



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Spl. Appl. Writ No. 572/2023

1. State Of Rajasthan, Through The Secretary, Department Of Medical And Health, Secretariat, Jaipur.
2. Additional Director (Administration), Medical And Health Services, Tilak Marg, Jaipur.
3. Chief Medical And Health Officer, Hanumangarh.

----Appellants

Versus

Sunita D/o Shri Roop Chand, Aged About 35 Years, Karalon Ka Bas, Bhangarh, Tehsil Bhadra, District Hanumangarh.

----Respondent

Connected With

D.B. Spl. Appl. Writ No. 381/2020

1. State Of Rajasthan, Through The Principal Secretary, Medical And Health Services (Group-Iii), Govt. Of Rajasthan, Secretariat, Jaipur.
2. The Director (Public Health), Medical And Health Services, Rajasthan, Swasthya Bhawan, C-Scheme, Tilak Marg, Jaipur.
3. The Additional Director (Administration), Medical And Health Services, Rajasthan, Tilak Marg, Swasthya Bhawan, Jaipur.

----Appellants

Versus

Rekha Meena D/o Jithing Meena, Aged About 25 Years, Ramgarh, Kushalgarh, District Banswara (Raj.)

----Respondent

D.B. Spl. Appl. Writ No. 66/2021

1. State Of Rajasthan, Through The Principal Secretary, Medical And Health Services (Group-Iii), Govt. Of Rajasthan, Secretariat, Jaipur.
2. The Director (Public Health), Medical And Health Services, Rajasthan, Swasthya Bhawan, C-Scheme, Tilak Marg, Jaipur.
3. The Additional Director (Administration), Medical And Health Services, Rajasthan, Tilak Marg, Swasthya Bhawan, Jaipur.

----Appellants

Versus

Dropadi D/o Shri Ratan Lal Sharma, Aged About 25 Years, R/o Village Hudera, Tehsil Ramgarh, Shekhawati, District Sikar.

----Respondent

D.B. Spl. Appl. Writ No. 241/2021



1. State Of Rajasthan, Through The Principal Secretary, Medical Health And Family Welfare Department, Government Of Rajasthan, Secretariat, Jaipur (Raj.)
2. The Director, Medical And Health Services, Tilak Marg, Swasthya Bhawan, Jaipur (Raj.)
3. The Additional Director (Administration), Medical And Health Services, Tilak Marg, Swasthya Bhawan, Jaipur (Raj.)

----Appellants

Versus

Anadu D/o Ram Lal, Aged About 24 Years, B/c Jat, R/o Gulji Ka Pana, Khotho Ki Dhani, Tehsil Baytu, District Barmer (Raj.)

----Respondent

D.B. Spl. Appl. Writ No. 375/2021

1. The State Of Rajasthan, Through Secretary, Department Of Medical And Health, Government Of Rajasthan, Secretariat, Rajasthan, Jaipur.
2. The Director, Medical And Health Services, Rajasthan, Jaipur.
3. Addl. Director (Admn.), Medical And Health Services, Rajasthan, Jaipur.

----Appellants

Versus

Deepa Bai D/o Shri Sahab Ram, Aged About 29 Years, Resident Of Village 9 Ksd, Tehsil Raisinghnagar, District Sri Ganganagar.

----Respondent

D.B. Spl. Appl. Writ No. 378/2021

1. State Of Rajasthan, Through Secretary, Department Of Medical And Health, Government Of Rajasthan, Secretariat, Jaipur.
2. The Director, Medical And Health Services, Rajasthan, Jaipur.
3. The Addl. Director (Admn.), Medical And Health Services, Rajasthan, Jaipur.

----Appellants

Versus

Smt. Indrawati D/o Shri Mahaveer Singh W/o Shri Rajesh Kumar, Aged About 34 Years, Ward No. 4, Near Lal Kui, Hanuman Mandir, Rajgarh, Tehsil Rajgarh, District Churu.

----Respondent

D.B. Spl. Appl. Writ No. 380/2021

1. State Of Rajasthan, Through Secretary, Department Of Medical And Health Services, Government Secretariat, Jaipur, Rajasthan.
2. The Addl. Director (Admn.), Medical And Health Services,



Swasthya Bhawan, Rajasthan, Jaipur.

3. The Addl. Director (Training), Medical And Health Services, Swasthya Bhawan, Rajasthan, Jaipur.

----Appellants

Versus

Vimla Choudhary D/o Shri Durga Ram W/o Shri Swaroop Ram, Aged About 27 Years, 92, Mundelo Ka Bas, Bilara, District Jodhpur.

----Respondent

D.B. Spl. Appl. Writ No. 445/2021

1. State Of Rajasthan, Through The Principal Secretary, Medical And Health Services (Group-Iii), Govt. Of Rajasthan, Secretariat, Jaipur.
2. The Director (Public Health), Medical And Health Services, Rajasthan, Swasthya Bhawan, C-Scheme, Tilak Marg, Jaipur.
3. The Additional Director (Administration), Medical And Health Services, Rajasthan, Tilak Marg, Swasthya Bhawan, Jaipur.

----Appellants

Versus

Priyanka Rao D/o Shri Swaroop Singh, Aged About 26 Years, R/o Village Pahadpura, Tehsil Sanchore, District Jalore (Raj.).

