

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****CWPOA No.6943 of 2019****Decided on: 21.04.2026**

Reena Shrivastava

...Petitioner

Versus

State of HP & others

...Respondents

*Coram***Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge***Whether approved for reporting?*¹ Yes

For the petitioner:

Mr. Dilip Sharma, Senior Advocate,
with Mr. Manish Sharma and
Mr. Ompal, Advocates.

For the respondents:

Mr. Hemant Kumar Verma, Deputy
Advocate General.**Jiya Lal Bhardwaj, Judge (Oral)**

The petitioner by way of present petition has
prayed for the following substantive relief(s):-

- “(i) That the impugned action of respondents whereby they have refused to consider the claim of applicant for appointment to the post of Clerk reserved for “Hearing Impaired” category, as reflected in Annexure A-16 dated 6.2.2016 may be struck down being in violation of fundamental right of applicant guaranteed under Article 16 of the Constitution of India;
- (ii) That the respondents may be directed to consider the applicant for appointment to the post of Clerk in respondent No.2 department reserved for “Hearing Impaired” category from due date, with

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



all consequential benefits;"

2. Shorn of unnecessary details, the brief facts of the case are that the respondents had issued an advertisement dated 16.01.2014 (Annexure A-1), for filling up of the vacancies reserved for Persons with Disability, in the categories of Clerk and Peon. The petitioner, who belonged to category of 'hearing impaired' and eligible to hold the post of Clerk, had applied before the cut of date fixed for receiving the applications i.e. 15.02.2014. Respondent No.2 had issued the admit card to the petitioner on 06.06.2015, for the typing test to be conducted by respondent No.3, which was appointed as nodal agency by the State government and date fixed was 25.06.2015. The petitioner appeared in the typing test conducted by respondent No.3 on 25.06.2015. Thereafter, the petitioner was called for the interview on 30.11.2015 as per the interview letter dated 17.11.2015, issued by respondent No.2 (Annexure A-7). However, the interviews were postponed and vide communication dated 26.11.2015 (Annexure A-8), the date to conduct the interview was fixed as 22.12.2015 at 11:00 AM. The petitioner on the said date, appeared before the interview Board and furnished the



disability certificate dated 03.11.2015 (Annexure A-6), where her disability was shown as 40% with respect to hearing impaired. However, the nature of disability was shown as temporary. At the time of appearing in the interview, the petitioner was informed that she is ineligible, as her physical disability has been shown as temporary in nature. After noticing the said fact, the petitioner informed the members of the interview board that the Doctors, who had been treating her, had informed that her disability is permanent in nature and thereafter, she approached Deen Dyal Upadhaya Zonal Hospital, Shimla, (for short "DDU, ZH, Shimla"), who issued her disability certificate dated 03.11.2015(Annexure A-6) and the Senior Medical Superintendent, DDU, ZH, Shimla, vide letter dated 28.12.2015, informed the Senior Medical Officer, IGMC Shimla-1 (Annexure A-9) to advise whether the nature of disability of the petitioner, is permanent or temporary. The Medical Board of the Doctors in IGMC Shimla, examined the petitioner on 04.01.2016 and thereafter had submitted the Medical Report (Annexure A-12), stating therein that the disability suffered by the petitioner is permanent in nature.

3. On receipt of the said report, Senior Medical



Superintendent had issued the disability certificate to the petitioner (Annexure A-13), depicting the disability of petitioner as 40% permanent of hearing impaired. The reference of BARE report IGMC dated 02.12.2015 & Medical Board report, IGMC dated 04.01.2016 was also mentioned.

4. After obtaining the disability certificate, the petitioner made a representation to respondents No.2 & 3, requesting to offer her appointment to the post of Clerk. However, no response was received. Thereafter, the petitioner sought information under the RTI Act and vide communication dated 06.02.2016 (Annexure A-16) she was informed that, the reason for non-consideration of her claim was the production of a temporary certificate of hearing impaired.

5. The grievance of the petitioner as highlighted in the present petition is that, she was suffering from hearing impaired disability and the Board had erroneously mentioned her disability temporary in nature in certificate dated 03.11.2015, which had subsequently been corrected as per the opinion given by the Doctors of IGMC, who had earlier examined her and thereafter issued a disability certificate on 07.01.2016. Thus, the action on the part of



the respondents in not considering her claim for appointment against the post of Clerk reserved for hearing impaired candidates, is illegal and arbitrary.

