

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(C) No. 596/2025 c/w
WP(C) No. 2326/2024

Shivani Misri

.....Appellant(s)/Petitioner(s)

Through: Mr. Nikhil Padha, Advocate.

vs

Union of India & Anr.

..... Respondent(s)

Through: Mr. Inderjeet Gupta, Advocate.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
29.04.2025

(ORAL)

01. In the instant petition filed under Article 226 of the Constitution of India, the petitioner herein has prayed for the following reliefs:-

(a) Issue a writ, order, or direction in the nature of mandamus to call on records the documents for arbitrary disqualifying the appointment of the Petitioner.

b) Issue a writ, order, or direction in the nature of mandamus to the Respondent(s) for the recruitment of the Petitioner.

c) Issue a writ, or direction in the nature of mandamus to the Respondent(s) for the quashing of the Advertisement published bearing no. O312023 inviting the applications for the recruitment of candidates.

d) Issue a writ, order, or direction in the nature of certiorari thereby quashing of the impugned disqualification order vice communication dated L3h2/2024 passed against the Petitioner.

e) Pass any such writ, order, or direction as may deemed fit in favour of the Petitioner in the interest of justice and equity.

02. The facts under the shade and cover of which aforesaid reliefs are being prayed and as are stated in the petition are that the petitioner is a blind women with a 100% permanent disability, as certified by the concerned Authority in the Disability Certificate, bearing no. JK21107199719970100381 issued on 05.09.2003.

03. It is being next stated that despite that the petitioner being suffering from 100% visual disability in both eyes, the petitioner demonstrated exceptional academic and professional accomplishments and obtained a Bachelor of Arts and Law (B.A.LL.B) degree from the University of Jammu in 2021 as well as earned a Master of Laws degree (LLM) from the University of Punjab in 2022 and is serving as a Law Professor at MIET Law College, Jammu.

04. It is being further stated that the respondent no. 2 issued an Advertisement no. 03/2023 dated 19.08.2023, inviting applications therein for various posts, including 18 posts of Junior Executives (Law) and out of the said 18 vacancies, three vacancies were reserved for persons with benchmark disabilities, under the categories of "Blindness" and "Low Vision."

05. It is being next stated that the petitioner in response to the said Advertisement notice dated 19.08.2023 applied for the post of Junior Executive (Law) under the aforesaid reserved category and appeared in the Computer-Based Examination (CBT) conducted by the respondents on 21.10.2023, whereupon, the respondents declared the results on 15.12.2023, wherein the petitioner was declared successful and the said result was formally communicated to the petitioner through notification dated 15.12.2023.

06. It is being next stated that during the process of document verification, the petitioner was directed by the respondents to submit an undertaking affirming her classification under the "Persons with Benchmark Disability" category and in compliance thereof, the petitioner submitted the required

undertaking, however, the respondents disputed the authenticity of the same, prompting the petitioner to provide another certificate, duly certified by the Medical Superintendent of Government Hospital Jammu and that thereafter, when on 24.05.2024, the final selection result for the post in question was announced, the result of the petitioner was kept withheld and the petitioner came to be informed through E-mail that her result has been kept withheld pending confirmation of the functional requirements as prescribed in the advertisement notice for the post in question.

07. It is being further stated that the petitioner thereafter was yet again asked by the respondents to provide fresh disability certificate for clarification and reassessment, in response whereof, the petitioner, approached this Court and filed WP(C) No. 2326/2024, challenging the action of withholding of her result by the respondents and on 27.09.2024, this Court issued an interim order directing the respondents not to issue any further advertisements or make appointments against the post in question, yet the respondent no. 2 in violation of the said order proceeded to inform the petitioner that upon reassessment of her case, she was found unsuitable for the post in question being incapable of performing the tasks attached to the post in question requiring **“seeing, reading and writing”**, whereupon the petitioner has instituted the present petition.

08. The petitioner has filed the present petition against the cancellation of her candidature upon reassessment of her disability by the respondents, as communicated in the communication dated 13.12.2024 impugned in the

instant petition. Additionally, the petitioner herein has also challenged the Advertisement Notice dated 19.08.2023.