----Respondent

D.B. Spl. Appl. Writ No. 456/2021

1. The State Of Rajasthan, Through The Secretary, Medical And Health And Family Welfare, Govt. Of Rajasthan, Jaipur.
2. Additional Director (Admn.), Medical And Health Services, Swasthya Bhawan, Jaipur

----Appellants

Versus

Dunga Ram Gurjar S/o Hardev Lal Gurjar, Aged About 27 Years, Village Gariyakheda, Chatarpura, Tehsil Badnor, District Bhilwara (Raj.)

----Respondent

D.B. Spl. Appl. Writ No. 457/2021

1. The State Of Rajasthan, Through The Additional Chief Secretary, Medical And Health And Family Welfare Department, Government Secretariat, Jaipur - 302005 (Rajasthan).
2. Additional Director (Admn.), Medical And Health Services, Swasthya Bhawan, Tilak Marg, C-Scheme, Jaipur- 302005 (Rajasthan)

----Appellants



Ramlal Naik S/o Sukharam, Aged About 23 Years, (Dob-15.05.1996), Category-Sc, R/o Sarkari School Ke Pass, Raowala, Barsalpur, District Bikaner (Rajasthan) Pin 334305.

----Respondent

D.B. Spl. Appl. Writ No. 500/2021

1. State Of Rajasthan, Through Its Additional Chief Secretary, Medical And Health Services, Secretariat, Jaipur.
2. Additional Director (Admn.), Medical And Health Services, Swasthya Bhawan, Jaipur.
3. Dr. Sampurnanand Medical College, Shastri Nagar, Jodhpur Through Its Principal.

----Appellants

Versus

Mohammed Rizwan S/o Shri Mohammed Salim, Aged About 33 Years, Resident Of 104, Mastan Baba Colony, Pali (Raj.), Mobile Number- 9928191111.

----Respondent

D.B. Spl. Appl. Writ No. 502/2021

1. The State Of Rajasthan, Through Its Additional Chief Secretary, Medical And Health Services, Secretariat, Jaipur.
2. Additional Director (Admn.), Medical And Health Services, Swasthya Bhawan, Jaipur.

----Appellants

Versus

Suresh S/o Shri Sukhdev Ram, Aged About 27 Years, (Physically Handicapped Candidate-OI, Marks Obtained 51.807 Percentage) Resident Of Village Nimbola Kallan, Tehsil Degana, District Nagaur (Raj). Mobile Numbe 9783300059.

----Respondent

D.B. Spl. Appl. Writ No. 8/2022

1. State Of Rajasthan, Through Its Additional Chief Secretary, Medical And Health Services, Secretariat, Jaipur.
2. Director (Non-Gazetted), Medical And Health Services, Swasthya Bhawan, Jaipur.

----Appellants

Versus

Ved Pal S/o Onkar Lal Meena, Aged About 44 Years, (Physically Handicapped Candidate -OI, Marks Obtained 40.389 Percentages) Resident Of Near Jain Temple, V/p Thanawad, Tehsil Aklera, District Jhalawar (Rajasthan), Mobile Number - 9571261836.



----Respondent

D.B. Spl. Appl. Writ No. 20/2022

1. The State Of Rajasthan, Through Secretary, Department Of Medical And Health, Government Of Rajasthan, Secretariat, Rajasthan, Jaipur.
2. Director, Medical, Health And Family Welfare Services, Rajasthan, Jaipur.
3. Addl. Director (Admn.), Medical, Health And Family Welfare Services, Rajasthan, Jaipur.

----Appellants

Versus

Smt. Kamla W/o Shri Ram Chandra, Aged About 57 Years,
Village Payali, Tehsil Deedwana, District Nagaur.

----Respondent

D.B. Spl. Appl. Writ No. 29/2022

1. State Of Rajasthan, Through The Principal Secretary, Medical And Health Services (Group-Iii), Govt. Of Rajasthan, Secretariat, Jaipur.
2. The Director (Public Health), Medical And Health Services, Rajasthan, Swasthya Bhawan, C-Scheme, Tilak Marg, Jaipur.
3. The Additional Director (Administration), Medical And Health Services, Rajasthan, Tilak Marg, Swasthya Bhawan, Jaipur.

----Appellants

Versus

Parma Devi Bishnoi D/o Shri Kishan Lal, Aged About 35 Years,
R/o Bichpuri, Rajod, Tehsil Degana, District Nagaur (Raj.).

----Respondent

D.B. Spl. Appl. Writ No. 32/2022

1. State Of Rajasthan, Through The Principal Secretary, Medical And Health Services (Group-Iii), Govt. Of Rajasthan, Secretariat, Jaipur.
2. The Director (Public Health), Medical And Health Services, Rajasthan, Swasthya Bhawan, C-Scheme, Tilak Marg, Jaipur.
3. The Additional Director (Administration), Medical And Health Services, Rajasthan, Tilak Marg, Swasthya Bhawan, Jaipur.

----Appellants

Versus

Seema Kumari Dhobi D/o Shri Lala Ram Dhobi, Aged About 27 Years,
R/o Village-Post Bisundani, Tehsil Sawar, District Ajmer (Raj.)

----Respondent



D.B. Spl. Appl. Writ No. 46/2022

1. State Of Rajasthan, Through The Secretary, Department Of Medical And Health, Secretariat, Jaipur.
2. The Additional Director (Administration), Medical And Health Services, Tilak Marg, Jaipur.
3. Chief Medical And Health Officer, Churu.

