123 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2025:PHHC:033985-DB

LPA-496-2025 (O&M)
Date of Decision: 10.03.2025

Sohan Singh …Appellant

Vs.

State of Haryana and others …Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Sunil K. Nehra, Advocate for the appellant.

Mr. Sanjeev Kaushik, Addl. AG, Haryana.

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SANJEEV PRAKASH SHARMA, J. (Oral)

CM-1290-LPA-2025

For the reasons mentioned in the application, the same is allowed and delay of 103 days in filing the appeal is condoned.

LPA-496-2025 (O&M)

1. The challenge in the present LPA is to the order passed by the learned Single Judge dated 30.09.2024, whereby the learned Single Judge has rejected the claim of the appellant for being granted him benefit of reservation as disabled category candidate for appointment on the post of Assistant Professor Biotechnology.

2. Brief facts which are to be noticed for adjudication of the present appeal are that on 16.02.2016, the Haryana Public Service Commission (for short 'the HPSC') had advertised six posts in all for the

post of Assistant Professor in Biotechnology. Vide corrigendum dated 29.04.2016, one post was reserved for the persons with disability (orthopedic handicapped) earmarked out of the aforesaid six posts. It was also stated in the corrigendum that the reservation shall be carried out for physical handicapped category horizontally but would cut across vertically reservation. It was further stated that the government instructions dated 15.07.2014 will accordingly apply.

3. The appellant participated in the selection process applying under the physically handicapped quota and after the result was declared, it has come to the notice of the appellant that one of the candidates who had also applied under physically handicapped quota was selected on his own merits in BCA category. Thus, the physically handicapped quota having fulfilled, the petitioner was left out being appointed. He preferred the present writ petition putting up his claim on the basis of circular dated 15.07.2014, which provided in Clause (F) as under:-

> *"Adjustment of candidates selected on their own merit:*
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> *Persons with disabilities selected on their own merit without released standards alongwith other candidates will not be adjusted against the reserved share of vacancies. The reserved vacancies will be fill up separately from amongst the eligible candidates with disabilities which will thus comprise physically handicapped candidates who are lower in merit than the last candidate in merit but otherwise found suitable for appointment if necessary by released standards. It will apply in case of direct recruitment only wherever reservation for persons with disabilities is admissible.*

4. Learned counsel submits that applying the same principle, one candidate from physically handicapped quota was given appointment in the subject of Hindi, although physically handicapped category already stood filled while filling-up the general posts. Learned counsel submits that the conditions laid down in the advertisement which are required to be followed and as the advertisement itself mentions and relies on circular dated 15.07.2014, the aforesaid Condition (F) would apply and a candidate who is selected on his own merit without relaxed standards along with other candidates belonging to physical disability would fill-up the physically handicapped quota and it has to be additionally given to a person having own merit like the appellant.

5. Learned counsel submits that although he is not interested in challenging the appointments given in other subject but his main point of arguments is with regard to the judgment rendered by the Hon'ble Supreme Court in the case of **Bedanga Talukdar vs. Saifudaullah Khan and others 2011(12) SCC 85**, wherein the Hon'ble Apex Court has held as under:-

> *"28. We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There can not be any relaxation in the terms and*

conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant Statutory Rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the Rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of quality contained in Articles 14 and 16 of the Constitution of India.

29. A perusal of the advertisement in this case will clearly show that there was no power of relaxation. In our opinion, the High Court committed an error in directing that the condition with regard to the submission of the disability certificate either along with the application form or before appearing in the preliminary examination could be relaxed in the case of respondent No. 1. Such a course would not be permissible as it would violate the mandate of Articles 14 and 16 of the Constitution of India.

6. Thus, he submits that since the conditions of the advertisement itself rely on circular dated 15.07.2014, the learned Single Judge has erred in not granting the relief as per Clause (F) (supra).

7. We have considered the submissions.

8. We find that the learned Single Judge has examined the contentions and extensively deal with the arguments. The learned Single Judge relied on the judgment passed by the Hon'ble Supreme Court in the case of **Rajesh Kumar Daria vs. Rajasthan Public Service Commission and others (2007) 8 SCC 785** and also deal with the conditions of Clause (F) (supra) and proceeded to observe as under:-

