

2026:PHHC:019584



107 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-33752-2024
DECIDED ON: 22.01.2026

HARSH KUMAR

....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Dr. Pankaj Nanhera, Sr. Advocate with
Mr. Aman Mehta, Advocate and
Mr. Anurag Mor, Advocate
for the petitioner(s)

Mr. Deepak Balyan, Addl. AG. Haryana

Mr. Kanwal Goyal, Advocate
Ms. Sheena Dahiya, Advocate and
Ms. Komal Klana, Advocate for respondent No.2-HPSC

SANDEEP MOUDGIL, J

Prayer

1. The jurisdiction of this Court has been invoked under Articles 226/227 of the Constitution of India, 1950 for issuance of a writ in the nature of certiorari to quash the order dated 07.10.2024 (Annexure P-11) passed by the respondent no. 2 vide which the claim of the petitioner to give appointment to the vacant post against the advertisement no. 58/2023 dated 17.11.2023 (Annexure P-1) has been rejected in violation of Section 34 of Rights of Persons with Disabilities Act, 2016 and in compliance of instructions dated 25.04.2018 (Annexure P-7) issued by the respondent no. 1 and which was

further modified on 01.05.2019 (Annexure P-8) with a further prayer to direct the respondents to give appointment to the petitioner in pursuance of advertisement no. 58/2023 dated 17.11.2023 (Annexure P-1) for the post of HCS (Executive Branch) and other Allied Services in light of the instructions dated 25.04.2018 (Annexure P-7) vide which it has been clarified that if a suitable person with disability is not available, the same be filled by interchange among the four categories of disabilities like in the present case, in the interest of justice.

Brief Facts

2. The petitioner is presently serving as an Assistant in the District Courts at Hisar, posted as Record Keeper at Hansi Sub Division. He applied for the Haryana Civil Services (Executive Branch) and other Allied Services pursuant to Advertisement No. 58/2023 issued by the respondent-Commission, under the PwBD category, falling in the Orthopaedic Handicapped (OH) sub-category of the Unreserved category. The petitioner successfully qualified the preliminary examination, thereafter appeared in the main examination conducted on 30.03.2024 and 31.03.2024, and was declared successful in the main examination result dated 27.05.2024. He subsequently appeared in the interview held on 12.06.2024 and secured a total of 304 marks out of 675.

3. The final result was declared on 18.06.2024, wherein 12 candidates were recommended for appointment under the PwBD category against 13 advertised vacancies, leaving one post vacant. The petitioner stood immediately below the last selected candidate in the PwBD category and had the highest marks amongst the non-selected PwBD candidates. It is undisputed that one post reserved for PwBD (HH sub-category) remained unfilled. The petitioner made a representation and thereafter issued a legal notice claiming appointment against

the vacant PwBD post, which was not decided, compelling him to approach this Court by way of an earlier writ petition. Pursuant to the directions of this Court, the respondent-Commission passed a speaking order dated 07.10.2024 rejecting the petitioner's claim, which has been impugned in the present writ petition.

Contentions

On behalf of the petitioner(s)

4. Learned counsel for the petitioner contends that the action of the respondents in leaving one PwBD post vacant despite the availability of an eligible and meritorious PwBD candidate is arbitrary, illegal, and contrary to the mandate of Section 34(2) of the Rights of Persons with Disabilities Act, 2016. It is submitted that the statutory scheme as well as the Government of Haryana instructions dated 25.04.2018, as modified on 01.05.2019, clearly provide that if a vacancy reserved for a particular sub-category of PwBD cannot be filled, the same must be filled by inter-change amongst the remaining PwBD categories before being diverted to non-PwBD candidates.

5. It is argued that the respondent-Commission has itself admitted that one PwBD post has remained vacant, yet has failed to apply the principle of interchangeability, thereby frustrating the object of reservation meant for persons with benchmark disabilities. The petitioner, belonging to the OH sub-category and having secured the highest marks amongst the non-selected PwBD candidates, had a legitimate and enforceable right to be considered for appointment against the said vacant post.

6. Learned counsel further submits that the ground taken by the respondent that the Government instructions were not mentioned in the advertisement is wholly untenable, as statutory provisions and executive

instructions issued by the State Government are binding upon the Commission irrespective of their express mention in the advertisement. Such a stand, it is contended, amounts to a policy disconnect and is impermissible in law, particularly in light of the law laid down by the Supreme Court in ***Vikash Kumar v. UPSC (2021) 5 SCC 370***.

On behalf of respondent No.1/State

7. Learned State counsel submits that the affidavit filed by the petitioner contains false and misleading averments, as all issues raised therein already stand duly replied to in the short reply dated 25.02.2025. It is contended that no backlog post of PwBD-BDPO from the 2021 recruitment is vacant, as the same has already been filled in the HCS (Executive Branch) and Allied Services recruitment, 2023.

8. It is further submitted that the allegation regarding wrongful allotment of a carried-forward PwBD (VH) post of ARCS to a non-PwBD candidate is incorrect, since no suitable PwBD-VH candidate was available, and the posts were filled strictly in accordance with the applicable recruitment processes.

9. Learned State counsel argues that the Government instructions dated 25.04.2018 do not provide for automatic interchange of PwBD vacancies and mandate that interchange is permissible only after non-availability of a suitable candidate of the same disability category in the subsequent recruitment year. The respondents, therefore, acted in accordance with law, and no illegality or arbitrariness is made out.

On behalf of respondent no.2/HPSC

10. Learned counsel for respondent No. 2 argues that the present writ petition is misconceived and liable to be dismissed as the Commission has acted

strictly in accordance with Advertisement No. 58/2023 dated 17.11.2023 and the requisition received from the State Government. It is submitted that the Commission has no authority to alter or interchange categories of posts, as the roster points and sub-classification of PwBD vacancies are determined and maintained by the concerned department.

