

*Before Rajesh Bindal & Harinder Singh Sidhu, JJ.*

**HARDEEP SINGH** — *Appellant*

*versus*

**STATE OF PUNJAB AND ANOTHER** — *Respondents*

**LPA No. 1898 of 2014**

March 14, 2016

*Constitution of India, 1950 — Art.226 — Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995 — Ss. 33 & 36 — Appellant, Orthopedically challenged, sought recruitment to the post of Science Master in the 3% posts reserved for differently disabled person — Out of 14 posts, 3 posts meant for Hearing impaired and 5 posts for Orthopedically challenged were filled leaving 6 posts vacant — Appellant in waiting list of Orthopedically challenged sought appointment against 6 vacant post — LPA bench agreed with the Single Judge that Section 36 mandates that vacancies in each category have to be carried forward once and only then inter change amongst categories allowed — In instant case vacancies had not been carried forward — Appeal dismissed.*

*Held*, that it provides that in case due to non-availability of a suitable person with disability, in a particular category the post remained unfilled in any recruitment year, the unfilled vacancies will be carried forward to the succeeding year. If in the succeeding year also, suitable person with that 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 is permitted to fill up the vacancy by appointment of a person, other than a person with disability.

(Para 10)

*Further held*, that the definite stand of the State in the affidavit of Ashwani Kumar, Assistant Director (Recruitment) office of the Director Public Instruction(Secondary Education), Punjab, S.A.S. Nagar, dated 7.12.2015 filed in this appeal is that there is no carry forward of vacancies in the category of Orthopedically Challenged persons from the previous recruitment. In the absence thereof, it was not possible to interchange the unfilled vacancies in other categories to Orthopedically challenged category. The only exception to the Rule is

that in case in an establishment keeping in view the nature of vacancies, a candidate of a particular category cannot be employed, the vacancy may be interchanged among the three categories with prior approval of the appropriate government. The case in hand does not fall in that category. All the posts in the category of Orthopedically challenged persons were filled up and admittedly the appellant was in the waiting list.

(Para 11)

Kapil Kakkar, Advocate, *for the appellant.*

P. S. Bajwa, Additional Advocate General, Punjab.

### **RAJESH BINDAL, J.**

(1) Judgment of learned Single Judge declining appointment as Science Master in the category of differently abled persons has been impugned in the present appeal by the appellant.

(2) The appellant claimed before the learned Single Judge that an advertisement was issued on 9.10.2009 for recruitment to the posts of Science Masters/ Mistresses. Total 450 posts of Science Masters/ Mistresses were advertised. As there is 3% reservation of posts for differently disabled persons in terms of the provisions of the Persons and Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter to be referred as, 'the Act'), 14 posts were reserved for them. Out of total 14 posts, 3 posts in the category of Hearing Impaired, 5 posts in the category of Orthopedically challenged candidates were filled up and 6 posts remained vacant. The appellant was in waiting list in the Orthopedically Challenged category. His claim was that as over all 6 posts remained vacant in the category of differently disabled persons, the appellant should have been offered appointment. In support of his plea, reliance was placed upon instructions dated 2.5.1997 issued by the Government of Punjab and on an earlier Single Bench Judgment of this Court in CWP No. 12886 of 2010 *Jagjit Kaur and others versus State of Punjab through Secretary and others*, decided on 12.1.2011.

(3) With reference to Section 36 of the Act, it was sought to be argued by learned counsel for the appellant that the principles laid down therein will apply in the cases where the process of selection takes place annually and not otherwise.

(4) On the other hand, learned counsel for the State submitted that there is no error in the order passed by the learned Single Judge.

Section 36 of the Act provides complete answer to the issue sought to be raised by the appellant. It clearly provides that in case any vacancy under Section 33 of the Act could not be filled in any recruitment year, the same has to be carried forward to the succeeding recruitment year and if in the succeeding recruitment year also suitable person with disability in that category is not available, it may first be filled with 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.

(5) In the case in hand, there being no carry forward of vacancies from previous years in the category to which the appellant belongs, the conversion of vacancies to other categories was not permissible. Learned counsel for the State, however, could not explain the instructions issued by the Government providing conversion of the vacancies among different categories, which apparently run contrary to the provisions of the Act.

(6) Heard learned counsel for the parties and perused the paper book.

(7) The facts which are not in dispute are that the State advertised 450 posts of Science Masters/ Mistresses. Section 33 of the Act, which is extracted below, provides for reservation to the extent of 3% of the total vacancies advertised, which has further been bifurcated in three different sub-categories :

**Reservation of posts.**—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) locomotor disability or cerebral palsy,

in the posts identified for each disability: Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

(8) In terms of the aforesaid statutory provisions, out of 450 vacancies, 14 were reserved for differently disabled persons. At the time of selection only 3 vacancies in the category of hearing Impairment and 5 in the Orthopedically Challenged category could be filled and 6 posts remained vacant. The appellant was on the waiting list in the category of Orthopedically Challenged category. His claim for conversion of the reserved vacancies from one category to another category in the over all reserved category for differently disabled persons was rejected by the learned Single Judge.

(9) Section 36 of the Act, which is extracted below, provides complete answer to the issue sought to be raised by the appellant.

**“36. Vacancies not filled up to be carried forward.—** 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:

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 three categories with the prior approval of the appropriate Government.”

(10) It provides that in case due to non-availability of a suitable person with disability, in a particular category the post remained unfilled in any recruitment year, the unfilled vacancies will be carried forward to the succeeding year. If in the succeeding year also, suitable person with that 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 is permitted to fill up the vacancy by appointment of a person, other than a person with disability.

(11) The definite stand of the State in the affidavit of Ashwani Kumar, Assistant Director (Recruitment) office of the Director Public

Instruction (Secondary Education), Punjab, S.A.S. Nagar, dated 7.12.2015 filed in this appeal is that there is no carry forward of vacancies in the category of Orthopedically Challenged persons from the previous recruitment. In the absence thereof, it was not possible to interchange the unfilled vacancies in other categories to Orthopedically challenged category. The only exception to the Rule is that in case in an establishment keeping in view the nature of vacancies, a candidate of a particular category cannot be employed, the vacancy may be interchanged among the three categories with prior approval of the appropriate government. The case in hand does not fall in that category. All the posts in the category of Orthopedically challenged persons were filled up and admittedly the appellant was in the waiting list.

(12) In Single Bench judgement in *Jagjit Kaur's case* (*supra*), the import of Section 36 of the Act was not considered and reliance was placed upon merely on the instructions issued by the Government, which on the face of it are contrary to the provisions of Section 36 of the Act, hence, not abiding precedent.

(13) For the reasons mentioned above, we do not find any reason to differ with the view taken by the learned Single Judge. The appeal is accordingly dismissed.

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*P.S. Bajwa*