09. Objections to the instant petition have been filed by the respondents, wherein petition is being opposed *inter alia* on the premise that the petitioner was not eligible for the post in question for not being meeting the functional requirements specified in the advertisement notice and after reassessment of her case, the petitioner was informed that she was ineligible for the post because she did not meet the functional requirements i.e. **“reading and writing” and “seeing”**. It is being admitted in the reply that three posts were earmarked in the advertisement notice dated 25.07.2023 for persons with benchmark disabilities, consisting of two posts in Category A and one post in Category C.

10. It is further stated in the objections that candidature of the petitioner was rejected in terms of impugned communication due to a discrepancy between the disability category mentioned in her disability certificate and the category specified in her application form as the disability certificate dated 05.09.2023 indicated the category as "Low Vision," whereas in the application form filled by the petitioner "Blindness" category was provided and in order to clarify the same petitioner submitted an affidavit on 24.01.2024, stating therein that the mention of "Blindness" in the application form was inadvertent and that her case falls under the "Low Vision" category. Subsequently, the petitioner was subjected to the selection process and that upon being asked to provide a fresh disability certificate, the said fresh certificate submitted by the petitioner again categorized her condition as

"Blindness," which contradicted the affidavit submitted by the petitioner and the said contradiction led to the rejection of her candidature.

11. It is further stated in the objections that though both "low vision" and "blindness" categories are suitable for the post in question under Category A, yet the petitioner was found to be ineligible for the post for not meeting the functional requirements of the post being "**seeing**" "**reading and writing**".

12. It is further stated in the objection that petitioner after being provided an opportunity of reassessment her functional requirements on 21.10.2024, the petitioner subjected herself to the said reassessment process, whereupon it was certified that the petitioner lacks the functional capabilities of "seeing" "reading" and "writing" as specified for the post in question, as a consequence whereof, her candidature was cancelled.

13. It is being lastly stated in the objections that as per the Ministry of Social Justice and Empowerment (DEPwD) Gazette notification No. A-14019/6/2020-HR dated 14.03.2022, it is stipulated that the Central Ministries of Departments of Public Sector Undertakings or Autonomous Bodies are responsible to verify the authenticity of certificates of disability and assess a candidate's suitability for appointment based on the functional requirements of the post and that in line with the said circular, the petitioner was called upon to have herself reassessed/re-examined by a Medical Officer of a Government Hospital for the required functional requirements. In response, the petitioner submitted a reassessment certificate which indicated that while she is able to perform tasks such as sitting, standing, walking, bending, hearing, communication, and manipulation with fingers, she is unable to

perform tasks involving reading, writing, and seeing and following this, the respondents decided to initiate a further reassessment of the petitioner's disability by a Review Committee constituted for this purpose and with the petitioner's consent, the said reassessment was undertaken on 21.10.2024, and it was subsequently certified that the petitioner lacks the functional requirements of "seeing," "writing and "reading" as specified for the post in question, as a result whereof, the respondents in tune with the Ministry's guidelines, concluded that the petitioner did not meet the essential functional requirements of the post and, therefore, her candidature was cancelled

Heard learned counsel for the parties and perused the record.

14. Before proceeding to advert to the rival pleading of the parties noticed in the preceding paras, it would be appropriate to refer to the definition of the **“Expression Person With Benchmark Disability”** and **“Person With Disability”** defined in Section 2 Clause (r) and (s) of the Rights of Persons with Disabilities Act, 2016 respectively hereunder:-

“Section 2(r) of the Act provides that a “person with benchmark disability” is a person with at least forty percent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority.

Section 2(s) says that a “person with disability” is a person with long-term physical, mental, intellectual, or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society.”

