2026:PHHC:190991

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-29147-2017

Kirti Rani

.....Petitioner

VERSUS

State of Haryana and others

.....Respondents

Reserved on: 07.09.2026
Pronounced on: 15.10.2026
Uploaded on:16.10.2026

Whether only the operative part of the judgment is pronounced? No
Whether full judgment is pronounced? Yes

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present *:* Mr. Rama Niwas Sharma, Advocate for the petitioner.

Mr. N.S. Panwar, DAG, Haryana-State.

Mr. Kanwal Goyal with Ms. Sheena Dahiya, Advocate for respondent No.3.

HARPREET SINGH BRAR, J.

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the action of respondent No.3-Haryana Public Service Commission (hereinafter referred to as 'respondent-Commission').

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By this action, one post of Assistant Professor (College Cadre) in the subject of Commerce, advertised for the category of Economically Backward Persons in the General Castes Category (hereinafter referred to as 'EBP(Gen)'), was allotted to respondent No.4, a Physically Handicapped (Visually Handicapped) (hereinafter referred to as 'PH(VH)') candidate. The petitioner further seeks quashing of the appointment order dated 17.08.2017 (Annexure P-8) *qua* respondent No.4. A writ in the nature of *mandamus* is also sought directing the respondents to select and appoint the petitioner against the thirteenth post advertised for the EBP(Gen) category, with all consequential benefits.

CONTENTIONS

2. Learned counsel for the petitioner, *inter alia*, contended that the respondent-Commission issued Advertisement No.7 dated 24.01.2014 (Annexure P-1) for recruitment to 1396 posts of Assistant Professor (College Cadre), HES-II in various subjects in the Higher Education Department, Haryana. Of these, 219 posts were in the subject of Commerce. The petitioner applied under the EBP(Gen) category. The said advertisement was later withdrawn, and a fresh Advertisement No.10 dated 16.02.2016 (Annexure P-2) was issued for 1647 posts, of which 256 were in the subject of Commerce. As per Note B thereof, the candidates who had applied against the earlier advertisement were not required to apply again, and their applications were to be considered, if otherwise eligible.

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3. Thereafter, the respondent-Commission issued a corrigendum dated 29.04.2016 (Annexure P-3), revising the category-wise classification of posts. The 256 posts in Commerce were distributed as under:

General	**SC**	**BC-A**	**BC-B**	**EBP(Gen)**	**ESM**	**Total**
132	57	24	9	13	21	**256**

The posts for persons with disabilities were shown separately, i.e., 07 for PH(VH) and 07 for Physically Handicapped (Orthopedically Handicapped) (hereinafter referred to as 'PH(OH)'). *Note (i)* to the corrigendum stated that, in view of the instructions dated 15.07.2014 (Annexure P-6) issued by the Government of Haryana, General Administration Department (hereinafter referred to as 'the 2014 Instructions'), reservation for the PH categories is horizontal and cuts across vertical reservation.

4. Furthermore, in the result of the written test declared on 17.04.2017 (Annexure P-4), the petitioner (Roll No.2872) was shortlisted for interview in the EBP(Gen) category. Respondent No.4 (Roll No.4489) was shortlisted in the PH(VH) category. However, in the final result declared on 08.06.2017 (Annexure P-5), respondent No.4 was recommended against one of the 13 EBP(Gen) posts and marked as PH(VH). The petitioner was not recommended. Respondent No.1 then issued appointment orders dated 17.08.2017 (Annexure P-8) to 247 candidates, wherein respondent No.4 was shown at Sr. No.13 as 'EBP PH(VH)'. Five more candidates were appointed vide order dated 20.09.2017 (Annexure P-9).

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5. Learned counsel contended that the petitioner secured 58.63 marks and stands at serial No.13 in the merit of the EBP(Gen) category. This position was worked out by the petitioner, who prepared the merit list of the EBP(Gen) category (Annexure P-7) on the basis of the roll number-wise marks of all candidates uploaded by the respondent-Commission. Since 13 posts were advertised for the said category, the petitioner was entitled to be selected against the thirteenth post. However, the said post was allotted to respondent No.4, who secured only 54.68 marks.

