

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8734 of 2025

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Md. Sarwar Ali S/o Md. Ali Ahmad, Resident of Walima Manzil, Guzzu Khan Lane, Nathnagar, Bhagalpur, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar Bihar.
2. The Principal Secretary, Labour Resource Department, Bihar, Patna.
3. The Deputy Secretary, Labour Resource Department, Bihar, Patna.
4. The Director, Directorate of (Employment and Training, Labour Resource Department, Govt. of Bihar, Patna.
5. Bihar Technical Service Commission, through its Secretary, Patna.
6. The Incharge Secretary, Bihar Technical Service Commission, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Md. Najmul Hodda, Advocate Ms. Ayushi Chaudhary, Advocate
For the Respondent/s	:	Mr. Pankaj Kumar, SC-12 Mr. Kamlesh Kishore, AC to SC-12
For the BTSC	:	Mr. Nikesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

2 28-04-2026 Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the Bihar Technical Service Commission (hereinafter referred to as 'Commission').

2. The present writ petition has been filed for the following reliefs:-

(A) For issuance of writ of mandamus or any other appropriate writ order or direction commanding the respondents authorities to appoint the petitioner on the post of "Trade Instructor" under handicapped category with respect to



advertisement number 50/2023 (group-13) published by the Bihar' Technical Service Commission, Patna as the petitioner is orthopedically handicapped and 4 seats of the handicapped has been vacant as yet in connection with above advertisement and same has been kept for unreserved category for subsequent recruitment.

(B) For issuance of a writ of mandamus or any other appropriate order or direction restraining the respondent authorities to not to shift handicapped reserved 4 seats for subsequent recruitment.

(C) For any other appropriate relief as the court may deem fit.

3. Learned counsel for the petitioner submits that the petitioner has applied for the post of Trade Instructor in the Bihar Technical Service Commission, as notified under Advertisement No. 50 of 2023 dated 14.09.2023, issued by respondent no. 5. Counsel further submits that he has applied under the category of the handicapped quota, as the petitioner is orthopedically handicapped, having 60 per cent disability. Counsel further submits that there were five posts under the handicapped category, one has been filled and the remaining four were vacant, but the case of the petitioner has not been considered by the Commission.



4. Counsel further submits that, at the time of taking the decision, the Commission has completely ignored and violated Section 34 of the Rights of Persons with Disabilities Act, 2016. Counsel further submits that the Government of Bihar has ignored the resolution published on 12.10.2017, according to which posts under the handicapped category have been interchanged, and in that view of the matter, the petitioner is entitled to appointment under the handicapped category. The rejection of his candidature is bad in law, therefore, he prays that the writ petition be allowed and the Commission be directed to appoint the petitioner under the handicapped category.

5. Learned counsel for the Commission, on the other hand, submits that the appointment under the handicapped category has to be guided by the central statute, namely, the Rights of Persons with Disabilities Act, 2016 (Act No. 49 of 2016) [hereinafter referred to as 'Act of 2016'], and Section 34 of the Act of 2016 thereof is very clear. He submits that the most relevant provision for the petitioner is Section 34(2) of the Act of 2016, according to which, 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. In this background, learned counsel for the Commission submits that the central law is very clear on this issue and, in that view of the matter, the petitioner is not entitled to any relief.

6. Counsel further submits that the petitioner has obtained 30.7144 marks, whereas the minimum cut-off for the OH category was 35.2400, and since the petitioner has obtained lesser marks than the cut-off, he has not been selected.

7. Counsel further submits that the resolution of the Government of Bihar dated 12.10.2017 was issued, but it has been clarified, as annexed as Annexure R-5/B, by Clause 9. Counsel further submits that the said circular was issued vide Memo No. 962 dated 22.01.2021 (hereinafter referred to as 'Resolution of 2021'). Counsel further submits that by the Resolution of 2021, the earlier resolution dated 12.10.2017 has been modified, therefore, he submits that the relief sought by the petitioner in light of the earlier resolution dated 12.10.2017 does



not arise.

8. Upon hearing the parties, it appears to this Court that, with a view to deciding the issue involved in the present writ petition, it is necessary to first quote the relevant law. Section 34 of the Rights of Persons with Disabilities Act, 2016 states as follows:-

34. (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.

9. Further, the resolution issued by the Government of Bihar, contained in Memo No. 962 dated 22.01.2021, the relevant clauses are Clause 9, 10 and subsequently Clause 17, which are as follows:-

“9) दिव्यांगजन अधिकार अधिनियम, 2016 की धारा-34 (2) के आलोक में जहां कोई रिक्ति किसी भर्ती वर्ष में उपयुक्त संदर्भित दिव्यांगजन की गैर-उपलब्धता के कारण या कोई अन्य पर्याप्त कारण से भरी नहीं जा सकेगी ऐसी रिक्ति गैर आरक्षित वर्ग में कर्णांकित करते हुए पश्चात्त्वर्ती भर्ती वर्ष में अग्रणित होगी और पश्चात्त्वर्ती भर्ती वर्ष में भी उपयुक्त संदर्भित दिव्यांगजन उपलब्ध नहीं होता है, तो पहले यह पांच प्रवर्गों में से अदला-बदली द्वारा हो सकेगी



