



2025:CGHC:22600

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 1329 of 2021

Reserved on : 25.02.2025

Delivered on : 09.06.2025

Saroj Kshemanidhi (Visually Impaired Handicapped Candidate) S/o Shri Kshemanidhi, Aged About 27 Years Candidate In Exam 2019 Of Assistant Professor, Roll No. 190206100316, R/o H.No. 68/2 Rawatpara, Village And Post Bhagdola, Tahsil Pussore, District Raigarh (C.G.) Mb - 8305186458, District : Raigarh, Chhattisgarh

... Petitioner

versus

1 - Chhattisgarh Public Service Commission Raipur, Through The Secretary Chhattisgarh Public Service Commission Raipur, Shankar Nagar Road Raipur, Tahsil District Raipur, Chhattisgarh.

2 - State of Chhattisgarh, Through The Secretary, Higher Education Department, Atal Nagar, New Raipur, Tahsil And District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

For Petitioner : Mr. Vijay K. Deshmukh, Advocate.

For Resp.No. 1/ CGPSC : Mr. Anand Mohan Tiwari, Advocate.

For Resp. No. 2/ State : Mr. Kishan Lal Sahu, Dy. G.A.

Hon'ble Shri Narendra Kumar Vyas, J.

CAV ORDER

1. The petitioner who is a visually impaired handicapped candidate has filed this writ petition under Article 226 of the Constitution of India praying for providing 2% reservation against backlog vacancies as per advertisement dated 08.01.2021 issued by respondent No. 1/Chhattisgarh Public Service Commission for appointment on the post of Assistant Professor (Commerce) as the advertisement provides 11 posts reserved for persons with

disabilities including OA (one arm) & OL (one leg) as per the Rights of Persons With Disabilities Act, 2016.

2. The brief facts as reflected from records are that on 23.01.2019, respondent No. 1/Chhattisgarh Public Service Commission (for short "the CGPSC") issued an advertisement for total 1384 posts for Assistant Professor including 184 posts for commerce subject. The date for submission of applications through online was from 04.02.2019 to 05.03.2019. On 23.02.2019, respondent No. 1/CGPSC issued a corrigendum amending the number of posts for physical handicapped persons. The petitioner applied for the said post on 14.03.2019, appeared in the written test conducted by CGPSC on 05.11.2020 & 07.11.2020 and cleared the same, as such he was called for interview, however, he could not find place in the final selection list, hence this petition for issuing direction to respondent No. 1 CGPSC to issue corrigendum by providing reservation to the extent of 2% for blind and low vision for current vacancy as well as for backlog vacancies for commerce faculties of Assistant Professor. The petitioner has also prayed for restraining the respondent No.1 to fill up the vacancy in this category.
3. The Chhattisgarh Public Service Commission/respondent No. 1 has filed its return mainly contending that:-
 - (A) The CGPSC is an examining body only not the rule making authority and it conducts recruitment process on the basis of relevant recruitment rules, various circulars, reservation rosters

and instruction received from concerned department of State Government.

(B) It has been further contended that the petitioner willfully participated in the selection process having clear knowledge of the fact that in the advertisement no reservation has been provided for the Visually impaired/blind/low vision/visually handicapped category, as such the petitioner does not have any right to challenge the advertisement in the midst of the selection process. It is further submitted that at the stage of challenge any interference with the advertisement would amount to create a discrimination to the other candidates who had not applied for the subject matter because of not providing reservation to the category under which the claim of petitioner has been made. The identification of the post for PH category in an establishment is the prerogative of the department as well as the State Government, hence the petitioner has no right to claim for identification of post in an establishment as a matter of right.

(C) It has been further contended that the selection process has been initiated by complying the procedure, directions issued by the Government as well as the provisions of the RPWD ACT 2016 and the order passed in WPPIL 1470/2007 & WPS 1137/2019 therefore no interference is required in the subject matter, thus he would pray for dismissal of the writ petition.

4. The respondent No. 2/State has filed return mainly contending that :-

(A) Upon proposal given by them for recruitment of candidates on various posts, an advertisement dated 23.01.2019 was published by the Chhattisgarh Public Service Commission. In the impugned advertisement the reservation in respect of the physically disabled persons has been provided as per the circular of the State Government dated 29.08.2018. The said advertisement was challenged by one **Ramakant Singh Chandel and 4 Others** before this Court in **WPS No. 1137/2019** in respect of reservation that has been provided to the visually handicapped persons. The said writ petition was allowed on 26.04.2019 with a direction that the respondents should rearrange the reservation for the persons with disabilities in accordance with the Act and the judgment of the Supreme Court before proceeding further with the recruitment process and while rearranging the advertisement, the respondents shall also give reasonable time to the candidates of each category to apply and participate. Thereafter, the respondents/State in compliance of the directions of this Hon'ble Court as well as in light of the judgment of the Hon'ble Supreme Court reported in **(2013) 10 SCC 772, Union of India and Another Vs. National Federation of the Blind and Others** as well as the Rights of Persons With Disabilities Act, 2016 (hereinafter termed as 'the Act of 2016') and circular of the State Government, the CGPSC has issued the corrigendum dated 23.11.2019 and 08.01.2021 wherein the number of reservation has been changed in the faculty of Arts,

Science, commerce and some subjects of Law. As such, the present petition is bereft of merit and substance, therefore the same deserves to be dismissed.