> *"The standards of selection as such have not been defined in instructions, which nevertheless provide, as apparent from the clause reproduced above, that persons with disabilities selected on merit without relaxed standards will not be adjusted against the posts/vacancies reserved for them, which is horizontal reservation. To give effect to this reservation for the category, the relaxed standards of selection need to be decided. In competitive selections the standards meant for any post/seat are determined by merit, which remain the undisputed benchmark across systems structures. In view of the settled law governing operational aspects of reservations in selection, these standards get determined by the merit of the ones selected against unreserved posts/seats since the same are offered solely on excellence irrespective of the category one belongs to. Accordingly, the meritorious from amongst all the applicants compete on the basis of their worth/quality/brilliance decided by the merit position earned, and determine the standards in the process. The ones who do not get selected against the unreserved posts/seats as per the standards determined, are required to be considered thereafter against the seats/posts*

reserved in their respective categories for which different standards get determined, which cannot be higher than the ones determined for the unreserved, or else the rule of migration will come in operation requiring the more meritorious, whether in vertically or horizontally reserved categories, to be shifted to the unreserved category Hence, the standards meant for any post are determined by the merit of the unreserved, and standards for the vertically or horizontally reserved categories are to be seen vis-a-vis those standards. Resultantly, the candidates admitted/selected against the vertically or horizontally reserved categories cannot be considered to have been selected without relaxed standards. And only the candidates selected against unreserved posts/seats are to be considered to have been selected without any relaxation in standards. In case the Commission has considered the SC candidates selected against vertically reserved posts as the ones selected without relaxed standards, this is wrong. However, validity of the revised result is not under challenge, nor can it be at this stage.

10 Besides, if any wrong has been done by the Commission, it will not confer any right on the petitioner to claim entitlement for the post. The right to equality cannot be enforced in breach of law A reference in that regard can be made to law laid down in ***State of Kerala v K. Prasad and Anr. (2007) 7 SCC 140***.

> *13. We may now deal with the plea of the respondents that they have been discriminated against It is true that Article 14 of the Constitution embodies a guarantee against*

> *arbitrariness but it does not assume uniformity in erroneous actions or decisions. It is trite to say that guarantee of equality being a positive concept, cannot be enforced in a negative manner. To put it differently, if an illegality or irregularity has been committed in favour of an individual or even a group of individuals, others, though falling in the same category, cannot invoke the jurisdiction of the writ courts for enforcement of the same irregularity on the reasoning that the similar benefit has been denied to them. Any direction for enforcement of such claim shall tantamount to perpetuating an illegality, which cannot be permitted. A claim based on equality clause has to be just and legal."*

9. From the careful reading of the judgment passed in **Bedanga Talukdar** case (supra) would show that what the Supreme Court has observed is in terms of conformity with the Articles of 14 and 16 of the Constitution of India. In **Anil Kumar Gupta vs. State of Uttar Pradesh and others 1996 (5) SCC 173**, the Apex Court was examining the issue relating to filling up the post horizontally as well as vertically and what was the method and manner to be applied.

10. The reservation as a whole is provided under Article 16 read with provisions of Article 15(4) of the Constitution of India. Those reservations which are provided under Article 15(4) or 15(5), in service, are to be treated as 'horizontal reservation' while those reservations which are provided under Article 16(4A) and 16(4B), have to be treated as 'vertical reservations'.

11. Way back in **Indra Sawhney v. Union of India 1992 Suppl. (3) SCC 217**, it was specifically observed that reservation provided for physically disabled persons is a horizontal reservation. Applying the same principle in **Rajesh Kumar Daria** case (supra), wherein judicial services women candidates were given additional benefit of appointment by carving out separately 30% reservations apart from the women candidates who had already got their placement in the main list i.e. general quota, was found to be unjustified by the Supreme Court and the male candidates who had been deprived on account of the additional reservations, awarded to the female candidates, were directed to be appointed additionally.

12. In the present case, once a disabled category candidate has already been appointed and fills a general category post, he eats away the physically handicapped quota and therefore, one post of the concerned quota would be reduced. Similarly, if a woman candidate is selected in the general category quota, she takes away one post from the women reservation. This is the correct interpretation of the horizontal reservation cutting across vertical reservation. It would be apposite to quote para No.17, 18 and 19 of the **Anil Kumar Gupta** case (supra):-

> *"17. On a careful consideration of the revised notification of December 17, 1994 and the aforementioned corrigendum issued by the Lucknow University, we are of the opinion that in view of the ambiguous language employed therein, it is not possible to give a definite answer to the question whether the horizontal reservations are overall reservations or compartmentalised reservations. We may explain these two expressions. Where the seats reserved for horizontal reservations are proportionately*

