



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.4525 of 2023

Reserved on: 27.10.2025

Date of Decision: 07.11.2025

Sajil KumarPetitioner
Versus
State of H.P. and OthersRespondents

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹ Yes.

For the Petitioner: Mr. Narender Singh Thakur, Advocate.
For the Respondent: Mr. Rajan Kahol, Additional Advocate General, with Mr. Ravi Chauhan and Mr. Anish Banshtu, Deputy Advocates General, for respondents No.1 to 3/State.
Mr. Rajesh Kumar Parmar, Advocate, for respondent No.4.

Sandeep Sharma, Judge:

By way of instant petition, petitioner has prayed for following

main reliefs:

- i) That writ in the nature of certiorari may kindly be issued, by quashing the selection/appointment of respondent No.4.
- ii) That writ of mandamus may kindly be issued, directing the respondents to select and appoint the petitioner against the post of Pharmacist (Allopathy) on contract basis as per batch-wise seniority under SC category with PWD."

2. Precisely, the facts of the case, as emerge from the pleadings adduced on record by the respective parties are that vide advertisement/public notice dated 19.08.2020 (Annexure P-3), respondent-department had advertised 17 posts of Pharmacist

¹Whether the reporters of the local papers may be allowed to see the judgment?

(Allopathy) under various categories of Persons with Disabilities (**for short, "PWD"**). Out of 17 posts, seven posts were advertised for the category of Ortho Impaired. Petitioner herein, who had completed his Degree in B. Pharmacy in the year 2005 and had registered himself with Pharmacy Council of Himachal Pradesh, applied for the post of Pharmacist (Allopathy) under the category of Ortho Impaired. Though on 29.08.2020, petitioner attended the counselling in terms of public notice dated 18.08.2020, but respondent-department did not declare the result for the post of Pharmacist (Allopathy).

3. On 06.09.2022, respondent-department again started recruitment process for the post of Pharmacist (Allopathy) against the category of PWD through batch-wise basis on contract basis. Name of the petitioner was sponsored by the employment exchange for the post of Pharmacist (Allopathy) against the category of PWD through batch-wise on contract basis and vide letter dated 23.08.2022 (Annexure P-3), respondent-department called petitioner as well as other similar situate person to appear for the counselling on 06.09.2022.

4. On 17.01.2023, petitioner attended the counselling as per schedule at Shimla, however, respondent directed petitioner to appear before the Medical Board at DDU Zonal Hospital, Shimla on 20.01.2023 and 24.01.2023. The petitioner appeared before the Medical Board on 20.01.2023, which after examining the petitioner issued disability certificate in favour of the petitioner with 50% Locomotor Disability.

(Annexure P-5). Though pursuant to aforesaid counselling/interview held in the month of September 2022, respondent-department on the recommendation of Selection Committee vide office order dated 07.06.2023 (Annexure P-6) offered appointment to the selected candidates on batch wise basis, but petitioner was not offered appointment, despite his being eligible under the category of PWD (Locomotor) under SC category. In the afore background, petitioner has approached this Court in the instant proceedings, praying therein for reliefs, as have been reproduced hereinabove.

5. Pursuant to notices issued in the instant proceedings, respondents No.1 to 3 have filed reply, under the signatures and affidavit of Director, Health Services, Himachal Pradesh, wherein facts, as have noticed hereinabove are not disputed, but claim of the petitioner has been attempted to be refuted on the ground that at the time of scrutiny of documents i.e. disability certificate, some of the candidates, including the petitioner, it was recommended by the Selection Committee to direct those persons, including the petitioner, to appear for their fresh medical board before the State Medical Board. Though as per fresh medical certificate in respect of petitioner dated 24.01.2023, petitioner was found to be suffering with 50% permanent disability and appointment subject to the condition rested to the employer, but since physical condition of the petitioner was not found in accordance with the physical requirement of the post of Pharmacist in terms of the Government Notification dated

