IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWPOA No.165 of 2019
Reserved on 15.06.2026
Decided on: 29.07.2026
Uploaded on: 29.07.2026

Hoshiyar Singh ...Petitioner

Versus

State of H.P. and others ...Respondents

Coram

Hon'ble Mr.Justice Jiya Lal Bhardwaj, Judge.

Whether approved for reporting?[1] Yes

For the petitioner: **Mr. Radhey Shyam Gautam, Advocate.**

For the respondents: **Mr. Hemant Kumar Verma, Deputy Advocate General for respondents No. 1 to 4-State.**

Mr. Rajesh Sharma, Advocate for respondent No.5.

Jiya Lal Bhardwaj, Judge

The petitioner by way of present petition has prayed for the following substantive reliefs:-

> *"i) That impugned selection and appointment of respondent No. 5 to the post of P.E.T. Teacher (C&V) made by the respondents No. 1 to 4 on the basis of interview conducted on 28.02.2008 in Distt. Kullu, H.P. may be quashed and set aside.*
>
> *ii) That the respondents may be directed to offer appointment letter to the applicant being at serial No.2 in the merit or in the alternative direction may be kindly be issued to conduct fresh interviews for the said post."*

[1] *Whether the reporters of Local Papers may be allowed to see the judgment?*

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2. The facts as emerge from the pleadings are that the petitioner after doing matriculation in the year 1991, did 10+2 from the H.P. Board of School Education. Thereafter, he obtained three years Bachelor of Physical Education (for short 'B.P.E.') degree in the year 2002 from Nagpur University and got his name registered with Employment Exchange, Anni, District Kullu, H.P. The petitioner is physically challenged person and has 46% permanent disability of hearing impairment (Annexure A-3).

3. The respondents-State had decided to fill-up the posts of Craft and Vocational (for short 'C&V') category Teachers and the name of the petitioner being eligible to hold the post of Physical Education Teacher (for short 'P.E.T.') in District Kullu, H.P. under a special drive from amongst the reserved category of disabled persons, was also sponsored by the Employment Exchange, Kullu, H.P. and the petitioner was issued the interview letter dated 16.01.2008 (Annexure A-4) to remain present in the office of respondent No.3 on 27.01.2008. A note was given in the interview letter that the candidates are required to bring with them domicile certificate of Kullu District issued by the competent authority to avoid the outsider candidate on fake address.

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4. The petitioner appeared in the interview held on 27.01.2008, on which date, only two candidates from District Kullu remained present i.e. petitioner and one Shri Thakur Dass. However, subsequently, the interviews taken on 27.01.2008 were cancelled citing the reason that the State Government has constituted a Selection Committee for the interview of Class-III i.e. C&V Teachers and other category and the petitioner vide interview letter dated 23.02.2008 (Annexure A-5) was again directed to appear before the Special Selection Committee for interview on 28.02.2008 at 10.00 a.m. sharp along-with original documents. The petitioner appeared in the interview held on 28.02.2008 in the office of respondent No.4, who was the Chairman of the Selection Committee and total four candidates, including the petitioner and three other persons, namely, S/Sh. Thakur Dass from Kullu District, Praveen Kumar from Mandi District and respondent No.5 from Hamirpur District, appeared in the interview. After the interview, respondent No.5 was selected and appointed to the post of P.E.T. in the pay-scale of Rs.5000-8100/- plus usual allowances as sanctioned by the Himachal Pradesh Government from time to time vide office order dated 01.03.2008 (Annexure R-1) issued by respondent No.3 appended with the reply.

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5. The petitioner feeling aggrieved by the appointment of respondent No.5 had challenged the same *inter alia* on the grounds that neither his name was sponsored by the Employment Exchange nor any interview letter was issued to him and further one Shri Praveen Kumar from Mandi District was also interviewed and the Selection Committee had allowed them to appear in the interview. It has been averred that the post of P.E.T. (C&V) Teachers category were proposed to be filled up by the respondents-Department under special drive from amongst the category of physically disabled persons exclusively reserved for candidates, who belong to the District, in which the posts were to be filled up. It has further been averred that the respondents-Department proposed to fill up certain similar posts of P.E.T. in District Shimla from amongst the physically disabled persons and the petitioner and one Shri Thakur Dass were also the candidates. The petitioner did not appear in the interview, but said Shri Thakur Dass had appeared in the interview held on 25.02.2008 and was not selected on the ground that he belonged to District Kullu and being an outsider, he was not considered for appointment. Similarly, candidates from outside were not considered and as such the post of P.E.T. in question, which was exclusively required to be filled up from amongst the candidates belonging to Kullu District, could not be offered to candidates from outside Kullu,

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as they were not eligible for consideration. The action on the part of Selection Committee to select and appoint respondent No.5 to the post of P.E.T. is illegal, unjust, arbitrary, discriminatory and against the instructions and rules and the same deserves to be quashed and set aside. The appointment of respondent No.5 has not been made by the Selection Committee on the basis of merit, but seems to have been made on extraneous considerations at the behest of influential persons by ignoring the merit and against the norms/instructions. The petitioner had been legitimately expecting, after interview, that he will definitely be selected and appointed on the basis of merit and performance and thus sought the relief that appointment of respondent No.5 be quashed and further the respondents-State may be directed to offer him appointment as P.E.T.