और केवल जब उक्त वर्ष में भी पद के लिए दिव्यांगजन उपलब्ध नहीं होता है, तो नियोक्ता किसी दिव्यांगजन से भिन्न किसी व्यक्ति की नियुक्ति द्वारा रिक्ति को भर सकेगा:

परंतु यदि किसी स्थापन में रिक्तियों की प्रकृति ऐसी है कि दिए गए प्रवर्गों के व्यक्तियों को नियोजित नहीं किया जा सकता तो रिक्तियों की समुचित सरकार के पूर्व अनुमोदन से पांच प्रवर्गों में अदला-बदली की जा सकेगी।

(10) दिव्यांगजन अधिकार अधिनियम, 2016 की धारा-32 में निहित प्रावधानों के अनुरूप यह निदेश दिया जाता है कि राज्य सरकार के अधीन उच्च शैक्षणिक संस्थानों में तथा ऐसे सभी उच्च शैक्षणिक संस्थानों में जिन्हें राज्य सरकार से सहायता मिली हो, नामांकन में दिव्यांगों के लिए 5 प्रतिशत स्थान आरक्षित रहेंगे। यह आरक्षण भी दिव्यांगता आधारित होगा, जातिगत आधारित नहीं होगा। नामांकन हेतु चयनित दिव्यांग उम्मीदवार जिस आरक्षित / गैर आरक्षित वर्ग का होगा, उसकी गणना उसी आरक्षित / गैर आरक्षित वर्ग के विरुद्ध होगी। उच्च शैक्षणिक संस्थानों में नामांकन हेतु दिव्यांग किसे कहा जायेगा तथा विभिन्न प्रकार के दिव्यांगों के लिए आरक्षण की क्या व्यवस्था होगी, इस संबंध में भारत सरकार द्वारा निर्गत दिव्यांगजन अधिकार अधिनियम, 2016 के प्रावधानों का अनुपालन किया जायेगा।

(17) दिव्यांगजन अधिकार अधिनियम, 2016 की धारा-23 (1) के निहित



प्रावधानों के आलोक में प्रत्येक विभाग / कार्यालय / संस्थान आदि द्वारा दिव्यांगजनों के शिकायतों के निवारण हेतु एवं एतद् संबंधी आरक्षण की देख-रेख हेतु शिकायत निवारण पदाधिकारी की नियुक्ति की जायेगी।"

10. Upon a bare reading of Section 34 of the Act of 2016, the contention made by the petitioner cannot be accepted, as there is a specific direction that unfilled posts shall be carried forward to the next recruitment year. After going through the Resolution of 2021, it appears to be nothing but a replica of Section 34(2) of the Act of 2016, and in the opinion of this Court, the Commission has acted completely in accordance with Section 34(2) of the Act of 2016 read with Clause 9 of the Resolution of 2021.

11. This Court is also of the view that the resolution dated 12.10.2017 has now been repealed by the said Resolution of 2021 mentioned above, therefore, the petitioner cannot claim any benefit by virtue of the said resolution dated 12.10.2017, which has already been amended.

12. This Court, upon perusal of the judgment passed by a co-ordinate Bench of this Court in the case of *Rajeev Ranjan & Ors. v. The State of Bihar & Ors.*, along with analogous cases decided on 06.02.2026 in CWJC No. 1373 of



2025, has categorically dealt with the same issue and has been pleased to hold, in paragraphs 51 to 55, as follows:-

51. If the provisions contained in 2017 Rules are examined qua Section 34 (2) of 2016 Act, it is found that the Clauses-2 (viii) and (ix) were not in conformity with the provisions of the Statute. Therefore, the General Administration Department was compelled to pass notification in the year 2021 in conformity with the manner of recruitment to fill up the vacancies reserved for the persons with disabilities.

52. I have already discussed with supporting judgments of the Hon'ble Supreme Court that any recruitment notification de hors the Statute is ultra vires to the Statute. The petitioners are claiming recruitment following 2017 Rules, which is not in conformity with the declaration of reservation of vacancies in establishments meant for persons with disabilities and the manner of recruitment to fill up such vacancies. This is the principal reason followed by the BTSC to fill up the vacancies reserved for persons with disabilities in the manner provided in Section 34 of the 2016 Act.

53. The petitioners cannot claim their right of recruitment following 2017



Rules, when the Rule is ultra vires to the Statute.

54. It is needless to say that 2016 Act is the source of the right of persons with disabilities to get the reservation in jobs in government establishments. If a Rule is framed by the Government by a process of delegated legislation and it is found that the Rule is not in conformity with the statutory provisions, the executive authority is always empowered to publish subsequent rule in conformity with the Act. This Act on the part of the executive authority cannot be challenged on the ground of altering the rule of the game after the game is started because the rule of the game also derives its authority from the Statute. If statutory indictment is corrected by a subsequent notification after initiation of selection process, the same cannot be called into question on the ground that executive authority has been trying to change the rule of the game.

55. For the reasons stated above I do not find any merit in these batch of writ petitions.

13. In light of the submissions and reasoning mentioned above, this Court is of the firm view that, upon interpreting Section 34(2) of the Act of 2016 read with Clause 9



of the Resolution of 2021 mentioned above, as well as the judgment and reasoning assigned in the case of *Rajeev Ranjan (Supra)*, no case is made out for the petitioner.

14. Accordingly, the present writ petition stands dismissed.

(Dr. Anshuman, J.)

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