2026 INSC 253

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 868 OF 2024

PRABHU KUMAR ....APPELLANT(S)

VERSUS

STATE OF HIMACHAL PRADESH & OTHERS ....RESPONDENT(S)

J U D G M E N T

Mehta, J.

1. Heard.

2. The appellant herein, a Law Graduate, is a specially-abled person suffering from 90% permanent locomotor disability due to left shoulder disarticulation. He has been practicing as an advocate since 2015.

3. He has preferred the instant appeal for assailing the judgment dated 29th September, 2020 passed by the High Court of Himachal Pradesh at Shimla[1] in C.W.P. No. 3634 of 2019, whereby the High Court

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Reason:

[1] Hereinafter referred to as "High Court".

dismissed the writ petition filed by the appellant and rejected his claim for appointment to the post of Assistant District Attorney[2].

Brief Facts: -

4. The facts relevant and essential for the disposal of the appeal are noted hereinbelow.

5. An advertisement dated 2nd May, 2018 was issued by respondent No. 3- Himachal Pradesh Public Service Commission[3] for 24 posts of ADA, Class-I (Gazetted). Out of these 24 posts, 20 were advertised in furtherance of a requisition and 4 were backlog posts. 2 posts from the 24 advertised posts were kept reserved for persons with disability. The advertisement provided that the applicant under the disabled category should not have less than 40% disability and not more than 60% disability in one leg or one arm.

6. The appellant submitted an online application form annexing all his documents including the disability certificate and the experience certificate from the bar. After scrutinizing the application submitted by the appellant, the Commission issued

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[2] For short "ADA".
[3] Hereinafter referred to as "Commission".

a Roll number and the appellant was allowed to appear in the written test conducted on 30th September, 2018. The result of the written test was declared by the Commission on 4th July, 2019. The appellant qualified the same under the Physically Handicapped (General) category. A total of 5 candidates with disability were declared successful against these two reserved posts. The appellant having succeeded in the written/screening test was called to appear before the interview board for personality assessment which was scheduled for 2nd August, 2019. The result of interview was declared on 3rd August, 2019 and the respondent-Commission, *vide* press note dated 3rd August, 2019, recommended the name of the appellant for appointment to the post of ADA under the physically handicapped quota.

7. The select list was forwarded to the Government of Himachal Pradesh in the form of a recommendation and the Government, acting upon the same, issued appointments to 16 out of the 17 recommended candidates. The name of the appellant was, however, withheld and not included in the notification dated 19th September, 2019 offering

appointment to only 16 candidates. The appellant made inquiries and also sought information under the Right to Information Act, 2005 seeking disclosure of the reason for his exclusion in the final list of appointments. In response, the appellant was provided copy of a communication dated 19th September, 2019 wherein it was stated that the recommendation of the appellant's name by Commission was not accepted on the ground that the appellant was having 90% disability (left shoulder disarticulation) which was well above the threshold limit of 60% fixed in the advertisement under the handicapped quota.

8. Being aggrieved by the non-issuance of appointment order despite succeeding in the selection process, the appellant approached the High Court by filing the captioned writ petition being C.W.P. No. 3634 of 2019. Before the High Court, the appellant contended that the respondents could not have prescribed a maximum limit of 60% disability in the subject recruitment process as the same ran in direct conflict with the provisions of Rights of Persons

with Disabilities Act, 2016[4]. The High Court, however, proceeded to dismiss the appellant's writ petition by judgment dated 29th September, 2020 which is the subject matter of challenge in this appeal.

Submissions

9. Shri P.V. Dinesh, learned senior counsel representing the appellant strenuously contended that the denial of appointment to the appellant in spite of him succeeding in the competitive selection process was absolutely illegal, unjustified and arbitrary. It was submitted that there existed no intelligible or rational criterion in prescription of the upper limit of 60% disability as a threshold beyond which the candidates belonging to the physically handicapped category would not be entitled for the appointment to the post of ADA. The said restriction has no rational nexus with the nature of duties required to be performed for the post in question.

10. It was further submitted that the appellant has been successfully practising law for nearly a decade, without any impediment on account of the disability

[4] Hereinafter, referred to as "RPwD Act, 2016".

in his shoulder. It was pointed out that the appellant topped amongst the 5 candidates who were shortlisted under the physically handicapped category, thereby demonstrating both merit and competence to discharge the duties attached to the post.

11. Learned senior counsel contended that the High Court itself in the impugned judgement observed that the respondents were not clear about the extent of maximum disability which could have been prescribed for physically handicapped reserved seats in the selection process for the post of ADA. Despite observing so, the High Court declined to grant relief to the appellant and proceeded to dismiss the writ petition.