6. Respondents No.1 to 3 filed reply to the petition and averred that the petition is not maintainable against the respondents. Respondent No.5 has been interviewed and selected being a deserving handicapped person of General Physically Handicapped (Ortho). Hence, his selection is genuine on the basis of reservation roster point available for the said category. It has further been averred that since the C&V Teachers category is a District cadre, hence while issuing interview letter, special note was mentioned, but the appointment letters of candidates are to be

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issued as per the requisition received from the Labour Commissioner-cum-Director Employment and Training (Special Cell of Physically Handicapped) Shimla. As per the letter dated 14.09.2007, it was informed that the requisitions were sought from the Labour Commissioner-cum-Director Employment and Training (Special Cell of Physically Handicapped) Shimla. Some of the Departments were doing this for the first time and some points were made clear for the benefit of the Department. Hence, due to non-availability of aforesaid letter, the interviews were conducted on 27.01.2008, which were later on cancelled on 30.01.2008. The requisition was thereafter sought from Labour Commissioner, Shimla, who sponsored the names of candidates available and registered with their office. Hence the special note given in the interview call letters has no relevance, since the Labour Commissioner sponsored the names of physically handicapped person from whole of Himachal Pradesh registered with them and in view of requisition, office of respondent No.3 conducted interview and selected the candidate from one of the District, who fulfills all the conditions. It has further been averred that respondent No.5 was interviewed and selected being a deserving handicapped person of General Physically Handicapped (Ortho), since the post was reserved for General Physically Handicapped (Ortho). The selection

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of respondent No.5 was pleaded to be genuine. It has also been averred that the petitioner belongs to General Handicapped (hearing impaired), but the post was reserved for SC/PH (hearing impaired), hence the petitioner was not eligible for selection as such and thus not appointed.

7. Respondent No.5 did not file reply to the petition.

8. The petitioner filed rejoinder to the reply filed by respondents No.1 to 3 and controverted the facts. It has also been averred that the respondents had failed to mention in both the interview letters that the post was reserved for physically handicapped persons or reserved for SC/ST or for Physically handicapped (Ortho) or hearing impaired and only a note has been given that the post was to be filled up from the candidates belonging to District Kullu. A perusal of Annexure R-II attached with the reply reveals that the post was reserved for SC/PH (hearing impaired), then why candidate from General Ortho category was selected/appointed. Further, when roster was available with the respondents then why candidates from other categories were called for attending the interview. The Hon'ble Supreme Court in **Mahesh Gupta and others vs. Yashwant Kumar Ahirwar and others,** AIR 2007 SC 3136 has held that 'A disabled is a disabled'. The question of making any further reservation on the basis of caste,

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creed or religion ordinarily may not arise. They constitute a special class.

9. I have heard the learned counsel for the parties and also perused the record carefully.

10. As per the call letters, it was not mentioned that the post, to be filled up from the P.E.T. (hearing impaired) was reserved for Scheduled Caste category. Even if the post was reserved for Scheduled Caste category (hearing impaired), it was against the mandate contained in the judgment passed by the Hon'ble Supreme Court in **Mahesh Gupta's** case (supra). The Hon'ble Supreme Court has succinctly dealt with the issue that the post under the physically handicapped category cannot be reserved for reserved category. This Court had summoned the record and as per the same, the post of P.E.T. was reserved for SC physically handicapped (hearing impaired) and one post for General Physically Handicapped (Ortho) was also reserved. However, if the interview conducted on 27.01.2008 is perused, the petitioner was interviewed for the post and he secured 38.11 marks, whereas Thakur Dass another candidate who appeared under the same category of hearing impaired secured 37.56 marks. At that point of time, the post of hearing impaired was not reserved for SC category and, therefore, the action on the part of respondents-State in not selecting the

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petitioner only for the reason that the post was reserved for SC Physically Handicapped (hearing impaired) and he belongs to general category in the subsequent interview on 28.02.2008 is illegal, arbitrary and unconstitutional. The post under the physical handicapped category could not have been reserved for Scheduled Caste category.

11. The Hon'ble Supreme Court in the aforementioned judgment in **Mahesh Gupta's** case (supra) has held as under:-

> "10. The State in terms of Article 16 of the Constitution of India may make two types of reservations vertical and horizontal. Article 16(4) provides for vertical reservation; whereas Clause (1) of Article 16 provides for horizontal reservation.
>
> 11. The State adopted a policy decision for filling up the reserved posts for handicapped persons. A special drive was to be launched therefor. The circular letter was issued only for the said purpose. A bare perusal of the said circular letter dated 29.03.1993 would clearly show that the State had made 3% reservation for blinds and 2% for other physically handicapped persons. Such a reservation falling within Clause (1) of Article 16 of the Constitution has nothing to do with the object and purport sought to be achieved by reason of Clause (4) thereof.
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> 12. Disability has drawn the attention of the worldwide community. India is a signatory to various International Treaties and Conventions. The State, therefore, took a policy decision to have horizontal reservation with a view to fulfill its constitutional object as also its commitment to the international community. **A disabled is a disabled. The question of making any further reservation on the basis of caste, creed or religion ordinarily may not arise. They constitute a special class.** The advertisement, however, failed to mention in regard to the reservation for handicapped persons at the outset, but, as