----Appellants

Versus

Kavita D/o Shri Badlu Ram W/o Shri Satyanarayan, Aged About 32 Years, Ward No. 5, Neshal Badi, Tehsil Rajgarh, District Churu.

----Respondent

D.B. Spl. Appl. Writ No. 81/2022

1. The State Of Rajasthan, Through The Deputy Secretary, Department Of Medical And Health (Group-3) Secretariat, Government Of Rajasthan, Jaipur.
2. The Additional Director (Admn), Medical And Health Services, Tilak Marg, Health Bhawan, Jaipur.

----Appellants

Versus

Shiv Pratap Singh S/o Shri Moti Singh, Aged About 30 Years, R/o Bijapur, Tehsil Bali, District Pali (Raj.)

----Respondent

D.B. Spl. Appl. Writ No. 144/2022

1. State Of Rajasthan, Through Its Secretary, Medical Health And Family Welfare, Govt. Of Rajasthan, Jaipur
2. Additional Director (Admn), Medical And Health Services, Swasthya Bhawan, Jaipur

----Appellants

Versus

Bhawana Dhadich D/o Shri Shiv Raj Dadhich, Aged About 37 Years, R/o Plot No. 07, Tapashvi Nagar Dadhich Bhawan, District Jodhpur (Raj.)

----Respondent

D.B. Spl. Appl. Writ No. 145/2022

1. State Of Rajasthan, Through Its Additional Chief Secretary, Medical And Health Services, Secretariat, Jaipur
2. Additional Director (Admn), Medical And Health Services, Swasthya Bhawan, Jaipur
3. Dr Sampunanad Medical College, Shastri Nagar, Jodhpur Through Its Principal
4. The Chief Medical And Health Officer, Jodhpur
5. The Medical Officer In Charge, Community Health Centre



Luni, District Jodhpur

----Appellants

Versus

Kailash Kaswan S/o Shri Ramchandra, Aged About 27 Years,
(Physically Handicapped Candidate-OI, Marks Obtained 81.034)
Resident Of Village/post Paliyas, Tehsil Degana, District Nagaur
(Raj.) Mobile Number 8696106886

----Respondent

D.B. Spl. Appl. Writ No. 146/2022

1. State Of Rajasthan, Through Its Additional Chief Secretary, Medical And Health Services, Secretariat, Jaipur.
2. The Additional Director (Admn.), Medical And Health Services, Swasthya Bhawan, Jaipur.
3. Dr. Sampurnanad Medical College, Shashtri Nagar, Jodhpur Through Its Principal

----Appellants

Versus

Sangeeta Choudhary D/o Harshukah Ram, Aged About 28 Years,
Village / Post Jhujanda, Tehsil Mumdw, District Nagaur (Raj.)
Mobile Number 9413169482

----Respondent

D.B. Spl. Appl. Writ No. 109/2024

1. State Of Rajasthan, Through Secretary, Department Of Medical And Health Services, Government Secretariat, Jaipur, Rajasthan.
2. The Addl. Director (Admn.), Medical And Health Services, Swasthya Bhawan, Rajasthan, Jaipur.
3. The Addl. Director (Training), Medical And Health Services, Swasthya Bhawan, Rajasthan, Jaipur.

----Appellants

Versus

Nainy Devi W/o Sh. Ram Dayal, D/o Sh. Shiv Ram Tak, Aged About 37 Years, Resident Of Village Olvi, Tehsil Bilara, Dist. Jodhpur (Raj.).

----Respondent

D.B. Spl. Appl. Writ No. 673/2024

1. The State Of Rajasthan Through The Secretary, Department Of Medical And Health, Government Of Rajasthan, Secretariat, Jaipur (Rajasthan).
2. The Director Medical And Health Services, Rajasthan Govt Of Rajasthan Jaipur
3. The Additional Director Administration, Department Of Medical And Health Jaipur

----Appellants



Versus

Pawan Jaipal S/o Tejaram Jaipal, Aged About 28 Years, By Caste Meghwal, Resident Of Bhutton Ka Baas, Fatipura, Bikaner, District Bikaner (Rajasthan)

----Respondent

For Appellant(s) : Mr. N.S. Rajpurohit, AAG
For Respondent(s) : Mr. Yashpal Khileree
Ms. Vinita
Mr. Vivek Fiorda
Mr. Jayram Saran
Mr. Bharat Singh Rathore
Mr. Rishabh Tayal
Mr. Jitendra Choudhary
Ms. Muskan Jangid
Ms. Priyanka Bhootra for
Mr. Shridhar Mehta
Mr. R.S. Choudhary
Dr. Ashok Choudhary
Mr. J.K. Suthar
Ms. Pragya Singh for
Mr. Narendra Singh

HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR
HON'BLE MR. JUSTICE KULDEEP MATHUR

Reportable**JUDGMENT****31/08/2024****By the Court (Per, Hon'ble Mr. Justice Kuldeep Mathur):**

1. The controversy following the recruitment drive initiated by the appellant-State came to be decided by learned Single Judge on different dates. Since common question of law and fact is involved in the present batch of special appeals, these are being heard together and decided by this common order and judgment. The following posts were advertised through different advertisements / corrigendum:-

- 'Nurse Grade-II' vide advertisements nos. नर्सिंग/नर्स श्रे. द्वि./एम एन आई टी/(सीधी भर्ती -2018)/2018/230 and नर्सिंग/नर्स श्रे. द्वि./एम एन आई टी/(सीधी भर्ती -2018)/2018/231 dated



30.05.2018 for the TSP and Non-TSP areas respectively, wherein 6035 posts were advertised for the Non-TSP areas and 522 posts were advertised for the TSP areas. Later on, through corrigendum dated 26.07.2018, the number of posts for Non-TSP Areas were reduced to 5927.