6. It was further contended that reservation for persons with disabilities under the 2014 Instructions is horizontal. A candidate selected against such quota is to be placed in the SC, BC or General category, depending upon the category to which he or she belongs. EBP(Gen) is not one of these categories. The claim of respondent No.4 was, therefore, required to be considered in the PH(VH) category, in which she was shortlisted, and upon adjustment, against the 132 General posts, not the 13 EBP(Gen) posts. Had she secured more marks than the petitioner, she could have been considered in the EBP(Gen) category on her own merit. That is admittedly not the case.

7. Learned counsel also placed reliance upon Clause (vii) of Para 12 of the 2014 Instructions, which lays down the criteria for the EBP(Gen) category. As per this clause, a person who claims the benefit of reservation under other categories is not entitled to claim the benefit of reservation in the EBP(Gen) category. Respondent No.4, having claimed the benefit of

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reservation as a PH(VH) candidate, could not have been given an EBP(Gen) post.

8. It was further argued that the highest marks in the PH(VH) category were 55.95, and the last selected candidate, i.e., respondent No.5, secured only 46.74 marks. Respondent No.4, with 54.68 marks, ought to have been appointed against a PH(VH) post. Instead, she was adjusted against the EBP(Gen) category only to accommodate respondent No.5. In the process, the petitioner was deprived of her right to selection and appointment.

9. Learned counsel further submitted that only 14 posts were advertised for persons with disabilities vide corrigendum (Annexure P-3), yet 15 such candidates have been appointed. This runs contrary to the settled principle that appointments cannot be made beyond the advertised posts. Moreover, as per the advertisement (Annexure P-2), two posts for persons with disabilities were to be filled from the SC category, but only one such post was filled. Even that candidate, one Mahesh Kumar (Roll No.3078), secured 60.05 marks and was appointed vide order dated 20.09.2017 (Annexure P-9). He was, therefore, to be treated as selected in the SC category and not against a post meant for persons with disabilities.

10. It was also contended that only 252 out of 256 posts have been filled, and 04 posts, i.e., 02 General, 01 ESM and 01 SC, remain vacant. Since two General posts are lying vacant, respondent No.4 could have been

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adjusted against one of them. The petitioner brought these facts to the notice of the respondents, but to no avail.

11. *Per contra*, learned counsel for the respondent-Commission contended that no legal right of the petitioner has been infringed. It was conceded that respondent No.4, a PH(VH) candidate, was selected against a post in the EBP(Gen) category. However, it was submitted that the said selection is valid and in consonance with the 2014 Instructions. The posts for PH(VH) candidates fall under horizontal reservation and not vertical reservation. It was argued to be a settled position of law that a candidate belonging to a horizontal category fills up a seat belonging to a vertical category, as there is no separate quota of posts for horizontal reservation. This stands fortified from the corrigendum (Annexure P-3), issued on the basis of the revised classification sent by the Additional Chief Secretary to Government of Haryana, Higher Education Department vide letter dated 27.04.2016.

12. Learned counsel further placed reliance upon Clause F of Para 13 of the 2014 Instructions, which deals with the adjustment of candidates selected on their own merit. As per this clause, persons with disabilities selected on their own merit without relaxed standards, along with other candidates, are not to be adjusted against the reserved share of vacancies. It was also submitted that respondent No.4 had applied under both the EBP(Gen) and the PH(VH) categories. EBP(Gen) being a vertical reservation, she was rightly considered and shown under the EBP(Gen)

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category as PH(VH). Horizontal reservation always cuts across all vertical reservations. Therefore, the question of adjusting any candidate did not arise, and the allegation that respondent No.4 was adjusted to accommodate respondent No.5 is malicious and unsubstantiated.

