

**Court No. - 1**

**Case :-** WRIT - A No. - 1331 of 2023

**Petitioner :-** Krashn Kant Singh

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Law Deptt. Civil Sectt. Lko. And 5 Others

**Counsel for Petitioner :-** Paavan Awasthi, Anand Singh Pawar, Parth Anand, Prashast Puri

**Counsel for Respondent :-** C.S.C., A.S.G.I., Gaurav Mehrotra, Raj Kumar Upadhyaya (R.K. Upadhyaya)

**Hon'ble Ramesh Sinha, J.**

**Hon'ble Subhash Vidyarthi, J.**

1. Upon a mention being made by the learned counsel for the petitioner on 09.02.2023, permission was granted for taking up the matter today on 10.02.2023 and accordingly, the matter has been listed in the supplementary list of fresh cases.
2. Heard Sri Paavan Awasthi, the learned counsel for the petitioner, Sri Amitabh Kumar Rai, the learned Additional Chief Standing Counsel of the State of U.P., Sri R.K. Upadhyaya, the learned counsel for the opposite party no.3/U.P. Public Service Commission and Sri Vijay Dixit, the learned counsel for the opposite party no.6 the High Court of Judicature at Allahabad who has filed a memo of appearance, which is taken on record.
3. By means of the instant writ petition, the petitioner has challenged the notification dated 27.01.2023, issued by the Uttar Pradesh Public Service Commission, Prayagraj, rejecting the application of the petitioner for selection in the U.P. Judicial Service Civil Judge (Junior Division) Examination, 2022.
4. Briefly stated, the facts of the case are that on 10.12.2022, the U.P. Public Service Commission issued an advertisement inviting applications

for selection to the post of Civil Judge (Junior Division), for a total of 303 vacancies. The point no.6 of the advertisement is as follows:

*“6. Vacancies: Presently the number of Vacancies are 303 which may be increase or decrease depending upon the circumstances / requirements. These posts are group ‘B’ Gazetted, temporary but likely to be continued in future. The details of the vacancies are as follows:*

<i>Vertical</i>	<i>Horizontal</i>
<i>Unreserved (General)- 123</i>	<i>Ex-servicemen- 15</i>
<i>OBC - 81</i>	<i>DFP - 06</i>
<i>SC - 63</i>	<i>Women - 60</i>
<i>ST - 06</i>	<i>Person with disabilities</i>
<i>E.W.S. - 30</i>	<i>(Pwds) - 12</i>

*Note: - According to the Uttar Pradesh Judicial Service (Fifth Amendment) Rules, 2022 Promulgated under Notification No.781/Two-4-2022-45(32)/2006, Dated: November 07, 2022 regarding Amendment in Uttar Pradesh Judicial Service Rules, 2001:-*

*Provided that four percent of vacancies shall be reserved for the following persons with “benchmark disabilities”, namely:*

*(i) One percent for the persons in the following category of disabilities under the category of “Locomotor disability’ (as defined in the Schedule appended to the Rights of Persons With Disabilities Act, 2016):- Total post 03+01+=04*

*(a) Locomotor disability of One Arm, One Leg and Both Legs;*

*(b) Leprosy cured person;*

*(c) Dwarfism;*

*(d) Acid attack victims;*

*(ii) One percent for the persons with “Low vision” under the category of ‘Visual Impairment’ (as defined in the Schedule appended to the Rights of Persons with Disabilities Act, 2016); Total post 03+01+=04*

*(iii) One percent for the persons with ‘hard of hearing’ under the category of ‘Hearing Impairment’ (as defined in the Schedule appended to the Rights of Persons with Disabilities Act, 2016); Total post 03+01+=04*

*(v) Remaining one percent for the persons mentioned in the above clause (I), (ii) & (iii), on rotation basis, Total 03 post, who have been allotted 1,1,1 posts in the above categories.*

*Explanation:- The roster points meant for the candidates with benchmark disabilities in clauses (d) and (e) of sub-section (1) of Section 34 of the said Central Ct, shall be allotted to the candidates in categories (i) to (iii) mentioned above, in the same order:*

*Provided further that the candidates who are able to perform the following physical activities alone are Eligible:*

*(a) Work performed by Sitting;*

*(b) Work performed by Standing;*

*(c) Work performed by Walking;*

*(d) Work performed by Seeing;*

*(e) Work performed by Hearing;*

*(f) Work performed by Reading and Writing;*

*(g) Communicating (Communicating would also include verbal or non-verbal communication).”*

5. The petitioner is a physically disabled person and his disability certificate states that:

*“(A) He is a case of Locomotor Disability*

*(B) The diagnosis in his case is AMPUTATION LEFT UPPER LIMB JUST BELOW SHOULDER AND LEFT LOWER LIMB JUST BELOW HIP.”*

6. The petitioner applied in pursuance of the aforesaid advertisement against the vacancies reserved for persons with disabilities and his application has been rejected by means of the order dated 27.01.2023. The order stated that the candidate may prefer an appeal against the order of rejection till 03.02.2023 at 5.00 p.m. The petitioner submitted an appeal on 31.01.2023 but no decision taken on his appeal has been communicated to the petitioner.