(B) It has been further contended that the petitioner has not prayed any relief with respect to his own candidature, on the contrary the relief prayed for in the instant writ petition is mere in the nature of a Public Interest Litigation and therefore the petitioner is not entitled for grant of any indulgence. Pursuant to the direction issued by this Court, the State Government has already undertook the exercise pertaining to identification of posts to be reserved in terms of Section 33 and Section 34 of the Act, 2016. The identification of the post for various categories of bench mark disabilities has not been assailed by the petitioner in the instant writ petition. It has been further contended that the post of Assistant Professor constitutes a cadre under the Collegiate Rules and the reservation as required for person with benchmark disability has to be provided in the cadre as a whole and not to the individual subject/discipline and while considering the bench mark disabilities for the purpose of reservation and identification of the post, the competent authority takes into consideration the discipline/faculty. It has been further contended that since the petitioner himself had participated in the selection process without any objection, he cannot be permitted to assail the selection process and at this belated stage, he cannot be permitted to unsettle the examination process which has attained

finality.

(C) It has been further contended that the merit list has been prepared and there is no illegality or infirmity in providing reservation to the particular category of the physically disabled person, thus, the instant petition deserves to be dismissed.

5. Learned counsel for the petitioner would submit that the impugned action of the respondent of not providing 2% reservation to blind and low vision person i.e. present petitioner in the subject Commerce, in the impugned advertisements for the post of Assistant Professor is bad-in-law as well as in facts and it is violation of fundamental rights of the petitioner and other blind and low vision candidates guaranteed under Article 16(1) of constitution of India. He would further submit that in the earlier advertisement which was published on 10.09.2014 for the post of Assistant Professor reservation was granted to Visually Handicapped for Commerce subject, however, contrary to the previous advertisement, no reservation has been provided in the Advertisement dated 23.01.2019 as well as Corrigendum dated 23.02.2019. He would further submit that pursuant to order dated 26.03.2019 and final order dated 24.04.2019 the respondent has not considered reservation and no corrigendum has been issued. Thus, action of the respondents is arbitrary and illegal, therefore, he would pray for allowing the writ petition.
6. To substantiate his submission he would refer to the judgments of **Hon'ble Apex Court dated 08.10.2013 in Civil Appeal No.**

9096 of 2013, Indra Sawheny V/s Union of India reported in AIR 1993 SC 477 , Vijay K. Deshmukh V/s State of C.G. in WP(PIL) 1470 of 2007 order dated 27.11.2015, in Union of India vs National Federation of the Blind and others in (2013) 10 SCC 772, in case of Mahesh Gupta & Others V/s Yashawant Kumar Ahirwar Ahirwar & others in the Hon'ble Supreme Court's Appeal (Civil) No. 3984 of 2007 vide order dated 30.08.2007 and in Re: Recruitment of Visually Impaired In Judicial Services SMW(C) No.(s) 2 of 2024 vide order dated 07.11.2024.

7. On the other hand, learned counsel for respondent No. 1 would submit that identification of the post for reserved category is the prerogative of the employer and they are only recruiting agency, as such, they have no authority to consider the claim of the petitioner, however, he would submit that since the selection process has been completed by complying the procedure, direction issued by the State Government as well as the provisions of the Act of 2016 and order passed by this Court in WPPIL No. 1470/2007 and WPS No. 1137/2019, therefore, the instant petition *sans merit* and would pray for dismissal of the writ petition.
8. Learned counsel for respondent No. 2 would submit that 100 point Roster has been followed in the recruitment process giving 7% amended reservation as per the order dated 10.04.2019 which has been issued as per the Policy dated 27.09.2014

framed by the State Government. As per the order, the post of Assistant Professor in Arts subjects has been identified for visually impaired candidates and no reservation has been provided to Science, Commerce and Computer Application, therefore, no illegality or infirmity has been committed by the respondents in not providing reservation to the visually impaired candidates. Even otherwise, the examination process has attained finality and the petitioner has participated in the selection process without any objection at the time of selection process, therefore, at this belated stage he cannot challenge the select list. Therefore, he would pray for dismissal of the writ petition.