- 'Women Health Worker' vide advertisement no. नर्सिंग/म 0 स्वा 0 कार्य 0/एमएनआईटी/(सीधी भर्ती -2018)/2018/1363 dated 18.06.2018 for the Non-TSP area wherein 4965 posts were advertised for Non-TSP area.

2. For convenience, the facts from the lead case being D.B. Civil Special Appeal Writ No.241/2021 (State of Rajasthan and Ors. v. Anadu) are taken for consideration.

3. As per the aforesaid advertisements, 3% of the advertised posts were kept reserved for category of persons suffering from 40% or more disability in one leg (PH-OL). The respondents being eligible and desirous for appointment on the advertised posts submitted their application forms in the Office of Director Medical and Health Services, Government of Rajasthan, Jaipur. After following the procedure prescribed under the aforesaid advertisements, the appellant- State published the provisional merit/selection lists on 25.11.2019, 14.12.2019 and 08.01.2020. The grievance of the respondents was that the names of the respondents were not included in the provisional merit/select list, though the candidates who had secured less marks than them were included in the aforesaid lists. The respondents herein possess requisite qualifications for the advertised posts along with disabilities certificate(s) issued by competent authority of the State of Rajasthan indicating their respective disabilities.



4. Being aggrieved and dissatisfied with the acts and inaction of the appellant-State, the respondents approached the learned Single Bench of this Court with a prayer that the acts and inaction of the appellant-State in excluding their names from the provisional merit/selection lists without disclosing any reason may be declared bad in the eye of law. In the writ petitions filed on behalf of the respondents, it was stated that since they possess more marks than the persons who have been included in the provisional merit/select list, a direction may be issued to the appellant-State to include their names in the final merit/selection lists under their respective PH category (physically handicapped category).

5. The appellant- State by way of filing reply to the writ petitions preferred by the respondents tried to justify the action of not including the names of the respondents in the provisional merit/select list dated 14.12.2019. It was asserted in the reply that before publication of the provisional merit/select list dated 14.12.2019, the respondents were examined by the Medical Board at the time of document verification when it was found that the respondents not only have 40% or more disability in one leg but also have deformity in the other leg/ other body part, such as shortening or weaker muscle strength. It was stated that the after assessment of physical condition of the respondents, they were liable to be treated as having disability in 'both legs' and not only in 'one leg'. The appellant-State, therefore, came to the conclusion that the respondents were not fulfilling the requisite terms and conditions with respect to eligibility mentioned in the advertisement for recruitment on the advertised posts.



6. The writ petitions were heard and finally decided by learned Single Bench while holding that the appellant- State was not justified in rejecting the candidature of the respondents owing to additional deformity in the second leg/other body part. The learned Single Bench observed that once it is not in dispute that petitioners are having 40% or more disability in one leg, the denial of appointment on the advertised posts on account of their minor additional physical deformity amounts to denial of fair opportunity in public appointment and the same is in violation of provisions of the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as 'the Act of 2016') and the Rajasthan Rights of Persons with Disabilities Rules, 2017 (hereinafter referred to as 'the Rules of 2017'). The appellant- State was directed to prepare a fresh select list for PH category and place the eligible respondents (after verifying their documents) at appropriate place in the select list in the concerned category and thereupon, issue appointment orders in their favour.

The appellant-State being aggrieved by the aforesaid judgments passed by learned Single Bench has preferred the present special appeals.

7. Learned counsel for the appellant- State submitted that under Note-1 appended with Clause-3, it was clearly mentioned that a person having disability other than OL- one leg will not be eligible for recruitment against the reserved posts. Learned counsel contended that in the present case, indisputably, all the respondents are suffering from some additional disability or deformity, therefore, as per the terms and conditions mentioned in the advertisement for claiming reservation under the PH



category (physically handicapped category), their names were rightly not included in the provisional select/merit list dated 14.12.2019 of the eligible candidates published by the department pursuant to the advertisement dated 18.06.2018.

8. To buttress the aforesaid contention, learned counsel submitted that in conformity with provisions of the Act of 2016 and the Rules of 2017, a committee was constituted by the State of Rajasthan under the Chairmanship of Principal Secretary, Social Justice and Empowerment Department to identify the posts which can be held by a person having more than 40% disability in one leg and is also entitled for reservation. The aforesaid committee in its meeting dated 18.12.2020 after undertaking detailed deliberations took a decision that for performing duties on the post of ANM/GNM, only candidates having disability in one leg are eligible for appointment and reservation. As per learned counsel, the opinion/decision of the aforesaid committee being a body of experts is binding and, therefore, learned Single Bench ought not to have taken a contrary opinion and issued a direction for providing appointment to the respondents.

9. Lastly, learned state counsel appearing for the appellant-State urged that learned Single Bench in its judgment has observed that since the respondents had produced the disability certificate issued by the competent authority at the time of document verification, they should not have been asked to undergo medical examination afresh, to ascertain the percentage of disability suffered by them and to find out whether they were also suffering from any other physical deformity. Learned counsel submitted that looking to the nature of the duties required to be



performed by health workers in the government hospital, the right of the employer to see whether a person selected for the post can perform the duties of the advertised post or not ought not to have been questioned by the learned Single Bench. An employer is well within its rights to adjudicate suitability of a candidate for the purpose of employment in its organization before issuing final appointment order in his/her favour.