23.03.2012 (Annexure P-8), which specifically provided the physical requirement of sitting, seeing, reading, writing, communication, standing, walking and hearing, he was not found fit for the job of Pharmacist by the Selection Committee of the respondent-department for want of his proper standing and walking. It is further averred in the reply filed by respondents that pursuant to recommendation of the Selection Committee, 11 posts of Pharmacists [including 3 posts for Hearing Impaired (partially deaf) and 8 posts for Ortho Impaired (Orthopedically Handicapped)] from amongst the category of PWD including the private-respondent No.4 stand filled-up by the respondent-department on the basis of recommendations of the Selection Committee vide office order dated 07.06.2023 (Annexure P-6), but 6 posts for Hearing Impaired (Partially Deaf) remained vacant for want of suitable eligible candidate under the said category of disability. It is further submitted in the reply that in supersession of Notification dated 23.03.2012 (Annexure P-8), State Government, in exercise of the powers vested under Sections 33 & 34 of the Rights of Persons with Disabilities Act, 2016, issued another Notification dated 27.09.2022 thereby identifying the post of Pharmacist (at serial No.24) for 4% reservation (as per Government Notification of the year 2017) to the disabled persons in the respondent-Health Department, by laying down the physical requirement of the posts and further specifying the category of disabled suitable for job (with the help of aids and appliances) (Annexure R-3).

6. I have heard the parties and gone through the record of the case.

7. Before ascertaining the correctness of rival submissions made at the behest of parties to the *lis*, it would be apt to take note of the fact that this Court, having taken note of the fact that appointment to the petitioner was denied on the ground that he was not found fit for job by the Selection Committee for want of his "proper standing and walking", passed the following order on 15.12.2023:

"By way of this writ petition, the petitioner is aggrieved by the act of the respondents, in terms whereof, he has not been offered appointment against the post of Pharmacist (Allopathy) on contract basis, as per batch-wise seniority against the seats reserved for SC (Ortho Impaired) as per public notice, appended with the petition as Annexure P-3.

A perusal of the reply filed to the petition by the respondents-State demonstrates that appointment has been denied to the petitioner on the ground that he was not found fit for job by the Selection Committee for want of his "proper Standing and Walking".

Learned counsel for the petitioner submits that after the petitioner was subjected to the medical test, the medical certificate, which has been issued by the Board, is nowhere suggestive of this fact.

Having heard learned counsel for the petitioner as well as learned Law Officer, this Court is of the considered view that in the facts of in this case, it would be in the interest of justice, in case, the petitioner is ordered to undergo another medical test by the Medical Board, which shall submit its report whether petitioner is fit to perform the duties of the post or not. Parties to the petition are not averse to the suggestion so made by the Court.

Accordingly, respondent No.2 is directed to subject the petitioner to another medical test by the Competent Medical Board and report thereof by obtained before the Court by the next date of hearing. The petitioner shall be intimated by the respondents of the date when

he shall appear before the Medical Board. Let needful be done within a period of ten days from today.

List on 08.01.2024.”

8. On 8.1.2024, learned Deputy Advocate General apprised this Court that the petitioner was subjected to medical test by the Medical Board and placed on record report of Medical Board, which revealed that the petitioner was found to have 50% permanent disability subject to the condition rested to the employer and the petitioner is scheduled to undergo Neuro Psychiatric Assessment at PGIMER Chandigarh on 29.2.2024, after which final decision was to be rendered. In view of above, matter was adjourned to 14.3.2024.

9. On 03.09.2024, learned counsel representing the petitioner informed the Court that the Psychological Assessment Report of the Department of Neuro Surgery of PGIMER, Chandigarh, stands received. He submitted that Medical Board of DDU be directed to submit its opinion at the earliest. In view of the above, this Court directed Medical Board to furnish its opinion on the basis of the medical reports available before it, including that of PGIMER, Chandigarh, as to whether the petitioner is fit for job for which he has been declared unfit by the Selection Committee for want of his “proper standing and walking” within two weeks.

10. On 25.09.2024, learned Additional Advocate General, while handing over copy of instructions dated 24.09.2024, submitted that the petitioner was examined by the Medical Board on 13.09.2024 and he has been referred to IGMC, Shimla by the Medical Board for opinion of Neurology, as these faculties are not available in DDUZH, Shimla.