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> noticed hereinbefore, the vacant posts were required to be filled up for two categories of candidates; one for Scheduled Castes and Scheduled Tribe candidates and other for handicapped candidates. Handicapped candidates have not been further classified as belonging to Scheduled Castes, Scheduled Tribes and general category candidates. It is a travesty of justice that despite the State clarified its own position in its order dated 1.01.2004 and stated that the posts were vacant under the handicapped quota but it completely turned turtle and took a diagonally opposite stand when a contempt petition was filed. In its reply in the said proceedings, reference was made to the aforementioned order dated 1.01.2004 but within a short time, viz., on 4.02.2004 it opined on a presumption that as the word "handicapped" was not mentioned in the heading of advertisement they were meant only for Scheduled Caste and Scheduled Tribe candidates. Rule of Executive Construction was given a complete go bye. Reasonableness and fairness which is the hallmark of Article 14 of the Constitution of India was completely lost sight of. The officers of the State behaved strangely. It prevaricated its stand only because a contempt proceeding was initiated. If the State was eager to accommodate the writ petitioner respondent, it could have done so. It did not take any measure in that behalf. It chose to terminate the services of some of the employees who had already been appointed. Such a course could not have been taken either in law or in equity. The State is expected to have a constitutional vision. It must give effect to the constitutional mandate. Any act done by it should be considered to have been effected in the light of the provisions contained in Part IV of the Constitution of India. The State in terms of the provisions contained in Part IV should have given effect to the principles embodied in Article 39 of the Constitution of India. Whereas a reasonable reservation within the meaning of Article 16 of the Constitution of India should not ordinarily exist, 50%, as has been held by this Court in Indra Sawhney v. Union of India [1992 Supp (3) SCC 212: AIR 1993 SC 477], reservation for women or handicapped persons would not come within the purview thereof."

12. Since the Hon'ble Supreme Court has held that the 'a disabled is a disabled' and the question of making any further

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reservation on the basis of caste, creed or religion ordinarily may not arise, the action on the part of the respondents to subsequently reserve the post for Scheduled Caste category (hearing impaired) is illegal, arbitrary and against the mandate of law laid down by the Hon'ble Supreme Court in the aforesaid judgment. A perusal of the result sheet shows that the post of P.E.T. under physical handicapped category (hearing impaired) to which the petitioner belongs was not filled up and this fact is also not been disputed by the respondents while filing reply to the petition.

13. Learned counsel for the petitioner had vehemently argued that the appointment of respondent No.5 is illegal for the reason that he belongs to another District. The said contention cannot be accepted for the reason that the disabled who belonged to the State of Himachal Pradesh had every right to be considered for appointment to the post under the category and such restriction even if imposed was totally arbitrary and illegal.

14. The another plea raised by learned counsel for the petitioner that one Shri Thakur Dass who, had appeared in District Shimla was ousted only on the ground that he belonged to District Kullu, is concerned, the said action on the part of the Selection Committee was wrong and illegal, but since he did not raise the issue regarding his rejection, this Court is not entering into that

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arena. The respondents-State cannot restrict the appointment to a particular District to a physically challenged person and thus the said plea is rejected.

15. However, the action on the part of the respondents-State to reserve the post of P.E.T. to be filled up from physically challenged person of Scheduled Caste category is illegal, arbitrary, discriminatory and unconstitutional. Since the petitioner had immediately approached the Court after selection of respondent No.5 and his candidature was not considered in the subsequent interview held on 28.02.2008, only for the reason that the post was reserved for Scheduled Caste category and he belongs to General category, he being in merit in the first interview and the another person did not approach the Court, at this stage asking the respondents to conduct the fresh interview to offer the appointment would not serve the purpose and, hence, this Court as a special case is directing the respondents-State to offer the appointment to the petitioner on the post of P.E.T. since he is a physically challenged person and special drive was initiated to fill-up the posts from the categories of the physically challenged persons from the date when respondent No.5 was appointed with all consequential benefits, except monetary benefits, which would be notional. The Court is also alive of the fact that earlier interview conducted by respondent

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No.3 was cancelled, but the Court cannot ignore the fact that when the petitioner was earlier interviewed, the post was not reserved and it seems that it has been done subsequently without any rationale and against the law as mentioned above.

16. Consequently, the present petition is allowed and the respondents-State is directed to offer appointment to the petitioner to the post of P.E.T. from the date when respondent No.5 has been offered the appointment w.e.f. 01.03.2008 with all consequential benefits, except monetary benefits, which would be notional. In case the respondents-State does not offer appointment to the petitioner within three months from today, he shall be granted the salary after expiry of three months from today.

17. The writ petition is disposed of in the aforesaid terms. No order as to costs. Pending applications, if any, also stand disposed of.

(**Jiya Lal Bhardwaj**)
Judge

29th July, 2026
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