

**(2013) 02 CHH CK 0031**  
**In the Chhattisgarh High Court**  
**Case No : Writ Petition (S) No. 4501 of 2010**

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|-----------------------------------|----|------------|
| Anamika Pandey and Another        | Vs | APPELLANT  |
| State of Chhattisgarh and Another |    | RESPONDENT |

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**Date of Decision :** 04-02-2013

**Acts Referred:**

Constitution of India, 1950 — Article 16(1), 16(4)  
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 33, 36

**Citation :** (2013) 3 MPJR 124

**Hon'ble Judges :** Satish K. Agnihotri, J

**Bench :** Division Bench

**Advocate :** Mateen Siddiqui, for the Appellant; Y.S. Thakur, Dy. A.G. for the State and Shri Y.C. Sharma, Shri Abhishek Sinha and Shri Vivek Rathore, Advocates for the PSC, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Satish K. Agnihotri, J.—WP (S) Nos. 4501 & 4626 of 2010, involving the common facts and common question of law require consideration and decision by the common order. The facts, in brief, are that pursuant to the advertisement dated 15-5-2009, the petitioners Anamika Pandey (petitioner No. 1 in WP (S) No. 4501 of 2010) {for short "Anamika"} and Suparna Shrivastava (petitioner in WP (S) No. 4626 of 2010) {for short "Suparna"} applied for recruitment on the post of Assistant Professor (Zoology). Ajay Kumar Pandey (petitioner No. 2 in WP (S) No. 4501 of 2010) {for short "Ajay"} applied for recruitment on the post of Assistant Professor (Chemistry). Thereafter, they participated in the written examination. The names of Anamika & Suparna were found place in the list of successful candidates of written examination at S. Nos. 131 & 132, respectively, but they were not called for interview. Thus, these petitions.

2. Shri Siddiqui, learned counsel appearing for the petitioners (Anamika & Suparna), would submit that the respondent No. 2/Chhattisgarh Public Service

Commission (for short "the PSC") had committed error in not calling the candidates at the ratio of 1: 3, as total number of posts of Assistant Professor (Zoology) against the unreserved category was 46, out of total 87 posts. The PSC prepared the category wise list and, as such, 3 reserved handicapped quota seats in unreserved category list were deducted and against remaining 43 seats, applying 1: 3 ratio, 129 candidates were called for interview. Shri Siddiqui would further submit that since the handicapped reservation is a horizontal reservation, the handicapped candidates could have been considered at time of preparation of final select list, not at the stage of interview i.e. after written examination.

3. Shri Siddiqui would next submit that no handicapped candidates were available and, as such, no call letter was issued for interview. If total seats available for unreserved category i.e. 46 are taken into consideration 138 successful candidates in the written examination could have been called for interview. The rank obtained by Anamika & Suparna is 131 & 132, respectively within total 138 candidates and, as such, both of them were eligible for being called for interview and their names would have been found place in the select list.

4. On the other hand, Shri Sharma & Shri Sinha, learned counsel appearing for the respondent/PSC, would submit that the PSC had kept 3 seats reserved for handicapped candidates and, as such, for remaining 43 seats 129 candidates were called for interview i.e. at the ratio of 1: 3. Since no person was available against the handicapped quota for remaining 3 seats, no one was called for interview.

5. The respondents relying upon the provisions of Section 36 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short "the Act, 1995"), would submit that if in any recruitment year any vacancy u/s 33, ibid, cannot be filled up due to non-availability of a suitable person with disability or, for any other sufficient reason, such vacancy shall carry forward in the succeeding recruitment year. Thus, keeping in mind the mandate of the Act, 1995, since no handicapped person was eligible even for interview, it was decided to carry forward without calling for any one for interview.

6. The facts are indisputable, as aforesaid. The question arises in these petitions for consideration is as to when no candidate with disability is available, in the successful candidates" list, after written examination whether the seats reserved for persons with disability can be carried forward at the interview stage or after the final select list has been prepared on the basis of written examination and interview.

7. If the candidates are not available with disability i.e. 3 seats in the instant case, the seats will be carried forward for the subsequent recruitment year. There is no dispute that the reservation for persons or with class of persons with disability is a horizontal reservation, it is not a vertical reservation.

8. In the case of horizontal reservation, there is no lowering of marks as

compared with the minimum required cut off marks for other general category candidates. The post would stand carried forward under the provisions of Section 36 of the Act, 1995, does not mean that at the interview stage itself the seats meant for handicapped persons be not considered for interview. Calling candidates into 1: 3 ratio is to test the comparative merit of the candidates. The same could not have been done, if all the eligible candidate who comes within the ratio of 1: 3 are not called for interview, as aforestated.

9. The reservation for handicapped being a horizontal reservation that could have been looked and considered into at the stage of final select list while filling up the vacancies, not in the process of recruitment for the post. If the handicapped persons with disability were not available up to 138 against general category candidates, there was no reason to call only for 129 candidates, not total 138 (46 x 3). Since Anamika & Suparna are within the zone of consideration, as aforestated, for interview, they ought to have been called for interview.

10. The "vertical reservations" in favour of Scheduled Castes, Scheduled Tribes and other backward classes come under the provisions of Article 16(4) of the Constitution of India and the horizontal reservations, which cut across the vertical reservations are provided in Article 16(1); *ibid*. Thus, preparing a separate list for horizontal reservation, in the case on hand, for persons with disability at the interview stage after written examination would amount to vertical reservation, not horizontal reservation. (See *Indra Sawhney Vs. Union of India (UOI) and Others*, .

11. Accordingly, the process adapted by the PSC to have categorization during the course of recruitment process immediately after written examination is contrary to the constitutional requirement and the same is vitiated.

12. In view of the above, the respondent/PSC is directed to call Anamika & Suparna for interview and after the interview prepare the final select list on the basis of merit. Thereafter, the PSC may carry forward 3 posts horizontally reserved for persons with disability for the subsequent recruitment year.

13. As a sequel, the writ petitions, in respect of Anamika & Suparna, are allowed to the extent indicated above.

14. In case of Ajay, he does not come within the maximum candidates, eligible for interview in the Chemistry subject on the ratio of 1: 3, as there were 55 posts against unreserved category. Applying the ratio of 1: 3, 165 candidates ought to have been called for interview, as aforestated. Placement of Ajay is at S. No. 172 and in that event he was not eligible to be called for interview.

15. In view of the above, the petition in respect of Ajay is liable to be and is hereby dismissed. There shall be no order as to costs.