11. On 29.05.2025, learned Additional Advocate General placed on record communication dated 05.05.2025, issued under the signatures of Chairman, State Medical Board-cum-Senior Medical Officer, DDU Zonal Hospital Shimla, Himachal Pradesh, perusal whereof revealed that pursuant to orders passed by this Court, Dr. Sudhir Sharma, Professor and Head of the Department of Neurology, Atal Institute of Medical Super Specialties, Shimla, gave his opinion, under his signatures, which reads as under:

"Mr. Sajil Kumar has left hemi paresis and left homonymous heminopia as a sequelae of Tubercular abscess of brain for which he underwent right temporal craniectomy in 2009. He needs assistance in his activities of daily living due to left side weakness but has normal cognitive abilities and can perform essential duties of a pharmacist with some accommodation and assistance."

12. On 18.06.2025, this Court directed learned Additional Advocate General to have instructions "*whether in terms of medical opinion rendered by Dr. Sudhir Sharma, Professor and Head of the Department of Neurology, Atal Institute of Medical Super Specialties, Shimla, petitioner can be assigned duties of Pharmacist or not?*"

13. While placing on record communication dated 25.06.2025, issued under the signatures of Director, Health Services, Himachal Pradesh, learned Additional Advocate General apprised this Court that a Committee has been constituted in the office of Director, Health Services, Himachal Pradesh, to adjudge as to whether the petitioner can be assigned the duties of Pharmacy Officer or not.

14. On 08.07.2025, learned Additional Advocate General placed on record communication dated 07.07.2025, issued under the signatures of Director, Health Services, Himachal Pradesh, which reads as under:

“Kindly refer to the orders dated 26.06.2025 passed by the Hon’ble Court in the above titled CWP.

In this regard, it is submitted that pursuant to order dated 26.06.2025 passed by the Hon’ble High Court of HP in the above titled case, a committee was constituted in the office of the undersigned to access the case of the petitioner for appointment as Pharmacist (now Pharmacy Officer) in view of the Medical opinion rendered by Dr. Sudhir Sharma, Department of Neurology AIMSS Shimla. The committee as constituted, has submitted its report on 05.07.2025 with the following observations:-

The committee had carefully gone through the opinion given by Dr. Sudhir Sharma, Professor & Head of the Department of Neurology, Atal Institute of Medical Super Specialty, Shimla, Disability Certificate of the petitioner and other relevant record pertaining to the matter. It is clear that the petitioner has 50% (fifty percent) Locomotor Disability with left homonymous heminopia. Left facial weakness. Left Hemiparesis and right temporal craniectomy. On careful scrutiny, it has been found that the petitioner does not fall under the categories of Disabled persons suitable for the post of "Pharmacist" referred in the table above, as prescribed by the Govt. vide Notification dated

26.09.2022. Further, as per the assessment made by the Departmental Scrutiny Committee on the basis of clarification issued by the Directorate for the Empowerment of Scs, OBCs, Minorities & the Specially Abled, HP vide dated 07.10.2022, constituted during the process of recruitment held on 06.09.2022, petitioner does not fulfills Physical Requirement prescribed for the disabled persons for their appointment as Pharmacist.

Therefore, considering all aspects and facts of the matter and also the criteria fixed for disabled persons for their appointment on the post of Pharmacist notified by the Govt. vide Notification dated 26.09.2022, committee is of the opinion that Sh. Sajil Kumar (Petitioner) is not suitable for the post of Pharmacist reserved for disabled person.

The proceeding of the meeting held on 05.07.2025 is enclosed as FLAG-A.

A set of four copies of the above instructions is being enclosed and sent herewith for favour of kind information and record with the request that the same may very kindly be brought on record of the Hon'ble Court on 08-07-2025, or on next date of hearing(s) please."

14(1). As per aforesaid communication, petitioner herein is not suitable for the post of Pharmacist, reserved for the disabled person.

15. Mr. Narender Singh Thakur, learned counsel representing the petitioner, vehemently argued that once petitioner has been issued Certificate, thereby certifying that he is having disability to the extent of 50%, he cannot be denied appointment against the post in question. To substantiate his aforesaid argument, he placed heavy reliance upon the judgment passed by the Hon'ble Apex Court in **Syed Bashir-Ud-Din Qadri Vs. Nazir Ahmed Shah and Others**, (2010) 3 SCC 603, wherein it has been held as under:

"It has to be kept in mind that this case is not one of the normal cases relating to a 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 applicant is concerned."

