

(2011) 11 P&H CK 0257
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 21466 of 2011

Abhay Partap Singh

APPELLANT

Vs

Haryana Public Service Commission and others

RESPONDENT

Date of Decision : 18-11-2011

Acts Referred:

Constitution of India, 1950 — Article 14
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 42

Citation : (2011) 11 P&H CK 0257

Hon'ble Judges : Tejinder Singh Dhindsa, J;Permod Kohli, J

Bench : Division Bench

Judgement

Permod Kohli, J.—Notice of motion.

2. On the asking of the Court Mr. HN Mehtani, Advocate, accepts notice on behalf of Respondent No. 1, whereas Mr. Aman Chaudhary, Additional Advocate General, Haryana, accepts notice on behalf of Respondent No. 2. Mr. K.K. Kareer, Registrar (Recruitment) of Respondent No. 3 is also present to assist us in the matter.

3. With the consent of the learned Counsel for the parties before us, this matter is being finally disposed of without insisting for the reply at the motion stage itself, keeping in view the nature of the relief claimed and the issue involved.

4. We have heard the learned Counsel for the parties at length.

5. Factual background relevant for disposal of this petition is noticed hereinafter.

6. The Petitioner is a Law Graduate and is Visually Handicapped with Low Vision. The disability suffered by him has been assessed as 40% as is evident from the certificate dated 31.03.2010 (Annexure P-1) issued by the Civil Surgeon, Kurukshetra. In response to an advertisement issued by the Haryana Public Service Commission inviting applications for appointment to 80 posts of Civil Judges/Judicial Magistrates, the Petitioner applied under the handicapped category. As many as six posts have been reserved for the physically

handicapped category keeping in view the provisions of the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as the Act). One per cent reservation is prescribed for persons suffering from blindness or low vision out of the total three per cent reservation under the physically handicapped category. Thus, out of six vacancies earmarked for the physically handicapped category, two vacancies are meant for the blind/low vision candidates. The Petitioner appeared in the HCS (Judicial Branch) preliminary examination held on 04.09.2011 and has been declared successful by securing 349 marks out of 500. It is pertinent to note that the last general category candidate has secured 348 marks and on account of rectification of certain errors, pursuant to the directions of this Court, the last general category candidate has now secured 344 marks.

7. This petition has been filed seeking a direction in the nature of mandamus to grant 30 minutes extra time in the examination to the Petitioner on account of his disability to enable him to effectively compete with the other candidates who do not suffer any infirmity. To support his claim for such a benefit/privilege, the Petitioner has placed on record a communication dated 29.08.2011 (Annexure P-4) from the Secretary, Haryana Public Service Commission, Panchkula, to Commissioner Disabilities, Social Justice & Empowerment Department, Haryana, recommending 30 minutes extra time to the visually handicapped candidates in the examination conducted by the Commission.

8. We have also perused the aforesaid communication and heard Mr. Mehtani, who does not dispute the aforesaid communication having been issued by the Haryana Public Service Commission.

9. We are also informed that a similar relaxation has been granted to the visually handicapped category candidates who appeared in the Haryana Civil Services (Executive Branch) examination. The relevant stipulation in regard to the Low Vision category candidates are noticed hereunder:

xi) Candidates must write the papers in their own hand. In no circumstances they will be allowed to help of a scribe to write answers for them. However, blind candidates will be allowed to write the examination with the help of a scribe. The prior permission of the Commission is required for the same. The eligibility conditions of a scribe, his/her conduct inside the examination hall and the manner in which and extent to which he/she can help the blind candidate in writing the examination shall be decided by the HPSC. For availing of the concession admissible to a blind candidate, the candidate concerned shall produce a certificate in the prescribed proforma from a Medical Board constituted by the State Government along with his application for the Main Examination. The same is applicable to the blind candidates seeking a scribe in Preliminary Examination.

10. The Petitioner has placed on record the Prospectus issued for HCS (Judicial Branch) examination, 2011, which contains detailed instructions and information

for the candidates. We find that there is no such stipulation in the Prospectus/ advertisement for this Branch of service. However, we feel that the absence of any such stipulation for this Branch of the service, should not be an impediment for the grant of similar relief to the Petitioner or other such like persons who suffer from disability as all such disable persons are entitled to equal protection both under the provisions of the Act and in view of the mandate of Article 14 of the Constitution of India. Additionally, we find that Section 42 of the Act provides for affirmative action to facilitate and empower the persons who are suffering from disabilities. It provides for making a scheme to provide aids and appliance to persons with disabilities. In case of Haryana Civil Services (Executive Branch), a relaxation has been granted to the Visually Handicapped candidates by granting them additional time of 30 minutes. We are of the considered view that the Petitioner is entitled to, at least, similar treatment/relaxation.

11. In view of the above, we allow the present petition at the motion stage and direct the Haryana Public Service Commission/the Competent Examination Body to grant 30 minutes extra time to the Petitioner in all the papers of the Haryana Civil Services (Judicial Branch) (Main) Examination to be held on 24, 25 and 26 November, 2011, provided the Petitioner himself attempts the examination.

12. A copy of this order be given dasti to the learned Counsel appearing for the parties free of costs duly authenticated by the Reader/Court Secretary of the Bench for immediate compliance.