divided among the vertical (social) reservations and are not inter-transferable, it would be a case of compartmentalised reservations. We may illustrate what we say: Take this very case; out of the total 746 seats, 112 seats (representing fifteen percent) should be filled by special reservation candidates; at the same time, the social reservation in favour of Other Backward Classes is 27% which means 201 seats for O.B.Cs.; if the 112 special reservation seats are also divided proportionately as between O.C.,O.B.C.,S.C. and S.T., 30 seats would be allocated to the O.B.C. category; in other words, thirty special category students can be accommodated in the O.B.C. category; but say only ten special reservation candidates belonging to O.B.C. are available, then these ten candidates will, of course, be allocated among O.B.C. quota but the remaining twenty seats cannot be transferred to O.C. category (they will be available for O.B.C. candidates only) or for that matter, to any other category; this would be so whether requisite number of special reservation candidates (56 out of 373) are available in O.C. category or not; the special reservation would be a water tight compartment in each of the vertical reservation classes (O.C.,O.B.C.,S.C. and S.T.). As against this, what happens in the over-all reservation is that while allocating the special reservation students to their respective social reservation category, the over-all reservation in favour of special reservation categories has yet to be honoured. This means that in the above illustration, the twenty remaining seats

would be transferred to O.C. category which means that the number of special reservation candidates in O.C. category would be 56+20=76. Further, if no special reservation candidate belonging to S.C. and S.T. is available then the proportionate number of seats meant for special reservation candidates in S.C. and S.T. also get transferred to O.C. category. The result would be that 102 special reservation candidates have to be accommodated in the O.C. category to complete their quota of 112. The converse may also happen, which will prejudice the candidates in the reserved categories. It is, of course, obvious that the inter se quota between O.C., O.B.C., S.C. and S.T. will not be altered.

18. Now coming to the revised notification of December 17, 1994, it says that "horizontal reservation be granted in all medical colleges on total seats of all the courses....". These words are being interpreted in two different ways by the parties; one says it is over-all reservation while other says it is compartmentalised. Paragraph 2 says that the candidates selected under the aforesaid special categories "would be kept under the categories of Scheduled Castes/Scheduled Tribes/Other Backward Classes/General to which they belong. For example, if a candidate dependent on a freedom fighter selected on the basis of reservation belongs to Scheduled Castes, he will be adjusted against the seat reserved for Scheduled Castes". This is sought to be read by the petitioners as affirming that it is a case of compartmentalised reservation. May be or

may not be. It appears that while issuing the said notification, the Government was not conscious of the distinction between overall horizontal reservation and compartmentalised horizontal reservation. At any rate, it may not have had in its contemplation the situation like the one which has arisen now. This is probably the reason that this aspect has not been stated in clear terms.

19. It would have been better - and the respondents may note this for their future guidance - that while providing horizontal reservations, they should specify whether the horizontal reservation is a compartmental one or an overall one. As a matter of fact, it may not be totally correct to presume that the Uttar Pradesh Government was not aware of this distinction between "overall horizontal reservation", since it appears from the judgment in Swati Gupta that in the first notification issued by the Government of Uttar Pradesh on May 17, 1994, the thirty percent reservation for ladies was split up into each of the other reservations. For example, it was stated against backward classes that the percentage of reservation in their favour was twenty seven percent but at the same time it was stated that thirty percent of those seats were reserved for ladies. Against every vertical reservation, a similar provision was made, which meant that the said horizontal reservation in favour of ladies was to be a "compartmentalised horizontal reservation". We are of the opinion that in the interest of avoiding any complications and intractable problems, it would be better that in future the

horizontal reservations are comparmentalised in the sense explained above. In other words, the notification inviting applications should itself state not only the percentage of horizontal reservation(s) but should also specify the number of seats reserved for them in each of the social reservation categories, viz., S.T., S.C., O.B.C. and O.C. If this is not done there is always a possibility of one or the other vertical reservation category suffering prejudice as has happened in this case. As pointed out hereinabove, 110 seats out of 112 seats meant for special reservations have been taken away from the O.C. category alone - and none from the O.B.C. or for that matter, from S.C. or S.T. It can well happen the other way also in a given year. We have extensively quoted the said judgment only for the purpose to explain as to what we have stated herein above."

13. Taking into consideration the law as settled by the Supreme Court, if we examined Clause (F) of the Circular issued by the Government of Haryana dated 15.07.2014, we find that the interpretation of the government cannot be said to be in consonance with law as laid down by the Apex Court and the same therefore being the mis-interpretation of the method and manner in which appointments are to be made, the learned Single Judge has rightly ignored the said explanation being *non est* in law.

14. Having noticed as above, we find that the action taken by the respondents in not giving appointment to the appellant cannot be said to be illegal or unjustified or in violation of Articles 14 and 16 of the Constitution of India. Benefit wrongly given to a candidate in the subject of Hindi cannot

be made a basis to give the same to the appellant as there is no concept of negative equality in law.

15. The appeal is found to be without merit and is accordingly dismissed.

16. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(KIRTI SINGH)
JUDGE

10.03.2025
rajesh

1. Whether speaking/reasoned? : Yes/No
2. Whether reportable? : Yes/No