9. I have heard learned counsel for the parties and perused the documents placed on record with utmost satisfaction.

10. From the aforesaid submissions made by the parties the point emerged for determination of this Court is :-

“Whether the State Government is bound to provide 2% reservation for visually impaired candidate in commerce subject when 7% reservation has already been followed by the State Government by providing reservation to other physical disabled persons in the same recruitment process?”

11. Before advertng to the issue raised in this petition, it is expedient for this Court to go through the relevant provisions of the Act of 2016. The Section 2(b) defines appropriate Government. Section

33 of the Act provides identification of the posts for reservation and Section 34 provides reservation. These Sections read as under :-

“2(b) "appropriate Government" means-

- (i) in relation to the Central Government or any establishment wholly or substantially financed by that Government, or a Cantonment Board constituted under the Cantonments Act, 2006, the Central Government;
- (ii) in relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, other than a Cantonment Board, the State Government.

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.

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 nonavailability 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.”

12. From the above stated provisions of law it is quite vivid that for initiating the recruitment process in the State Service, the State Government will be the appropriate Government for identification of the posts for reservation and for providing reservation. Accordingly the State Government issued circular dated 27.09.2014. The Clause 3 of the Circular provides the

identification of the services/posts for providing reservation to the persons with physical disability. This Clause further provides that list issued by the Social Welfare Department, Govt. of Chhattisgarh dated 25.09.2014 will be included in the identified posts but this list is not exhaustive and the head of the department has discretionary power to identify other posts but the posts which have been identified by the head of the department will not supersede the posts which have already been included in the list issued by the Social Welfare Department on 25.09.2014. The Clause 11 of the circular provides that a 100 point roster has to be prepared for providing reservation to the persons with physical disability and Clause 11 provides for maintaining the roster register. The Clause 11(i) provides that all the vacancies posts which have to be filled up by direct recruitment shall be entered in the roster register and if the appointing authority does not find suitable particular to be reserved for persons with physical disability or if it finds that it has to be filled up from the categories of other disable persons, then also this post will be deemed to be reserved for persons with physical disability. This process has to be adopted uniformly for filling up all the categories of the posts which include Class I, II, III and IV. Accordingly, the appointing authority deems fit to provide reservation for OA and OL category candidates only as they have to impart education and to work in the laboratory also or any other administrative work assigned to them by the

Principle which may cause difficulty towards discharging their duties to the candidates who are suffering from eye disabilities.

13. The appointing authority being best judge to assess suitability of the candidates for its establishment or to run his administration and the Court normally should not direct employer to choose particular employee for particular assignment. The posts which are reserved for OA and OL of commerce faculty are looking to the nature of duty to be performed by them. This Court cannot lose sight of the fact that commerce and science faculty not only require to impart oral lecture but also require lot of writing of numerals and figures. The appointing authority in its wisdom taking into consideration this difficulty likely to be faced by them has chosen not to provide reservation to the persons with VH. This is a subjective matter of appointing authority which cannot be found faulty or warrants interference by this Court in view of limited scope of power of interference by this Court.
14. The learned counsel for the petitioner to substantiate his submission has referred to the judgment rendered by Hon'ble the Supreme Court in case of **National Federation of Blind (supra)**. This judgment also supports the stand taken by the respondents as in paragraph 38 of the judgment, Hon'ble the Supreme Court has held that if a post is not suitable for one category of disability the same could be identified as suitable for another category or categories of disabilities entitled to the benefits of reservation. Similarly, the proviso to Section 34 of the

Act of 2016 also empowered the appropriate Government to interchange the post within 5 categories with the prior approval of the appropriate Government. The State Government taking into consideration the difficulty likely to be faced by the VH candidate has already granted reservation for commerce faculty in OA and OL category. Thus, the judgment of Hon'ble Supreme Court as well as the Proviso Clause has been duly complied by the respondents. Therefore, the action of the respondent No. 2 in not providing reservation for persons with VH disability cannot be found faulty or illegal which warrants interference by this Court. Thus, the issue determined by this Court is answered against the petitioner by recording the finding that this Court in view of bar contained in Section 34 of the Act cannot issue Writ of Mandamus to the respondent No. 2 to provide 2% reservation for commerce faculty to the VH candidate as they have already provided reservation to OA and OL for commerce subject.

15. Accordingly, the Writ Petition sans merit and it is dismissed. The interim order passed by this Court on 24.03.2021 is vacated and the respondents are directed to issue appointment order within 60 days to a suitable candidate whose appointment has been deferred in view of the interim order passed by this Court.

Sd/-
(Narendra Kumar Vyas)
Judge