15(1). He submitted that case of the person with disability is required to be handled with sensitivity and not with bureaucratic apathy. He submitted that though in the instant case, it stand duly established on record that petitioner has 50% locomotor disability with left homonymous heminopia (left facial weakness), but yet on flimsy grounds, he is being denied appointment.

16. While referring to the Notification dated 23.03.2012 (Annexure P-9), Mr. Thakur, learned counsel representing the petitioner, submitted that in terms of 32 of the Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995, few posts have been identified for 3% reservation to disabled persons in the Health and Family Welfare Department. He submitted that post of Pharmacist has also been identified for 3% reservation to disabled persons, if it is so, there is no occasion, if any, for respondent-department to deny him appointment on the basis of opinion rendered by the Medical Board, which otherwise is totally uncalled for.

17. To the contrary, Mr. Rajan Kahol, learned Additional Advocate General, while justifying the impugned action of the respondents, submitted that though there is no dispute that post of

Pharmacist is also identified for 3% reservation to disabled persons, but bare perusal of Notification dated 23.03.2012, adduced on record by the petitioner, itself suggests that all the person having disability cannot be appointed against the post of Pharmacist, rather category of disabled persons' suitable for job with the help and aid of appliances can be given appointment. He submitted that physical requirement of the post of Pharmacist, in terms of aforesaid Notification dated 23.03.2012 is sitting, seeing, reading and writing, communication, standing, walking, hearing, Pushing, & Pulling and Manipulation of Fingers, but since petitioner has been not found fit for want of his proper standing and walking, no illegality can be said to have been committed by the respondents while rejecting the candidature of the petitioner. He further submitted that petitioner though was found to be suffering with 50% permanent disability and appointment was subject to the condition vested with the employer, meaning thereby, appointment, if any, could be given to the petitioner by the employer i.e. respondent-department, keeping in view his physical condition vis-a-vis physical condition required for the post of Pharmacist in terms of Government Notification dated 23.03.2012, which specifically provided physical requirement of sitting, seeing, reading and writing, communication, standing, walking and hearing. He submitted that as per opinion rendered by the Medical Board as well as special Board constituted pursuant to order passed by this Court, petitioner has

not been found suitable for post for want of his proper standing and walking.

18. True it is that Medical Certificate in respect of the petitioner dated 24.01.2023 [available at page No.29 (Annexure P-5) of the paper-book] suggests that he was found to be suffering with 50% permanent disability, but it was categorically certified that appointment is subject to the condition rested to the employer, meaning thereby, while offering appointment to the petitioner under the category of PWD, respondent-department was at liberty to assess the physical condition of the petitioner in accordance with physical requirements required for the post of Pharmacist in terms of Notification dated 23.03.2012, which specifically provides for physical requirement of sitting, seeing, reading and writing, communication, standing, walking and hearing.

19. In the instant case, this Court, having taken note of aforesaid Medical Certificate issued in favour of the petitioner ordered for constitution of Medical Board with the further direction to assess the medical condition of the petitioner, taking note of opinion rendered by the Neurological Department of the PGIMER, Chandigarh. Pursuant to order dated 26.06.2025 passed by this Court, Committee was constituted by Director, Health Services, Himachal Pradesh, to assess the case of the petitioner for appointment as Pharmacist (now Pharmacy Officer) in view of the medical opinion rendered by Dr. Sudhir Sharma, Professor and Head of the Department of Neurology, Atal Institute of Medical Super

Specialties, Shimla. Committee after having gone through the opinion rendered by Dr. Sudhir Sharma as well as Disability Certificate of the petitioner and other relevant record of the matter, found that the petitioner does not fall in the categories of disabled persons suitable for the post of Pharmacist, referred in the table, as prescribed by the Government vide Notification dated 26.09.2022 as well as assessment made by the Departmental Scrutiny Committee on the basis of clarification issued by the Directorate for the Empowerment of SCs, OBCs, Minorities & the Specially Abled, HP, vide dated 07.10.2022, constituted during the process of recruitment held on 06.09.2022.