11. Learned counsel for respondent No. 2 submits that the petitioner applied under the PH (OH) category, participated in the entire selection process and, having failed to secure selection in his own category, cannot now seek appointment against a vacancy reserved for PH (HH). It is contended that one post under PH (HH) remained vacant due to non-availability of suitable candidates, and the same cannot be filled by another category without specific approval of the Government.

12. Learned counsel for respondent No. 2 avers that the instructions dated 25.04.2018 do not provide for automatic interchange of disability categories and any such exercise falls exclusively within the domain of the concerned Government Department, subject to statutory procedure and approval. No such direction was ever issued to the Commission.

13. Learned counsel for respondent No. 2 contends that the terms of the advertisement are binding and the petitioner, having participated without protest, is estopped from challenging the same after being declared unsuccessful. It is thus prayed that the writ petition, being devoid of merit, deserves dismissal.

14. Heard learned counsel for the parties at length.

Analysis

15. The petitioner, who is presently serving as an Assistant in the District Courts at Hisar and posted as Record Keeper at Hansi Sub Division, participated in

the selection process pursuant to Advertisement No. 58/2023 issued by the Commission for recruitment to the Haryana Civil Services (Executive Branch) and Allied Services. He applied under the PwBD category in the Orthopaedic Handicapped (OH) sub-category of the Unreserved category. He qualified the preliminary as well as the main examination and was called for interview. Upon culmination of the process, he secured 304 marks out of 675. The final result dated 18.06.2024 recommended 12 candidates against 13 advertised PwBD vacancies, and one post reserved for the PH (HH) sub-category remained unfilled. The petitioner stood immediately below the last selected candidate in the PwBD category and has approached this Court seeking appointment against the unfilled PH (HH) post by invoking the principle of interchangeability under Section 34(2) of the Rights of Persons with Disabilities Act, 2016.

16. The principal submission of learned counsel for the petitioner is that once a PwBD vacancy has remained unfilled and an eligible PwBD candidate is available, the same must necessarily be offered to the next meritorious candidate irrespective of sub-classification. It is contended that the action of the respondents in not interchanging the vacancy defeats the object of reservation for persons with benchmark disabilities.

17. This Court is unable to agree with the submissions advanced by learned counsel for the petitioner.

18. It is trite law that a candidate whose name does not find place in the select list acquires no indefeasible right to appointment merely because a vacancy exists. The Apex Court in *Shankarsan Dash v. Union of India*, (1991) 3 SCC 47, has categorically held that even if vacancies are notified and candidates are found fit, successful candidates do not acquire an indefeasible right to appointment

unless the rules so provide. The relevant extract of the afore-said case law reads as under:-

*“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in **State of Haryana v. Subhash Chander Marwaha, (1974)1 SCR 165, Miss Neelima Shangla v. State of Haryana, (1986)4 SCC 268, or Jitendra Kumar and others v. State of Punjab and others, (1985)1 SCR 899.**”*

19. In the present case, the petitioner admittedly did not secure selection in his own OH sub-category. His claim is predicated upon seeking migration to another sub-category, namely HH, which was separately notified in the advertisement. The advertisement clearly delineated the number of vacancies category-wise and sub-category-wise. The Commission acted strictly within the requisition received from the State Government and the roster maintained by the competent department. The Commission cannot travel beyond the terms of the advertisement or alter the sub-classification of vacancies on its own.

20. Section 34(2) of the Rights of Persons with Disabilities Act, 2016 (for short 'Act') no doubt provides for interchange among categories of benchmark disabilities if a suitable candidate is not available in a particular category. However, the provision is enabling in nature. It does not contemplate automatic interchange in the same recruitment cycle without a conscious decision of the appropriate Government. Section 34(2) of the Act reads as under:-

“SECTION 34(2)

(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.”

21. The material placed on record shows that no direction for interchange of the HH vacancy to the OH category was issued by the State Government. In absence of such a decision, the Commission cannot assume jurisdiction to convert one disability category into another.

22. The contention that statutory provisions override the advertisement is unexceptionable as a proposition of law; however, in the facts of the present case, there is no demonstrated violation of the statutory mandate. The petitioner has not

been able to show that the respondents acted contrary to Section 34(2). At best, he seeks a particular manner of implementation of the provision, which lies within the policy domain of the Government.

23. The reliance placed on *Vikash Kumar v. Union Public Service Commission, (2021) 5 SCC 370*, is misplaced. That decision dealt with the issue of reasonable accommodation in the context of examination conditions and the right of a candidate to a scribe. The said judgment does not lay down that interchange of disability categories must be effected automatically in every recruitment irrespective of the administrative framework governing roster management.

24. It must also be noticed that the petitioner participated in the entire selection process without any demur regarding the sub-classification of vacancies. The law is well settled that a candidate who takes a calculated chance cannot, upon being unsuccessful, challenge the process. In *Madan Lal v. State of Jammu & Kashmir, (1995) 3 SCC 486*, the Apex Court held that a candidate who participates in the selection process cannot subsequently turn around and question it merely because the result is not favourable. The principle squarely applies here.

25. No *mala fides* have been alleged against the Commission. There is no material to demonstrate arbitrariness or hostile discrimination. The HH vacancy remained unfilled due to non-availability of suitable candidates in that sub-category, and the decision not to interchange the vacancy in the absence of governmental approval cannot be said to be illegal.

26. In view of the above discussion, this Court is of the considered opinion that the impugned speaking order dated 07.10.2024 does not suffer from any illegality warranting interference.

26. The writ petition is accordingly dismissed. Pending application, if any, also stands disposed off.

22.01.2026
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(SANDEEP MOUDGIL)
JUDGE

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