10. On these grounds, learned counsel implored the Court to accept the present special appeal and set aside the impugned order dated 15.12.2020 passed by the learned Single Bench.

11. *Per contra*, learned counsel for the respondents supported the judgment passed by the learned Single Bench and submitted that the disability certificates possessed by the respondents specifies the nature of physical handicap and the degree of disability suffered by them. It is further submitted that as per Clause 13(viii) of the advertisement, the candidates who had applied under PH category and were possessing a certificate issued by the competent authority at the time of document verification, were not required to undergo a fresh medical examination. Only those candidates who had failed to produce disability certificates at the initial stage, were required to undergo the medical examination. However, in the present case, in ignorance of the aforesaid clause, all the respondents were subjected to the medical examination, wherein the medical board while certifying that they were suffering disability of more than 40% in one leg, has further indicated that they are having disability in both the legs. The fresh evaluation of the respondents by a Medical Board constituted by the appellant-State ignoring the



disability certificates produced by them in conformity of the terms and conditions of the advertisement was *per se* illegal and cannot be read against their interests.

12. Learned counsel for the respondents vehemently and fervently submitted that a candidate having some deformity in other part of the body cannot be adjudged as unsuitable for employment under the category of OL- one leg as long as he/she is having 40% or more disability in one leg. Any additional deformity/disability cannot be permitted to be used as a tool to deprive the respondents from seeking employment under the State Government, as the same would be in gross violation of Articles 14, 16 and 21 of the Constitution of India as well as the object with which the Act of 2016 and the Rules of 2017 have been enacted.

13. Heard learned counsel for the parties at bar and perused the material available on record.

14. The findings/ observations recorded by the learned Single Judge in Para Nos.26 to 46 while accepting the writ petition filed by the respondents are being reproduced below for ready reference:-

"26. Indisputably, the petitioners had furnished their disability certificate(s) issued by the competent authority alongwith the applications form(s) and had produced the same at the time of document verification. Such being the position, the respondents could not have required the petitioners to undergo the medical examination.

27. In considered opinion of this Court, the medical examination before selection was required to be done only for the candidates, who had applied under disabled/PH category and did not possess the certificate issued by competent authority. But if a candidate was having a certificate issued by competent authority – her



examination by Medical Board was not required. 28. Petitioners have approached this Court and raised a grievance that their disability certificates cannot be ignored/overlooked. Be that as it may, after hearing learned counsel for the parties, on 04.03.2020, the Court directed the Principal, Dr. S.N. Medical College to constitute a Medical Board for examining "**petitioners' percentage of disability**".

29. A perusal of the order dated 04.03.2020 clearly shows that the Medical Board was required to examine and report exact percentage of petitioners' disability, whereas the members of the Board, instead of giving percentage of disability, have indicated that their percentage of disability is 40% and more. It was incumbent upon the Board to show percentage of disability in each leg but, on the contrary, they have given a sweeping remark that disability is above 40%, but in both the legs.

30. The Medical Board has gone a step ahead and has reported that the petitioners are having disability in their second leg also. That was reported on the basis of strength of their muscle. Matter does not end here they have gone to the extent of reporting that petitioners are not able to discharge the work of Nurse/Female Health Worker. Said part of the report reads thus :-

"प्रमाणित किया जाता है कि अभ्यर्थी श्री/सुश्री अनंदु का शारीरिक परीक्षण करने के उपरान्त हम मेडिकल बोर्ड के सदस्य इस निर्णय पर पहुंचे हैं कि अभ्यर्थी की उक्त दिव्यांगता अभ्यर्थी द्वारा विज्ञप्ति अनुसार आवेदित पद के दायित्वों को, जिनमें संलग्न सूची में दिये गये दायित्व सम्मिलित हैं. पूर्ण करने में बाधक सिद्ध होगी/ नहीं होगी एवं दिव्यांगता के इस प्रकार के साथ राजस्थान चिकित्सा एवं स्वास्थ्य अधीनस्थ सेवा नियम 1965 के नियम 13 के तहत अभ्यर्थी आवेदित पद के दायित्वों को विभिन्न पारियों में लगातार 8 घंटे तक सामान्य रूप से एवं आपातकालीन परिस्थितियों में आवश्यकतानुसार सम्पन्न कर सकेगा/नहीं कर सकेगा। (जो लागू न हो उसे काट दे"

31. Hence, evaluation of petitioners by Medical Board, ignoring their disability certificates was per-se illegal and further, the report of the Board constituted pursuant to the order of this Court being faulty and beyond the scope of reference, is liable to be ignored.

32. During the Court proceedings, Dr. Imran Sheikh in unequivocal terms informed that the Board has given the report in the format provided to it by the respondents. It was fairly admitted by him that all the candidates, who appeared before the Board on 18.03.2020, were having at least 40% disability in one of their legs and in addition thereto, had little or more



deformity in other leg, for which the Board has given the report dated 18.03.2020 and treated them to be PH- 'BL'.

33. Now, advertent to the basic reason for which the respondents have nixed petitioners' right of being considered as 'OL category' that petitioners are having some impairment in other leg also; this Court is of the considered opinion that such approach is illegal, arbitrary and iniquitous, to say the least.