The Apex Court in case titled as **“Vikash Kumar vs. UPSC & Ors”**, reported in **2021 5 SCC 370**, at paras 38, 39 and 40 has in regard to the above held as under:-

“38. The concept of a benchmark disability under Section 2(r) cannot be conflated with the notion of disability under Section 2(s). The definition in Section 2 (r) applies in the case of a specified disability. The expression “specified disability” is defined in Section 2 (zc) to mean the disabilities as specified in the Schedule. The Schedule to the Act incorporates five specified disabilities:

1. *Physical disabilities comprised of*
 - (a) *Locomotor disability including*
 - (i) *Leprosy cured persons*
 - (ii) *Cerebral palsy*
 - (iii) *Dwarfism*
 - (iv) *Muscular dystrophy*
 - (v) *Acid attack victims;*
 - (b) *Visual impairment encompassing*
 - (i) *Blindness*
 - (ii) *Low vision*
 - (c) *Hearing impairment*
 - (d) *Speech and language disability*
2. *Intellectual disability including*
 - (a) *Specific learning disabilities*
 - (b) *Autism spectrum disorder*
3. *Mental behaviour*
4. *Disability caused due to*
 - (a) *Chronic neurological conditions, such as*
 - (i) *Multiple sclerosis*
 - (ii) *Parkinson’s disease*
 - (b) *Blood disorder*
5. *Multiple disabilities (more than one of the above specified disabilities).*

The Central Government has been empowered to notify any other category as a specified disability.

39. *The concept of benchmark disabilities under the 2016 RPwD Act has specifically been adopted in relation with the provisions of Chapter VI and Chapter VII. Chapter VI contains special provisions for persons with benchmark disabilities. Among those provisions is Section 31 (free*

education for children with benchmark disability), Section 32 (reservation in higher educational institutions), Section 33 (identification of posts for reservation), Section 34 (reservation), Section 36 (Special Employment Exchange) and Section 37 (Special Schemes and Development Programmes). Chapter VII contains special provisions for persons with benchmark disabilities in need of d high support. Thus, the concept of benchmark disabilities has been adopted by the legislation bearing in mind specific provisions which are contained in the law for persons meeting this description.

40. Conflating the rights and entitlements which inhere in persons with disabilities with the notion of benchmark disabilities does disservice to the salutary purpose underlying the enactment of the 2016 RPwD Act. Worse still, to deny the rights and entitlements recognised for persons with disabilities on the ground that they do not fulfil a benchmark disability would be plainly ultra vires the 2016 RPwD Act.

15. Further a reference hereunder to the provisions of Section 3(5) would also be relevant, being germane to the controversy herein:-

3.Equality and non-discrimination:-

.....

3(5) the appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities”.

In regard to the aforesaid “reasonable accommodation” appearing in Section 3 (5) supra, the Apex Court in the aforesaid case of Vikash Kumar (Supra) has held at para 44 as follows:-

“44. The principle of reasonable accommodation captures the positive obligation of the State and private parties to provide additional support to persons with e disabilities to facilitate their full and effective participation in society. For a person with disability, the constitutionally guaranteed fundamental rights to equality, the six freedoms and the right to life under Article 21 will ring hollow if they are not given this additional support that helps make these rights real and meaningful for them. Reasonable accommodation is the instrumentality—are an obligation as a society—to enable the disabled to enjoy the constitutional guarantee of equality and non-discrimination.”

16. Reverting back to the case in hand, the case reply suggests that the respondents have overlooked the provisions of Section 3 (5) and the above position of law laid down by the Apex Court and this Court cannot overlook the fact that the respondents, in the explicit terms, while advertising the post in question notified the category of “blind” as well as “low vision” candidates eligible for the post.

17. Since the respondents have failed to advert to the aforesaid provisions of Section 3(5) supra qua the “reasonable accommodation” in the case of the petitioner, and cancelled the candidature of the petitioner after having been entertained against the post in question and subjecting her to the process of selection thereof, the respondents cannot, but said to have acted arbitrarily, unreasonably, unfairly and in breach and violation of the principles of law laid down by the Apex Court in the judgment of Vikash Kumar (Supra), while essentially having brushed aside the said provisions of Section 3 (5) Supra, inasmuch as the observations of the Apex Court made in judgment Vikash Kumar (Supra) under the guise and cover of the circular issued by Ministry of Social Justice and Empowerment (DEPwD) as mentioned (Supra).

18. Viewed thus, for what has been observed, considered and analyzed hereinabove, the instant petition succeeds, as a consequence whereof, the cancellation of candidature of the petitioner including the impugned communication no. dated 13.12.2024 does not legally sustain.

19. Accordingly the petition is **allowed** and the impugned communication dated 13.12.2024 is quashed and the respondents are directed to revisit and