13. Learned counsel for the respondent-Commission also relied upon a note submitted during the course of arguments to contend that reservation for persons with disabilities, now governed by Section 34 of the Rights of Persons with Disabilities Act, 2016, is a horizontal reservation, and a candidate selected against it must be adjusted in the vertical category to which he or she belongs. Reliance was placed upon the judgment of a two-Judge Bench of the Hon'ble Supreme Court in ***Rekha Sharma v. Rajasthan High Court, Jodhpur, 2024 INSC 615***, wherein it was held that, in the case of an overall horizontal reservation, a person with benchmark disability is to be adjusted in the category for which he or she has applied. It was further submitted that the Division Bench of this Court in **CWP-18738-2009** titled as '***Ajit Singh v. State of Haryana***', decided on 06.09.2011, has held that the seats of candidates belonging to a horizontal category who also fall within a vertical reserved category stand consumed in that vertical category, and the candidate lower in merit in that category has to make way for them. Therefore, respondent No.4, having applied in the EBP(Gen) category, was rightly adjusted against a post of that category.

14. As regards the number of candidates with disabilities, it was submitted that 14 posts were advertised, i.e., 07 PH(VH) and 07 PH(OH). In

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the PH(VH) category, only 06 candidates were available. Out of them, 05 were adjusted in the General category and 01, i.e., respondent No.4, in the EBP(Gen) category. In the PH(OH) category, 22 candidates came within the zone of consideration for 07 posts. Out of them, 05 were adjusted in the General category, 01 in the BC-A category and 01 in the BC-B category. Thus, a total of 13 candidates were selected against the posts meant for PH(VH) and PH(OH) categories. Mahesh Kumar (Roll No.3078), though a PH(OH) candidate, came within the zone of selection on his own merit in the SC category without any relaxation. Similarly, one Sunil (Roll No.6551) came within the zone of selection on his own merit in the BC-A category. Hence, the mode of selection adopted by the respondent-Commission does not violate any settled principle of law.

15. Learned counsel further submitted that there is no provision for preparing a merit list or waiting list beyond the number of seats advertised for Group A and Group B posts, and none was prepared. The petitioner's computation of her own position in the merit list is self-assessed and was denied. It was further submitted that the mere fact that 04 posts are lying vacant does not give any right to the petitioner to be considered against them. Lastly, it was contended that no request, as alleged, was ever received from the petitioner.

16. Learned State counsel, appearing for respondents No.1 and 2, submitted that the office of respondent No.2 merely sent the requisition vide Memo No.8/36-2006 C-1(2) dated 04.01.2016 for filling up the posts of

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Assistant Professor (College Cadre), HES-II (Group B) in various subjects. The entire selection process, from inviting applications to declaring the final result, was carried out by the respondent-Commission, and the answering respondents had no role in it. Since the petitioner was not recommended by the respondent-Commission, appointment cannot be offered to her in the absence of such recommendation.

OBSERVATIONS AND ANALYSIS

17. I have heard learned counsel for the parties and perused the record with their able assistance. The following question arises for adjudication:

> ***Whether a candidate belonging to the general caste, who is selected against the horizontal reservation for persons with disabilities and also claims the benefit of the EBP(Gen) category, can be adjusted against a post reserved for the EBP(Gen) category under the instructions dated 15.07.2014 (Annexure P-6)?***

18. It is well settled that the Constitution of India contemplates two distinct kinds of reservation in public employment. Reservation in favour of backward classes of citizens under Article 16(4) is called vertical reservation. Reservation in favour of categories such as persons with disabilities and ex-servicemen, traceable to Article 16(1), is called horizontal reservation. A nine-Judge Constitution Bench of the Hon'ble Supreme Court in ***Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217***, held that horizontal reservation cuts across vertical reservation. A candidate selected against a horizontal quota is placed in the appropriate vertical category by

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making necessary adjustments. If such a candidate belongs to the SC category, he is placed in that quota, and if he belongs to the open category, he is placed in that category. This is called interlocking reservation.

19. Further, it is equally well settled that the open category is not a quota reserved for candidates who do not belong to any reserved category. It is open to all, and the only condition for a candidate to be placed in it is merit. The two-Judge Bench of the Hon'ble Supreme Court in ***Rajasthan High Court v. Rajat Yadav, 2025 INSC 1503*** held that a reserved category candidate who outscores general candidates, without availing any concession, is to be treated as having competed in the open category itself. No question of 'migration' or 'adjustment' arises in such a case. This Court, in **CWP-35851-2025** titled as '***Rohit Soni v. State of Haryana***', decided on 05.08.2026, applied the same principle. Further, in **CWP-6262-2021** titled as '***Manjeet Kumar v. Indira Gandhi University***', decided on 27.07.2026, it was held that confining a meritorious candidate to the merit list of her own reserved category treats the General category as a compartment for non-reserved candidates, which is impermissible.

