as below:

1206	Lineman (Field)	S, R, ST, BN, W, MF	HH	To do works given by the superiors	Should have functional communication skill with assistive listening devices.
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From the reading of above quoted Entry, it is evident that it is applicable to Lineman (Field) whereas post in question is Assistant Lineman. The designation mentioned under serial No.1475 is Groundsman



and under column of nature of job, it is clearly recorded that Groundsman would assist the Linemen in the various aspect of line maintenance, repair and construction. Thus, Assistant Lineman is not equal to Lineman (Field) whereas he is equal to Groundsman.

24. It is further apt to notice that respondent filed an affidavit dated 03.05.2017 before this Court in *CWP-18665-2013* wherein it was deposed that as per duty charter, an Assistant Lineman is basically a Groundsman to help the Lineman. Duty chart of Assistant Lineman was enclosed with said affidavit. The relevant extracts of the affidavit as well as contents of duty chart are reproduced as below:-

“Affidavit

2. *That as per duty Assistant Lineman is charter, basically an a groundman to help the Lineman and is entrusted with field job only. Photocopy of duty charter of Assistant Lineman/Lineman is annexed herewith as Annexure R-1/2 for kind perusal of this Hon'ble Court.”*

DUTIES OF ASSISTANT LINEMAN

“The Assistant Lineman is basically a groundsman to help the Lineman. He will be assigned the following duties when posted in operation organisation:-

- 1. Assisting the LM in the performance of duties at ground carrying the T&P and ladders wherever required.*
- 2. Helping the lineman in the construction of works by carrying material to the location of work, digging of pits, erection of poles and sagging of conductors.*
- 3. Replacement of fuses at the consumers premises.*
- 4. To work on the overhead lines as LM, if so authorised in writing by a gazetted officer for construction and maintenance of lines, mains and services.*



5. *Any other job when specifically ordered by the JE/SDO.*
6. *In case ALM is authorised to work as Lineman, then he will perform the duties of lineman, if he is not attached with lineman and is asked to do so by JE(F)/JE(I)/SDO.*

*Under Secretary/GA
UHBVN, Panchkula”*

25. From the aforesaid affidavit, there does not remain even an *iota* of doubt that Assistant Lineman is Groundsman. The respondent while adjudication of CWP-18665-2013 pleaded that Assistant Lineman is Groundsman whereas before this Court is taking somersault and pleading that Assistant Lineman is different from Groundsman. The stand of respondent is depreciable. The respondent is making every endeavour to deny substantial benefit to the petitioners.

26. The Government of India issued notification dated 29.07.2013 in exercise of power conferred by Section 32 of 1995 Act. By said notification, posts as well as disabilities were identified. The post of Assistant Lineman was also identified and persons with disability of one leg and hard of hearing were declared eligible for the post. The State Government without any amendment has adopted notification dated 29.07.2013 by way of State notification dated 03.02.2017. The respondent has further issued instructions dated 17.04.2017 whereby it has been clarified that State Government has adopted notification dated 29.07.2013 of the Central Government. The respondent was bound to comply with notification dated 29.07.2013 of Government of India in true spirit and without tinkering with it. The exemption sought by respondent stands rejected by competent authority. Thus, respondent was duty bound to implement notification dated 29.07.2013 read with notification dated



03.02.2017 and instructions dated 17.04.2017. The respondent acting beyond its jurisdiction and contrary to aforesaid statutory provisions has confined benefit of reservation to persons with disability of hard of hearing whereas persons with disability of one leg are equally entitled for the post. It is apt to mention here that notification of 2001 issued by Government of India identified post of Assistant Lineman for persons with disability of hearing whereas notification dated 29.07.2013 identified for persons with disability of one leg as well as hard of hearing.

27. The respondents during the course of hearing conceded that while making appointments in 2023, persons with disability of one leg have been considered and offered appointment letter. The reservation to persons with disability is governed by 2016 Act and notifications issued thereunder by Central as well as State Government. The reservation to persons with disability of one leg has been granted on the basis of 2016 Act read with 2013 notification of Government of India and 2017 notification of State Government.

There is no change in the legal position from 2013 to 2024. In the absence of change in legal position, there was no reason to deny benefit of reservation to persons with disability of one leg in 2019-2020 and grant in 2023. The stand of respondent is contradictory, arbitrary and whimsical. The respondent has attempted to deny substantial benefit to persons who are unfortunately suffering from physical disabilities. The respondent was bound to comply with 2016 Act and notification issued thereunder. The respondent instead of adopting pragmatic, compassionate and holistic approach has followed pedantic and harsh approach.

28. In the wake of above discussion and findings, this Court is of the considered opinion that respondent has wrongly rejected candidature of persons with disability of one leg. The petitions are allowed and respondents are directed to consider all those petitioners who are with disability of one leg. It is made clear that petitioners suffering with other benchmark disabilities, on account of this judgment, would not be eligible for the post of Assistant Lineman.
29. It is further clarified that date of joining of petitioners shall be their date of appointment for all intent and purposes. The respondents would be at liberty to examine other terms and conditions of advertisement while considering claim of persons with disability of one leg. The needful shall be done within 10 weeks from today.
30. This order may prompt fence sitters to approach this Court. The benefit of this order shall be available only to present petitioners and it would not be available to any fence sitter otherwise there would be no end of litigation and it may open Pandora’s Box.
31. The respondent No.3- Uttar Haryana Bijli Vitran Nigam (UHBVN) is hereby burdened with costs of Rs.1,25,000/- for making false averments in the written statement. The costs shall be deposited within three months from today with PGI Poor Patient Fund.

(JAGMOHAN BANSAL)
JUDGE

24.04.2025
Ali/Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No