6. The respondents have filed their replies to the petition. Respondent No.1 has stated that it has unnecessarily been impleaded as a party respondent in the petition, as no relief has been sought against it.

7. Respondent No.2 has averred in reply that it had invited the applications to fill up three posts of Clerks earmarked for persons with disabilities (one each for visually impaired, hearing impaired and orthopedically handicapped). The petitioner, having passed the typing test, was called for the interview and appeared before the interview committee/selection committee on 22.12.2015, where she produced a temporary disability certificate. However various concessions provided by the Government are for the persons having permanent disability. Since the petitioner failed to produce a permanent disability certificate on the date of interview, the interview/selection committee found her ineligible for the post reserved for persons with disabilities and accordingly rejected her candidature. The reason for non-selection of the petitioner



against the post of Clerk referred for the hearing impaired was communicated to her, vide office endorsement dated 06.02.2016. It has further been averred that the candidates, who do not possess the eligibility criteria or permanent disability certificate on the date of final selection, cannot be appointed against that post in the Government.

8. Respondent No.3 filed separate reply and averred that the petitioner at the time of interview had produced only temporary medical certificate, which was not considered by the committee. It was further stated that as per the uniform definition of "Persons with Disabilities" issued by the Government of India, vide letter No.4-2/83-H.W.-III dated 06th August, 1986, and adopted by the State Government that 'Disability' is defined as an existing difficulty in performing one or more activities, which in accordance with the subject's age, sex and normative social role, are generally accepted as essential, basic component of daily living, such as self-care, social relations and economic activity. Since the petitioner could not produce a valid disability certificate at the time of interview on 22.12.2015, she was not considered for selection to the post by the Selection Committee. The record annexed with



the petition reveals that the permanent disability certificate was issued to the petitioner on 07.01.2016 by the concerned Medical Board and the same cannot be considered from the retrospective date, since the process of interview etc. had already been completed by the Selection Committee.

9. The petitioner filed rejoinder to the replies filed by respondents No.2 & 3 and controverted the facts made therein.

10. I have heard Mr. Dilip Sharma, learned Senior Counsel, duly assisted by Mr. Manish Sharma and Mr. Ompal, learned counsel, as well as Mr. Hemant Kumar Verma, learned Deputy Advocate General for the respondents and also perused the record carefully.

11. It is not in dispute that the petitioner had qualified the typing test conducted by the respondents for the post of Clerk and further she had applied under the category of hearing impaired.

12. It is also not in dispute that the advertisement was issued only for recruiting the Persons with Disability and there was a special drive to fill up the posts from the categories of person with disability. It is also not in dispute



that no person has been offered appointment against the post of Clerk under the category of hearing impaired, to which the petitioner belongs. The only question which required to be determined by this Court is whether the certificate, which the petitioner had produced after the interview, can be considered for the purpose of offering her appointment or not.

13. It is by now settled that the certificates for the purpose of determining the eligibility, has to be seen on the last cut off date fixed for the same. However, in the present case once there was a special drive to fill up the posts of Clerk from the categories of persons with disabilities and the petitioner had submitted the certificate of permanent disability before issuance of the appointment letters to other candidates, the action on the part of respondents in not considering the certificate of the petitioner is not justified.

14. Learned Senior Counsel for the petitioner has placed heavy reliance upon the judgment passed by this Court on 18.11.2019, in CWP No.2927 of 2019, titled, **Anjali vs. State of H.P. & others**, wherein in a case, where candidate, who was belonging to BPL category had



furnished a BPL certificate, which had expired during the currency of the last date of submitting the applications and his candidature was rejected on that sole ground the Court held that such rejection of the claim on such trivial issue is unjustified. The relevant part of the judgment reads as under :-