34. A candidate is entitled to be considered under the PH category for the post of Female Health Worker if she is physically challenged in one leg and such disability is 40% or more. The fact that a candidate is having some problem in other leg or even in other part of the body, does not expel or throw him out of his/her category of 'OL'. The pre-requisite condition for claiming reservation is, that a candidate should have 40% or more disability in one leg.

35. The reservation provides a handicap to a handicapped person, with the help of which he is placed at equal pedestal with other candidates. If a normal human being with some or small deformity or disability cannot be denied appointment, this Court wonders how and why the petitioners can be denied appointment, merely because they have some additional problem or disability.

36. Once a candidate has been found entitled for reservation, his eligibility or entitlement has to be reckoned on such basis. Thereafter, such disability, for which he has been given reservation is required to be ignored. The State is obliged to treat him as a normal candidate and also bound to ignore additional minor rather inconsequential issues/ailments.

37. Petitioners, out of this bunch of petitions, are having minor additional impairment in their other leg. Similar disability may be (in other part of the body also, such as upper limb (hand) ear or eye. But such disability by itself cannot be a ground to deny them benefit of reservation, which the framers of law have conferred upon them, as a matter of right, so that they can lead their life with self respect, self esteem and dignity.

38. According to provisions of Rule 13 of the Rules of 1965, all candidates are required to produce a certificate of fitness before joining. The petitioners who are having benchmark disability are also required to



produce a certificate of fitness as contemplated under Rule 13 of the Rules. If they are able to perform the duties of the post they have been selected for, and a certificate by the prescribed authority/competent authority is produced, the appointing authority cannot deny them appointment/joining.

39. The respondents cannot throw the petitioners out of the race and refuse to issue them appointment orders without giving them an opportunity to produce a certificate as contemplated under Rule 13 of the Rules.

40. This Court fails to comprehend that how the petitioners - who have been given admission in GNM Course, notwithstanding their physical conditions; who have been selected for contractual employment after taking benefit of reservation; who are having requisite educational qualification and experience of working as Female Health Worker/Nurse with the State, and other private agencies; who have cleared all the practical examinations, can be considered, rather branded as not capable of discharging their duties effectively !

41. Contention of the respondents that the petitioners do not have enough strength in their muscles is absolutely untenable. If the candidates, who have not claimed reservation, have been offered appointment without being subjected to muscle strength test, there can be no reason to test petitioners' muscle strength and non-suit them on such count.

42. All the petitioners before this Court are having 40% or more impairment/disability in one of their legs. A person who is having impairment to the extent of 40% or more, is bound to have overbearing impact on his other leg also. Naturally, because of more use of other leg or due to shifting of more body weight on stronger leg. This natural consequence should not lead to more adversities, than the nature has already posed to them.

43. Rule 35 of the Rules of 2011 clothes a Person with Disability, with an eligibility to hold post identified by the State Government. Rule 35, which begins with a non- obstante clause. At the same time, Rule 36 not only insulates but also provides a pole to a person suffering from the designated disability so that he can vault the social and emotional barrier and land on a level playing field and compete with his more fortunate counter parts.

44. Rule 35 of the Rules of 2011 has been enacted to eclipse the effect of the service rules relating to physical



fitness such as Rule 13 in the Rules of 1965, in the manner that if a person is suffering from the disability enumerated in Rule 36 of the Rules of 2011, irrespective of being physically unfit, he/she is to be offered appointment on the earmarked posts.

45. But at the same time, it cannot be said as a natural corollary, that a person with further disability in other leg or other body part is unfit to be appointed on the post of Female Health Worker.

46. A person with impairment in one leg (OL) has been notified to be appointed for the post of Female Health Worker, as required by Rule 36. It means that 3% seats are required to be reserved for persons with impairment in one leg. It is pertinent that such reservation is available only to persons having disability to the extent of 40% or more. Consequent to the provisions contained in Rule 35, no one can say that a person with 40% or more disability in one leg is not fit to perform a work of a Female Health Worker."

15. In the opinion of this Court, the following issues arise for consideration in this batch of special appeals:-

(1.) Whether the appellant- State was justified in subjecting the respondents to medical examination in order to ascertain the percentage of disability suffered by them, despite their possessing disability certificates issued by competent authority in terms of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996 and Rights of Persons with Disabilities Rules, 2017?

(2.) Whether the appellant- State is justified in denying appointment to the respondents on the posts of Female Health Workers despite their having 40% or more disability in OL- One Leg on the count that they suffer from minor deformity in other leg or in any other part of the body?



16. In order to adjudicate upon the issues referred above, this Court deems it just and proper to reproduce the relevant statutory provisions contained in following Act/Rules:-

(i) Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as 'the Act of 1995')

(ii) Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as 'the Act of 2016')

(iii) Rajasthan Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 2011 (hereinafter referred to as "the Rules of 2011")

(iv) Rajasthan Medical & Health Subordinate Service Rules, 1965 (hereinafter referred to as 'the Rules of 1965'):-

"(a) Section 2(t) of Act of 1995 :-

"2(t). "person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority;"

(b) Section 2(r) and Rule 2(s) of the Act of 2016:-

"Definitions.-

xxx xxx xxx

xxx xxx xxx

2(r) *"Person with benchmark disability" means a person with not less than forty per cent. of specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;*

2(s) *"Person with disability" means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;"*

(c) Sections 34 of the Act of 2016:



"34. Reservation.- (1) 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: Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:



Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit."