20. Moreover, this principle applies with equal force to horizontal reservation. A three-Judge Bench of the Hon'ble Supreme Court in ***Saurav Yadav v. State of Uttar Pradesh, 2021(1) SCT 87*** dealt with female candidates of the OBC and SC categories who had secured more marks than the last selected candidates in the 'Open General female' category. Their claim was rejected on the ground that they could be accommodated only

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within their own vertical columns. Rejecting this approach, the Hon'ble Supreme Court, speaking through Justice Uday Umesh Lalit, observed as follows:

> ***"31.*** *The second view is thus neither based on any authoritative pronouncement by this Court nor does it lead to a situation where the merit is given precedence. Subject to any permissible reservations i.e. either Social (Vertical) or Special (Horizontal), opportunities to public employment and selection of candidates must purely be based on merit.* ***Any selection which results in candidates getting selected against Open/General category with less merit than the other available candidates will certainly be opposed to principles of equality.*** *There can be special dispensation when it comes to candidates being considered against seats or quota meant for reserved categories and in theory it is possible that a more meritorious candidate coming from Open/General category may not get selected. But the converse can never be true and will be opposed to the very basic principles which have all the while been accepted by this Court. Any view or process of interpretation which will lead to incongruity as highlighted earlier, must be rejected.*
>
> ***32****.* ***The second view will thus not only lead to irrational results where more meritorious candidates may possibly get sidelined as indicated above but will, of necessity, result in acceptance of a postulate that Open/General seats are reserved for candidates other than those coming from vertical reservation categories. Such view will be completely opposed to the long line of decisions of this Court."***
>
> (Emphasis added)

21. The consequence of such placement for the remaining candidates of the reserved category was considered by a two-Judge Bench of

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the Hon'ble Supreme Court in ***Bharat Sanchar Nigam Limited v. Sandeep Choudhary, 2022(2) SCT 657.*** Two OBC candidates with more marks than the general category appointees were held entitled to be adjusted in the general category. The OBC seat so released was held to belong to the next OBC candidate, who was the original applicant. Speaking through Justice M.R. Shah, the following was held:

> ***"11.*** *In view of the above and for the reasons stated above, the present appeal fails and the same deserves to be dismissed and is accordingly dismissed. The High Court has rightly observed and held that two reserved category candidates, namely, Mr. Alok Kumar Yadav and Mr. Dinesh Kumar having more marks than the general category candidates appointed, were entitled to the appointment in the general category and* ***the seats reserved for OBC category were required to be filled in from and amongst the remaining candidates belonging to the OBC category. Consequently, respondent No.1 - original applicant was entitled to the appointment on such post****. However, at the same time in exercise of the powers under Article 142 of the Constitution of India, it is observed and directed that on reshuffling, the two candidates belonging to general category shall not be removed from service as they are working since long. However, at the same time, the respondent No.1 shall be entitled to the seniority from the date, the general category candidates having lesser marks than the aforesaid two reserved category candidates were appointed. With this, the present appeal stands dismissed. However, in the facts and circumstances, there shall be no order as to costs."*
>
> (Emphasis added)

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22. In the present case, the 2014 Instructions adopt the scheme of interlocking reservation. Para 3 thereof provides that 3% of the vacancies in direct recruitment to Group A, B, C and D posts shall be reserved horizontally for persons with disabilities, of which one percent each is earmarked for the three categories of disability. The manner in which such candidates are to be placed is provided in **Clause M** of Para 13 of the 2014 Instructions, which reads as under:

> *"M) HORIZONTALITY OF RESERVATION FOR PERSONS WITH DISABILITIES:*
> *Reservation for backward classes of citizens (SCs and BCs) is called vertical reservation and the reservation for categories such as persons with disabilities and ex-servicemen is called horizontal reservation. Horizontal reservation cuts across vertical reservation (in what is called inter-locking reservation) and persons selected against the quota for persons with disabilities have to be placed in the appropriate category viz.SC/BC/General candidates depending upon the category to which they belong in the roster meant for reservation of SCs/BCs.* ***To illustrate, if in a given year there are two vacancies reserved for the persons with disabilities and out of two persons with disabilities appointed, one belongs to a Scheduled Caste and the other to general category then the disabled SC candidate shall be adjusted against the SC point in the reservation roster and the general candidate against unreserved point in the relevant reservation roster.*** *In case none of the vacancies falls on point reserved for the SCs, the disabled candidate belonging to SC shall be adjusted in future against the next available vacancy reserved for SCs.*

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> *Since the persons with disabilities have to be placed in the appropriate category viz. SC/BC/ General in the roster meant for reservation of SCs/BCs,* ***the application form for the post should require the candidates applying under the quota reserved for persons with disabilities to indicate whether they belong to SC/BC or General category.****"*
>
> (Emphasis added)

23. A plain reading of the above shows the scheme. The quota for persons with disabilities is fixed against the total number of vacancies and is divided only by the type of disability. It is not split in advance among the vertical categories. The corrigendum dated 29.04.2016 (Annexure P-3) follows the same pattern. It shows a composite figure of 07 posts for PH(VH) and 07 for PH(OH), and its *Note (i)* expressly records that this reservation is horizontal and cuts across vertical reservation. Persons with disabilities are thus first selected against the quota and only then placed in the vertical columns. Significantly, **Clause M *(supra)*** names only the SC, BC and General categories for such placement. Its own illustration adjusts a disabled candidate of the general category *"against unreserved point"*, and it requires the application form to ask such candidates only whether they belong to the SC, BC or General category. It nowhere contemplates adjustment against a point reserved for EBP(Gen), even though the said category carries its own roster points under Para 1 of the 2014 Instructions. This omission cannot be treated as accidental. The very instrument which contains Clause M records the decision of the State Government to enhance the quantum of reservation, *inter alia*, for Economically Backward Persons

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in the General Category, and assigns that category its own quantum and roster points. The exclusion of the EBP(Gen) category from the categories available for placement of persons with disabilities is, therefore, a conscious one.

24. Adverting to the facts of the present case, it is not in dispute that 07 posts were advertised for PH(VH) candidates and only 06 such candidates were available. This stands recorded in the result dated 17.04.2017 (Annexure P-4) and the final result dated 08.06.2017 (Annexure P-5), and is admitted by the respondent-Commission. All 06 candidates were selected. Their placement, as reflected in the final result (Annexure P-5) and the appointment order dated 17.08.2017 (Annexure P-8), is as under:

Sr. No.	**Roll No.**	**Name**	**Category in which placed**
1.	1781	Bharti	General
2.	2233	Gaurav Kumar	General
3.	3342	Meena Rani	General
4.	6119	Shekhar Sethi	General
5.	6375	Sonia Minocha ***(respondent No.5)***	General
6.	4489	Prachi Goyal ***(respondent No.4)***	EBP(Gen)

Thus, five PH(VH) candidates were placed against the General category, while respondent No.4 alone was placed against the EBP(Gen) category.

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25. It is further noted that the marks of the relevant candidates are as under:

Candidate	Roll No.	Category	Marks
Kirti Rani (petitioner)	2872	EBP(Gen), not selected	58.63
Prachi Goyal (respondent No.4)	4489	PH(VH), placed against EBP(Gen)	54.68
Sonia Minocha (respondent No.5)	6375	PH(VH), placed against General	46.74

The highest marks in the PH(VH) category were 55.95, and respondent No.5 was the last selected candidate in that category. These figures are not disputed by the respondent-Commission.

26. Perusal of the above tables shows that respondent No.4 was selected solely against the horizontal reservation for PH(VH) candidates. She was not selected in the EBP(Gen) category on her own merit, as she secured 54.68 marks against 58.63 marks secured by the petitioner. Her placement in a vertical column was, therefore, purely a matter of interlocking under **Clause M *(supra)***, which permits adjustment only against an SC, BC or unreserved point. Being a person of the general caste, she had to be adjusted against an unreserved point in the General category. By adjusting her instead against a post reserved for the EBP(Gen) category, the respondent-Commission reduced the share of that category to 12 posts, and the candidate next in merit in that category was left out. Moreover, five PH(VH) candidates, the last of whom secured 46.74 marks, were placed in the General category, while respondent No.4, with 54.68 marks, was

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confined to the EBP(Gen) category. Such an approach treats the General category as a compartment for candidates who do not belong to any reserved category, which stands disapproved in ***Saurav Yadav (supra)*** and ***Manjeet Kumar (supra)***.