7. The learned counsel for the petitioner has submitted that Section 3 (3) of the Rights of Persons with Disabilities Act, 2016 provides that *“no person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.”*

8. Section 20 (1) of the Act of 2016 provides that *“no government establishment shall discriminate against any person with disability in any matter relating to employment; Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of section.”*

9. Section 34 of the Act of 2016 provides for reservation and sub Section (1) thereof provides as under:

*“Every appropriate Government shall appoint in every Government establishment, not less than four per cent of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent each shall be reserved for persons with*

*benchmark disabilities under clauses (a), (b) and (c) and one per cent for persons with benchmark disabilities under clauses (d) and (e), namely-*

*(a) blindness and low vision;*

*(b) deaf and hard of hearing;*

*(c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;*

*(d) autism, intellectual disability, specific learning disability and mental illness;*

*(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:”*

10. The State of Uttar Pradesh has enacted the U.P. Public Services Commission (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993 and Section 2 (ddd) and 2 (e) thereof defines locomotor disability and physical disability as follows:-\_

*“locomotor disability means disability of bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy;*

*Section 2 (e) “Physical disability” means the disabilities as specified in the schedule appended to this Act.*

11. The service conditions of Civil Judge (Junior Division) are governed by U.P. Judicial Service Rules, 2001 and prior to the Fourth Amendment and Fifth Amendment, Rule 8 of the aforesaid Rule of 2001 provides as follows:

*“Rule 8- Reservation- Reservation to posts in the service for the members of scheduled castes, scheduled tribes and other categories shall be in*

*accordance with the provisions of the law prescribing reservation for scheduled caste, scheduled tribes and other categories.”*

12. However, after amendment Rule 8 provides as follows:

*"Reservation 8- Reservation for the candidates belonging to the scheduled castes, scheduled tribes and other categories shall be in accordance with the Act and the Uttar Pradesh Public Services (Reservation for physically handicapped, dependents of freedom fighters and ex- servicemen) Act, 1993, as amended from time to time, and the orders of the government in force at the time of recruitment.*

*Provided that four percent of vacancies shall be reserved for the following persons with "benchmark disabilities. namely:*

*(i) One percent for the persons in the following category of disabilities under the category of 'Locomotor disability' (as defined in the Schedule appended to the Rights of Persons with Disabilities Act, 2016):-*

*(a) Locomotor disability of One Arm, One Leg and Both Legs:*

*(b) Leprosy cured person*

*(c) Dwarfism:*

*(d) Acid attack victims:*

*Provided further that the candidates who are able to perform the following physical activities alone are Eligible*

*(a) Work performed by Sitting:*

*(b) Work performed by Standing:*

*(c) Work performed by Walking.*

*(d) Work performed by Seeing (e) Work performed by Hearing;*

*(1) Work performed by Reading and Writing: (g) Communicating (Communicating would also include verbal or non-verbal communication).”*

13. The petitioner has specifically pleaded in the writ petition that in the online application form provided by the Commission, there was a specific option under the ‘physically handicapped category’ for disability of ‘one arm and one leg’. Accordingly, the petitioner has submitted his application form by applying in the category of O.A.L. i.e. one arm and one leg and had submitted other requisite details and has deposited the fee. The petitioner’s online application was not rejected at the time of its submission.

14. However, subsequently, on 27.01.2023, the Commission issued a notification stating that candidates falling in eight sub categories of physically handicapped persons, namely L.V, H.H., O.A., O.L., B.L., L.C., D.W. and A.A.V. options have been identified as suitable for being appointed as Civil Judge (Junior Division). A Government Order dated 18.04.2022 provides that a person suffering from disability cannot be restrained from competing against an unreserved vacancies, provided post has been identified for being filled by person suffering from the relevant category of handicap. Accordingly, application of the candidates who belong to sub categories different from the identified sub categories, were rejected.

15. The learned counsel for the petitioner has submitted that the advertisement mentioned that four per cent of the vacancies are reserved for the persons with benchmark disabilities, including ‘locomotor disability of one arm, one leg and both legs’. It does not say that the candidate should be suffering from only one of the three disabilities, mentioned in the advertisement. His submission is that the petitioner is suffering from ‘locomotor disability of one

arm' and he is also suffering from 'locomotor disability of one leg' and, therefore, his candidature could not have been rejected.

16. The submission of learned counsel for the petitioner thus is that rejection of the application of the petitioner on the ground that he is suffering from the disability of one arm and one leg would amount to discrimination amongst the persons suffering from locomotor disabilities, which discrimination does not appear to be a proportionate means of achieving any legitimate aim. He has submitted that the petitioner is capable of working by sitting, by standing, by walking, by seeing, by reading and writing and by communicating, as required in the explanation appended to the vacancies for handicapped persons mentioned in the advertisement and, therefore, he is fully eligible for being considered for his appointment.

17. Sri R.K. Upadhyaya, the learned counsel for the U.P. Public Service Commission has stated that the petitioner's appeal filed against the order dated 27.01.2023 has been rejected but neither a copy of the same, has been sent to the petitioner nor could Sri Upadhyaya place a copy before the Court for its perusal.

18. The matter requires consideration.

19. The respondents may file a counter affidavit within a period of four weeks. Rejoinder affidavit, if any, may be filed within a period of two weeks thereafter.

20. List this case in the week commencing 03<sup>rd</sup> April, 2023.

21. Meanwhile, as an interim measure, it is provided that the petitioner shall provisionally be allowed to appear in the U.P. Judicial Service Civil Judge (Junior Division) Examination, 2022. The result of the examination, so far as it concerns the petitioner, shall be subject to the further orders to be passed in this petition.

22. Let a copy of this order be issued to the learned counsel for the parties today itself on payment of usual charges to enable them to communicate the same to the authorities to whom they are representing, so as to ensure compliance of the order.

**(Subhash Vidyarthi, J.) (Ramesh Sinha, J.)**

**Order Date :- 10.2.2023**

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