(d) Rules 35 and 36 of the Rules of 2011:-

"35. Eligibility.- Notwithstanding anything contained in any rules or orders for the time being in force regulating the recruitment and conditions of service of persons appointed to the various services or posts in connection with the affairs of every establishment including the Government Department. Persons with Disabilities shall be eligible for appointment to the posts identified for them under rule 36 of these rules provided they fulfill the qualifications laid down in the relevant recruitment or service rules for the posts and are functionally able to perform the duties of the posts of the said services.

36. Reservation for Persons with Disabilities.- In every establishment three percent of the vacancies shall be reserved for persons or class of Persons with Disabilities of which one percent each shall be reserved for persons suffering from;-

- (i) blindness or low vision;
- (ii) hearing impairment;
- (iii) Locomotor disability or cerebral palsy.

In the posts identified for each disability by the Government of India under section 32 and such reservation shall be treated as horizontal reservation:

Provided that where the nomenclature of any post in the State Government is different from the post in Government of India or any post in the State Government does not exist in any department of the Government of India, the matter shall be referred to the Committee constituted under rule



38 for identification of the equivalent post in the State Government. The Committee shall identify the equivalent post on the basis of nature of job and responsibility of each post.

(e) Rule 13 of the Rules of 1965:-

13. Physical Fitness:- A candidate for direct recruitment to the Service must be in good mental or bodily health and free from any mental or physical defect likely to interfere with the efficient performance of his duties as a member of service and if selected must produce a certificate to that effect from a Medical Authority notified by the Government for the purpose. The Appointing Authority may dispense with production of such certificate in the case of candidate promoted in the regular line of promotion, or who is already serving in connection with the affairs of the State if he had already been medically examined for the previous appointment and the essential standards of medical examination of the two posts held by him are to be comparable for efficient performance of duties of new post and his age has not reduced his efficiency for the purpose."

Issue No.1

17. The appointment on the post of Female Health Worker in the Medical and Health Department, Government of Rajasthan is governed by the Rules of 1965. As per Rule 13 of the Rules of 1965, a candidate for direct recruitment to the service on being selected for the post must produce a certificate issued by a medical authority notified by the Government for that purpose indicating that he/she is free from any mental or physical defect which is likely to interfere with efficient performance of his/her duties as a member of service.

18. It is pertinent to note here that under the subject advertisement, under Note 1 and 2 appended to Clause-3 clause



(viii) of Para 13, general directions were issued to the candidates applying against the post reserved for disabled person in the following terms:



"3.आरक्षण नोट:- 1. 40 प्रतिशत या इससे अधिक *One Leg Locomotor (OL) Disability* होने पर ही दिव्यांग अभ्यर्थियों के लिये आरक्षित पदों हेतु पात्र माना जायेगा। 40 प्रतिशत से कम *OL Disability* होने पर अपने पैतृक वर्ग में सामान्य अभ्यर्थियों की तरह आवेदन का पात्र होगा। *One Leg* के अतिरिक्त किसी अन्य प्रकार की निःशक्तता होने पर विशेष योग्यजन अभ्यर्थियों के लिये आरक्षित पदों के विरुद्ध नियुक्ति हेतु पात्र नहीं होगा।

2. इस विज्ञप्ति के संदर्भ में विभाग द्वारा गठित मेडिकल बोर्ड की राय / प्रमाण पत्र के आधार पर ही विशेष योग्यजन अभ्यर्थियों को आरक्षण का लाभ देय होगा।

13. सामान्य निर्देश -:

(viii) विशेष योग्यजन अभ्यर्थियों को इस भर्ती हेतु विभाग द्वारा गठित मेडिकल बोर्ड की राय / प्रमाण पत्र के आधार पर ही आरक्षण का लाभ देय होगा। जिसके लिये अभ्यर्थी को विभाग द्वारा आमंत्रित किये जाने पर मेडिकल बोर्ड के समक्ष उपस्थित होना होगा।"

19. Having perused rule 13 of the Rules of 1965 and Clause (viii) of Para 13 of the advertisement, this Court is of the considered opinion that the action of the appellant- State in directing respondents to undergo medical examination during the process of recruitment (document verification), despite their being in possession of disability certificates issued by the competent medical authority cannot be held to be bad in the eye of law for the reason that right of an employer/recruiting agency to adjudge suitability of a candidate for appointment to the posts in conformity with the rules governing the service conditions cannot be taken away.



20. However, this Court is constrained to observe that the Medical Board constituted by the appellant-State for conducting medical examination should have limited itself to only examining the respondents with respect to disability of less than 40% in one leg(OL) as stipulated in the advertisement. The action of Medical Board in subjecting the respondents to medical examination in order to ascertain disability in other body parts is violative of the purport and object of the Act of 1995 and 2016. This is for the reason that the object behind enacting the above-mentioned legislation is to include the person with special abilities while the action of the respondents has resulted to the contrary i.e. exclusion of the persons with special abilities.

21. The purport and object of the Act of 1995 was discussed by Hon'ble the Supreme Court in the case of ***Syed Bashir Uddin Qadri v. Nazir Ahmed Shah and others*** reported in **(2010)3 SCC 603** which reads as under:

"47. It has to be kept in mind that this case is not one of the normal cases relating to person's claim for employment. This case involves a beneficial piece of social legislation to enable persons with certain forms of disability to live a life of purpose and human dignity. This is a case which has to be handled with sensitivity and not with bureaucratic apathy, as appears to have been done as far as the appellant is concerned."