27. Furthermore, the justification offered by the respondent-Commission does not advance its case. It is trite law that a candidate selected against a horizontal quota has to be placed in the vertical category to which he or she belongs. However, the categories available for such placement are those contemplated by the governing instrument. **Clause M *(supra)*** contemplates placement only against an SC, BC or unreserved point. It does not contemplate adjustment of a person with disability against a point reserved for the EBP(Gen) category. Therefore, the submission that respondent No.4 was rightly shown in the EBP(Gen) category, being a vertical reservation, cannot be accepted. It is true that a PH(VH) candidate is placed in a vertical category only after selection against the horizontal quota. The question, however, is not when such placement is made, but where.

28. Insofar as the reliance placed by the respondent-Commission upon ***Ajit Singh (supra)*** and ***Rekha Sharma (supra)*** is concerned, these decisions lay down the general manner in which horizontal reservation interlocks with vertical reservation. They do not dilute the conclusion drawn above. In ***Rekha Sharma (supra)***, the advertisement itself provided that a handicapped candidate would be adjusted in the same category, including the EWS category, for which he had applied. The instrument governing the

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present selection contains no such provision. On the contrary, **Clause M *(supra)*** confines such placement to the SC, BC and General categories, and Clause (vii) of Para 12 of the 2014 Instructions bars a person claiming reservation under another category from the benefit of the EBP(Gen) category. Similarly, the principle culled out in ***Ajit Singh (supra)***, that a horizontally reserved candidate who also falls within a vertical reserved category is consumed in that category, presupposes that the candidate is entitled to be placed in that vertical category. Respondent No.4 was not so entitled *qua* the EBP(Gen) category. Further, Section 34 of the Rights of Persons with Disabilities Act, 2016 came into force on 19.04.2017, after the present selection process had commenced under Advertisement No.10 of 2016. In any event, the said provision only fixes the quantum of reservation and its distribution among the categories of disability. It does not provide the vertical category in which a selected candidate is to be placed. The reliance placed upon the said judgments and provision is, accordingly, misplaced.

29. Insofar as **Clause F** of Para 13 of the 2014 Instructions is concerned, the reliance placed thereon is misplaced. The said clause deals with persons with disabilities selected *"on their own merit without relaxed standards alongwith other candidates"* and provides that they shall not be adjusted against the reserved share of vacancies. Respondent No.4 was not selected on her own merit in the EBP(Gen) category, as she stood below the petitioner. If anything, the clause rests on the same principle, i.e., a

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candidate's placement on merit must not eat into the share reserved for others.

30. It is further noted that no rule, instruction or term of the advertisement has been brought to the notice of this Court which bars a PH(VH) candidate from being placed in the open category. On the contrary, Clause E of Para 13 of the 2014 Instructions provides that a person with disability cannot be denied the right to compete for appointment against an unreserved vacancy.

31. Furthermore, Clause (vii) of Para 12 of the 2014 Instructions provides that a person who claims the benefit of reservation under other categories shall not be entitled to claim the benefit of reservation in the EBP(Gen) category. Admittedly, respondent No.4 claimed, and was selected on the strength of, the reservation for PH(VH) candidates. Her claim to a post reserved for the EBP(Gen) category was, therefore, barred by the said clause as well. **Clause M *(supra)*** and Clause (vii) of Para 12 thus lead to the same result.

32. Insofar as respondent No.5 is concerned, the contention that respondent No.4 was placed in the EBP(Gen) category only to accommodate respondent No.5 is belied by the record. Since all the PH(VH) candidates available were selected, the selection of respondent No.5 did not depend on the column in which respondent No.4 was placed. In any event, no relief has been sought against her. Her appointment, therefore, remains unaffected.