20. Petitioner has 50% Locomotor Disability with left homonymous hemianopia (left facial weakness), Left Hemiparesis and right temporal craniectomy, as a result thereof, he is not fit for the job of Pharmacist for want of his proper standing and walking. Since work of Pharmacist is not confined to sitting on the chair, rather one being Pharmacist is required to do physical work, such as of giving first aid to the injured person in Pharmacy Center or Primary Health Centers and on some occasions, they are also required to travel to the house of ill person, coupled with the fact that Medical Board constituted by this Court, which is an expert body, has not found petitioner fit for the job of Pharmacist, no illegality can be said to have been committed by the respondents while denying him the appointment to the post of Pharmacist.

21. There cannot be any quarrel with the proposition of law laid down by the Hon'ble Apex Court in *Syed Bashir-Ud-Din Qadri* (supra), wherein Hon'ble Apex Court while holding that persons with disability have a right to live a life of purpose and human dignity, observed that cases pertaining to disability are required to be handled with sensitivity and not with bureaucratic apathy, but once petitioner, who though is suffering from 50% locomotor disability, has not been found fit for the job of Pharmacist by the Medical Board, which has admittedly given its opinion taking note of Notification dated 26.09.2022 issued by the Government of Himachal Pradesh, prescribing therein categories of disabled persons, who despite having disability can be given job against certain posts with the help and aid of appliances, no illegality can be said to have been committed by the respondents inasmuch as denying appointment to the petitioner against the post of Pharmacist.

22. At this stage, learned counsel for the petitioner referred to a judgment passed by Hon'ble Apex Court in ***Recruitment of Visually Impaired in Judicial Services v. The Registrar General, High Court of Madhya Pradesh***, 2025 SCC OnLine SC 481, decided on 03.03.2025, the Hon'ble Apex Court took suo motu cognizance of a letter petition dated 15.01.2024, addressed to the Hon'ble Chief Justice of India by the mother of a visually impaired judicial aspirant. The petition challenged the legality of the Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994, wherein Rule 6A

excluded visually impaired and low-vision candidates from appointment in the judicial service. The Hon'ble Apex Court observed that once a person has been permitted to pursue a law degree, all other opportunities, whether in the form of practice or appointments, or assignments in public or private sectors, would automatically make them eligible to participate in the selection process for such positions. The Hon'ble Court observed that visually impaired persons can be accommodated through court staff, assistive technologies, and accessible reading and writing facilities. Whereas in the case at hand, the work of a Pharmacist mainly involves dressing and giving injections, performing emergency duties during off-hours, assisting with medical stores and surgical instruments, indenting thereof, and maintaining medical stores, among other duties. Although this Court is in full agreement with the observations of the Hon'ble Apex Court in the Recruitment of Visually Impaired case (supra), it believes that the nature of work required to be performed is different in both situations. The work of a Judge is primarily confined to reading, dictating, conducting courtroom proceedings, and writing judgments, which essentially do not require much physical movement, in contrast to work which is to be done by a pharmacist. In the opinion of this Court, role of a judge does not require physical exertion or mobility of the kind essential to a pharmacist's work and can be effectively performed with the aid of reasonable accommodation and staff assistance. Moreover, in the

Supreme Court judgment, the rules and administrative framework themselves were under challenge, particularly the decision declaring visually impaired candidates 'unsuitable' for judicial service. The Hon'ble Apex Court examined the validity of such exclusionary criteria and held that denying eligibility solely on the ground of visual impairment was unconstitutional and violative of the principle of reasonable accommodation under the Rights of Persons with Disabilities Act, 2016. In contrast, in the present case, the Government of Himachal Pradesh, vide Notification dated 26.09.2022, has specifically identified the post of Pharmacist (Allopathy) and prescribed the physical requirements and categories of disabilities suitable for the post. These rules and notifications have not been challenged in the present proceedings.

23. Consequently, in view of detailed discussion made hereinabove as well as law taken into consideration, this Court finds no merit in the present petition and accordingly the same is dismissed.

The present petition is disposed in the above terms, so also the pending miscellaneous application(s), if any.

**(Sandeep Sharma),
Judge**

November 07, 2025
(Rajeev Raturi)