22. Similarly, in the case of ***Union of India and Ors. v. National Federation of Blind and Ors.*** reported in **(2013)10 SCC 772**, Hon'ble Supreme Court has held as under:

"23. India as a welfare State is committed to promote overall development of its citizens including those who are differently abled in order to enable them to lead a life of



dignity, equality, freedom and justice as mandated by the Constitution of India. The roots of statutory provisions for ensuring equality and equalization of opportunities to the differently abled citizens in our country could be traced in Part III and Part IV of the Constitution. For the persons with disabilities, the opportunities changing owing to world offers technological more new advancement, however, the actual limitation surfaces only when they are not provided with equal opportunities. Therefore, bringing them in the society based on their capabilities is the need of the hour."



23. We find that the action(s) of appellant-State has resulted in exclusion of eligible and meritorious candidates belonging to the category of "persons with special abilities" and, therefore, the same is contrary to the purpose and object which the legislature intended to achieve by bringing these special beneficial enactments, that is, non-discrimination, full and effective participation and inclusion in society and equality of opportunity.

24. It is apposite to note here that Section 3 of the Act of 2016 mandates that the appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others. Thus, if the action of the appellant-State in denying appointment to the respondents despite their percentage of disability of 40% or more being approved, based on the findings given by the Medical Board constituted with reference to Note-1 appended to Clause 3 and Clause (viii) of Para No.13 of the advertisement, in relation to minor deformity in other body parts is accepted, the same would counteract the object of the Act of 1995 and Act of 2016. The language used by the appellant-State in Clause 3 and Clause (viii) of Para 13 of the advertisement is required to be read in a manner that it fulfills the intention of the legislature and produces the intended result.

**Issue No.2**

25. There is no quarrel with regard to the respondents possessing requisites educational qualifications and registration with Rajasthan Nursing Council for appointment on the post of Nurse Grade II and Female Health Worker for the Non-TSP/TSP area against the notified vacancies.

26. As per the respondents, in conformity with Section 32 of the Act of 1995, a committee was constituted for identification of posts for different categories of disabilities. The said committee had taken a decision that the posts in question should only be filled with candidates having disability in one leg- OL. Indisputably, the respondents are claiming consideration of their candidature against the posts reserved for PH OL- one leg category. Learned Single Bench on 04.10.2020 at the time of preliminary hearing of the writ petitions, directed the respondents to appear before a Medical Board comprising of three doctors. The report furnished by the Medical Board established that the respondents are having permanent disability of more than 40% in one leg. However, Medical Board on examining the respondents, also found that the other leg/body part is also having some deformity such as shortening or weaker muscle strength.

27. It is pertinent to note that learned Single Bench in order to ascertain the percentage of disability and the nature of disability suffered by the respondents directed one of the doctors who was member of the above mentioned Medical Board to remain present before the Court and recorded his statements in the following manner:

"32. During the Court proceedings, Dr. Imran Sheikh in unequivocal terms informed that the Board has given the report



in the format provided to it by the respondents. It was fairly admitted by him that all the candidates, who appeared before the Board on 18.03.2020, were having at least 40% disability in one of their legs and in addition thereto, had little or more deformity in other leg, for which the Board has given the report dated 18.03.2020 and treated them to be PH- 'BL'."

28. The language of Section 2(t) of the Act of 1995 and Section 2(r) and Rule 2(s) of the Act of 2016 is clear and unambiguous that reservation is to be extended to all the persons having disability to the extent of 40% or more.

29. A bare look at the disability certificates issued in favour of the respondents indicates that the percentage of disability expressed/disclosed by the doctors in the medical examination report(s)/disability certificate(s) issued in favor of the respondents is with reference to a particular leg/limb only. There is nothing on record to establish/indicate the percentage of disability suffered by the respondents in other leg/other body part. In the opinion of this Court, if a person is suffering from disability to a certain extent in other leg or body part the same by any stretch of imagination cannot be construed to mean that the candidate shall not be fit to perform his/her duty. Partial deformity/ shortening/ weakening of muscular strength in other body part would not render a person ineligible to be appointed on the advertised post, particularly when he/she is capable of performing all the duties and functions attached to the advertised post.

30. The intention of the legislation in bringing the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and Rights of Persons with Disabilities Act, 2016 is to ensure full participation of the people with



disabilities in public employment. A welfare state is under an obligation to ensure that the person suffering from disabilities should not be deprived from public employment despite their possessing eligibility and merit to hold the post on hyper-technical grounds or for *ipse-dixit* reasons. All-round efforts are required to be made to ensure that no opportunity is left out for integration of persons with special abilities into the social main stream to achieve the ultimate object of enacting aforementioned special legislations viz., all persons with special abilities shall get a dignified life full of equal opportunities without any discrimination.

32. In view of aforesaid discussion, the action of the appellant-State in denying appointment to the respondents under the PH category (PH-OL category) is declared bad in the eye of law.

33. We uphold the direction issued by the learned Single Judge to the appellant- State to prepare a fresh select/merit list for PH category by placing the eligible respondents at appropriate place in the select/merit list in their own category, keeping in view the observations recorded by this Court with respect to above issues.

34. The necessary exercise in conformity with this order shall be undertaken by the appellant- State within a period of 2 months from the date of this Judgment. No order as to costs.

(KULDEEP MATHUR),J

(SHREE CHANDRASHEKHAR),J

23-45-TarunGoyal/-

Whether fit for reporting:

Yes/No.