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33. Further, the grievance that 15 candidates with disabilities were appointed against 14 advertised posts is equally misplaced. As explained by the respondent-Commission, 13 candidates were selected against the reserved posts. The remaining two, namely Mahesh Kumar (Roll No.3078) and Sunil (Roll No.6551), came within the zone of selection on their own merit in the SC and BC-A categories, respectively, without any relaxation. In terms of **Clause F *(supra)***, they are not to be counted against the reserved share. The plea based on two PH(SC) posts in the advertisement (Annexure P-2) also does not survive. The corrigendum (Annexure P-3) reclassified the posts for persons with disabilities as PH(VH) and PH(OH) only, *"instead of their earlier classification like PH (Gen)/PH (SC)."*

34. Consequently, once respondent No.4 is treated as placed in the General category, the thirteenth post of the EBP(Gen) category stands released. The said post is to be filled from amongst the remaining EBP(Gen) candidates, strictly in order of merit. This does not amount to operating a waiting list, as contended by the respondent-Commission. The thirteenth post of the EBP(Gen) category was within the posts advertised and was wrongly filled. Filling it with the candidate entitled to it is only a correction of the selection already made. This Court refrains from determining the inter se merit of such candidates, as the same is for the respondent-Commission to undertake on the basis of its record. The claim of the petitioner shall be considered in that exercise, and she shall be entitled to the said post only if she is found next in merit and otherwise eligible.

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35. It is also to be considered that respondent No.4 has been working since 2017, and the error in her placement is not attributable to her. Her placement in the General category does not, in any manner, affect her appointment, and no appointed candidate is required to be unseated. The respondent-Commission has also admitted that 04 posts advertised in the subject of Commerce remain vacant, 02 of which, as pointed out by the petitioner, belong to the General category. Respondent No.4 can, therefore, be adjusted against one such post, and the candidate found entitled to the released EBP(Gen) post can be accommodated without disturbing any appointed candidate. Even otherwise, unseating any appointed candidate at this stage would be contrary to public interest. The Hon'ble Supreme Court in ***Sandeep Choudhary (supra)*** protected the appointees while granting relief to the deserving candidate. The Constitution Bench in ***Sivanandan C.T. v. High Court of Kerala, 2024(3) SCC 799*** is to the same effect, and this Court followed the same course in ***Manjeet Kumar (supra)***.

36. In light of the above discussion, this Court concludes that, under the instructions dated 15.07.2014 (Annexure P-6), a candidate belonging to the general caste who is selected against the horizontal reservation for persons with disabilities has to be adjusted against an unreserved point in the General category. Such a candidate cannot be adjusted against a post reserved for the EBP(Gen) category, and the post so released must go to the next meritorious candidate of that category. The issue framed above, stands answered accordingly.

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CONCLUSION

37. In view of the foregoing discussion, the present petition is disposed of in the following terms:

a. The action of the respondents in placing respondent No.4 against the thirteenth post of the EBP(Gen) category is hereby quashed and set aside. Respondent No.4 shall be treated as selected against the General category under the PH(VH) horizontal reservation and shall be adjusted against an unfilled General category post of the said recruitment and, in the absence thereof, against a supernumerary post. Her appointment vide order dated 17.08.2017 (Annexure P-8) shall otherwise remain undisturbed.

b. The respondent-Commission is directed to fill the EBP(Gen) post so released from amongst the eligible EBP(Gen) candidates, strictly in order of merit, and in doing so, to consider the claim of the petitioner. This exercise shall be completed within a period of six weeks from the date of receipt of a certified copy of this order. If the petitioner is found next in merit and otherwise eligible, she shall be recommended for appointment, and respondents No.1 and 2 shall issue her appointment letter within four weeks of such recommendation. The appointment shall be made against the EBP(Gen) post so released.

c. In case the petitioner is so appointed, she shall be granted consequential notional benefits, including seniority and fixation of

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pay, from 17.08.2017. However, actual monetary benefits shall be given to her only from the date of her actual joining.

d. It is clarified that none of the candidates already appointed and working, including respondents No.4 and 5, shall be removed from service.

38. Pending miscellaneous applications, if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

15.10.2026
P.C.

Whether speaking/reasoned. : Yes/No
Whether Reportable : Yes/No

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