“8. Admittedly, the petitioner was classified under the BPL category as per the guidelines made by the respondents/State Government. It is noticed that sufficient time was granted for submission of applications but, the petitioner has submitted the application alongwith BPL certificate which expired during the currency of the last date of submitting the applications and her candidature has been rejected on this ground alone. Though the candidature of the petitioner has been rejected only on the basis of expired BPL certificate only, therefore, we have to take a pragmatic view. The petitioner is undoubtedly a Scheduled Tribe and belongs to Below Poverty Line category. In the instant case, the things which are required to be considered in a pragmatic way are that: (i) a girl has applied for the post of Police Constable; (ii) she is a Scheduled Tribe; and (iii) more importantly she belongs to Below Poverty Line category. Therefore, by taking the pragmatic view, we are of the opinion that the petitioner who was permitted by the respondents by issuing roll number to appear in the ground test and also in the written test has to be considered for selection to the post because under the reserved category only one person is available i.e. the petitioner. Non-production of BPL certificate at appropriate time being a trivial issue is not being taken note of.

9. Considering the entire facts and circumstances of the case and the fact that the petitioner is a girl belonging to a backward class and also falls under the Below Poverty Line category, we are inclined to grant a relief to her. Accordingly, the writ petition is allowed with a direction to the respondents to process the case of the petitioner,



consider the same and pass appropriate orders, if she is not disqualified or ineligible for any other reason."

15. In the present case, it is not in dispute that the petitioner had applied well within the cut-off date and thereafter qualified the typing test conducted by the respondents. Further when the interview was conducted on 22.12.2015, the petitioner did not notice that the certificate, issued to her is only for temporary disability. It is also not in dispute that the certificate issued in favour of the petitioner by the Medical Board on 07.01.2016, is genuine. The only plea taken by the respondents that since the certificate has been issued after cut-off date, the same could not have been considered and her claim has rightly been rejected, cannot be countenanced, more particularly when respondents had started a special drive to fill up the posts of Clerk from the persons with disabilities and the appointments were not issued to any persons. Not only this, no person from the category of the petitioner was offered the appointment and the post remained vacant.

16. Learned Deputy Advocate General has placed reliance upon the judgment passed by the Hon'ble Supreme Court in Civil Appeal No. 3957 of 2023, titled, **Sakshi Arha**



vs. The Rajasthan High Court & Ors., to contend that once on the cut-off date fixed to submit the application, the petitioner was not possessing the disability certificate showing her disability permanent in nature, the subsequent certificate cannot be accepted. No doubt the Hon'ble Supreme Court has culled out the said reasons in the aforesaid judgment, but as already noticed above, the normal rule to see the eligibility is the last cut-off date fixed in the advertisement, however, in the case of persons with the disabilities, once a special drive was undertaken by the respondents to fill up the posts from the persons having disabilities only and further no person from the category of hearing impaired was offered appointment, then in that case, the action on the part of the respondents in not considering the disability certificate, which entitles the petitioner for appointment to the post of Clerk, is totally unjustified. The very purpose of taking initiatives to implement the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, is frustrated, if the petitioner is denied appointment. It is also to be kept in mind that when the certificate earlier issued in favour of the petitioner was



shown to the Selection Committee, who conducted the interview on 22.12.2015, the disability was shown as temporary by mistake and in the subsequent medical certificate issued by the Doctors within a few days, ought not to have rejected. Further, a perusal of Annexure A-13 also reveals that the said certificate was issued as per the BERA report, IGMC Shimla dated 02.12.2015, which was earlier conducted before the interview held on 22.12.2015, and thus, if some discrepancy had occurred on account of the negligence on the part of the medical board, the petitioner cannot be penalized for the same. It is not even the case of the respondents that on the date when the petitioner had appeared in the interview, she had not furnished the medical certificate, the only plea is that the said medical certificate had shown the disability as temporary in nature.

17. Consequently, the present petition is allowed and the respondents are directed to consider the candidature of the petitioner for appointment to the post of Clerk in respondent No.2-Department from the date when other persons have been offered the appointment in sequel to the interview conducted on 22.12.2015 and offer her



appointment, with all consequential benefits, within three months from today. However, it is made clear that no monetary benefits shall be given to the petitioner till today, but she will be assigned the seniority and other consequential benefits from the date when the other persons have been offered appointment, showing her junior-most in the said list. No orders as to cost. Pending application(s), if any, also stand disposed of.

21st April, 2026

(Anurag)

**(Jiya Lal Bhardwaj)
Judge**