
Rajool Goyal Vs State of Punjab and Others

Civil Writ Petition No. 13604 of 2015

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 30, 2015

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 - Section 33, 36

Citation: (2015) 180 PLR 346

Hon'ble Judges: Satish Kumar Mittal and Harinder Singh Sidhu, JJ.

Bench: Division Bench

Advocate: Navdeep Chhabra, for the Appellant; Gaurav Garg Dhuriwala, D.A.G., for the Respondent

Final Decision: Dismissed

Judgement

Satish Kumar Mittal, J.

The petitioner is a Law Graduate. He is orthopedically physically handicapped. In pursuance of the advertisement

dated 20.01.2015 (Annexure P-1) issued by the Punjab Public Service Commission, he applied for the Punjab Civil Service (Judicial Branch)

Examination 2014-15 under the category of Physically Handicapped (Orthopedically Challenged) for recruitment to the post of Civil Judge (Junior

Division)-Cum-Judicial Magistrate. As per the advertisement, candidates equal to 10 times the number of vacancies advertised, selected in order

of their merit in the respective categories in preliminary examination were to be held eligible to sit in the Main Examination, subject to securing

minimum 150 marks for general category candidates and minimum 100 marks out of 500 for all reserved category candidates. The petitioner

appeared in the Preliminary examination in the category of Physically Handicapped (Orthopedically Challenged), and secured 172 marks. In that

category, first 10 candidates in order of merit were declared to have qualified for appearance in the Main Examination, because one seat was

reserved in that category. Two seats were reserved for the category of Visually Impaired and one seat was reserved for Hearing Impaired

category. However, one candidate was declared to have qualified for Main Examination in the category of Hearing Impaired and no candidate

could qualify in the category of Visually Impaired. The petitioner has filed this petition seeking direction to the respondents that when four posts

were reserved under the category of ""Physically Handicapped, Punjab"", which were further bifurcated in three sub-categories, i.e. two for Visually

Impaired; one for Hearing Impaired; and one for Orthopedically Challenged persons, first 40 candidates in order of their merit under the category

of ""Physically Handicapped, Punjab"" being 10 times the number of vacancies advertised, should have been called for Main Examination,

irrespective of the sub-category under which they fall. Therefore, the petitioner who figured within first 40 candidates in order of merit under the

category of ""Physically Handicapped, Punjab"" should be declared to have qualified the Preliminary Examination for appearance in the Main

Examination.

2. In the written statement filed on behalf of respondent No. 3, the claim of the petitioner has been contested. It has been stated that in the

advertisement dated 20.01.2015 (Annexure P-1), reservation under the category of ""Physically Handicapped, Punjab"" was made as under:

It has been stated that the petitioner had applied against one post under the Orthopedically Challenged category. In that category, first 10

candidates in order of merit have been declared to have qualified for appearance in the Main Examination. The petitioner is not among those 10

candidates, therefore, he has not been called for appearance in the Main Examination.

3. We have heard learned counsel for the parties.

4. Learned counsel for the respondents argued that as per Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights

and Full Participation) Act, 1995 (hereinafter referred to as "the Act"), every appropriate Government shall appoint in every establishment such

percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent each shall be reserved for

persons suffering from-

i) blindness or low vision;

ii) hearing impairment;

iii) loco motor disability or cerebral palsy

(Orthopedically Challenged)

in the posts identified for each disability. Learned counsel argued that in view of the said provision, one per cent seats were reserved for each of

three categories, and as far as the third category of ""loco motor disability"" is concerned, only one seat was reserved. The petitioner applied in the

said category. Learned counsel for the respondents further argued that in the present case, four seats advertised under the category of ""Physically

Handicapped, Punjab"" are the fresh seats and these are not the carry forward seats, therefore, the criteria provided for filling up vacancies under

Section 36 of the Act is not applicable. Section 36 of the Act provides that where in any recruitment year any vacancy under Section 33 cannot be

filled up due to non-availability of a suitable person with disability or, for any other sufficient reason, such vacancy shall be carried forward in the

succeeding recruitment year and if in the succeeding recruitment year also suitable person with disability is not available, it may first be filled by

interchange among the three 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. According to the learned counsel, since in the present case, the posts

advertised under the category of ""Physically Handicapped, Punjab"" are fresh posts and are not the carry forward posts, therefore, the petitioner

cannot be given the benefit of interchange of the posts among all the three categories.

After hearing learned counsel for the parties, we are of the opinion that the legal position as explained by learned counsel for the respondents is

correct. The factual position, as stated above, has not been disputed by learned counsel for the petitioner. Therefore, the petitioner, who has

applied against one seat reserved for the category of Orthopedically Challenged, can compete only in that category. He cannot compete and put

his claim against the post reserved for other two categories, i.e. Visually Impaired and Hearing Impaired. Thus, he cannot be held eligible to appear

in the Main Examination against the seat reserved for other two categories. As far as the category of Orthopedically Challenged is concerned, the

petitioner is not in the merit list of first 10 candidates, therefore, he has rightly not been declared to have qualified for appearance in the Main

Examination.

No merit Dismissed.