12. He further contended that denial of appointment to the appellant and the dismissal of the writ petition are grossly illegal, arbitrary and violative of the fundamental rights available to the appellant under Articles 14 and 16 of the Constitution of India.

13. Shri Dinesh urged that the High Court placed reliance upon the judgment of this Court in ***V***

Surendra Mohan v. State of Tamil Nadu[5] to hold that prescribing a maximum limit of disability for candidates belonging to physically handicapped category was in the domain of the employer. However, the said judgment has been expressly overruled by a three Judge bench of this Court in ***Vikash Kumar v. U.P.S.C.***[6] and as such, the impugned judgment is untenable in the eyes of law and liable to be set aside.

14. *Per contra*, learned counsel representing the respondents vehemently and fervently opposed the submissions advanced by the appellant's counsel. It was urged that the advertisement contained a specific condition in unambiguous terms that candidates seeking appointment under the physically handicapped category must have a disability ranging between 40% and 60% in one arm or one leg. Learned counsel submitted that the disability certificate held by the appellant reflects 90% permanent disability (left should disarticulation) and therefore, the appellant was not covered within the prescribed range of disability contemplated under the advertisement.

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[5] 2019 4 SCC 237.
[6] 2021 5 SCC 370.

15. It was further urged that the appellant cannot claim any relief as he had participated in the selection process despite being fully aware of the condition prescribing the upper limit of 60% disability. If the appellant was aggrieved by the stipulation fixing the upper disability limit at 60%, the appropriate course would have been to challenge the said condition prior to participating in the selection process. Having taken part in the process without objection, the appellant is now estopped from assailing the same after being denied appointment.

16. On these grounds, learned counsel for the respondents submitted that the appellant has failed to demonstrate any enforceable right for claiming appointment and, therefore, the present appeal deserves to be dismissed.

Analysis

17. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the impugned judgment and the material placed on record.

18. There is no dispute that the appellant who suffers from 90% permanent locomotor disability (left shoulder disarticulation), is a practising advocate

since the year 2015. The respondents, while advertising the post of ADA, reserved two posts for specially-abled persons. It was stipulated in the advertisement that a candidate seeking benefit of reservation under this category should have not less than 40% and not more than 60% disability in one leg or one arm.

19. In order to examine the validity of prescribing such a stipulation, reference must be made to the provisions of the governing statute *i.e.* RPwD Act, 2016.

20. Section 2(r) of the RPwD Act, 2016, defines a "person with benchmark disability" as follows:-

> "(r) "person with benchmark disability" means a person with not less than forty per cent. of a 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"

21. Complementing the aforesaid provision, Section 33 of the RPwD Act, 2016 mandates the identification of posts for reservation. Section 33 is extracted hereinbelow for ready reference:-

> "33. **Identification of posts for reservation.—**The appropriate Government shall—
> (i) identify posts in the establishments which can be held by respective category of persons with

> benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34;
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> (ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and
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> (iii) undertake periodic review of the identified posts at an interval not exceeding three years."

22. Conjoint reading of these provisions would clearly indicate that the legislature intended to create a threshold of inclusion, specifically designating 40% as the minimum requirement to qualify for "benchmark disability" status. Thus, none of these provisions indicate that an upper limit can be prescribed in the matter of adjudging the suitability of a candidate for a particular post. The RPwD Act, 2016 defines the "floor" for reservation eligibility but does not empower the State to create an arbitrary "ceiling" that excludes those with higher degrees of disability, provided they are otherwise capable of performing the functional requirements of the role through reasonable accommodation.

23. By fixing a 60% maximum limit, the respondents have essentially rewritten the statutory definition of "benchmark disability" to the detriment of those very persons whom the Act aims to protect. This restrictive interpretation finds no sanctuary

within the four corners of the RPwD Act, 2016, and fails to align with the objective of ensuring full and effective participation of specially-abled persons in the process of public employment.

24. The High Court while denying relief to the appellant placed reliance heavily upon the decision of this Court in ***V. Surendra Mohan*** *(supra)* to justify the imposition of an upper cap on disability. While ***V. Surendra Mohan*** *(supra)* had previously suggested that prescribing a maximum limit for disability reservations was permissible to ensure functional suitability, the ratio of the above judgment has been expressly overruled by a three-judge bench of this Court in ***Vikash Kumar*** *(supra)* wherein it was observed that ***V. Surendra Mohan*** *(supra)* failed to correctly consider the true purport and transformative nature of the RPwD Act, 2016. Specifically, it was noted that there was an absolute lack of discussion on the principle of "reasonable accommodation", a cornerstone of the RPwD Act, 2016 which mandates that the State must make necessary and appropriate modifications to ensure that persons with disabilities can enjoy their rights on an equal basis with others.

25. The salutary observations made by this Court in ***Vikash Kumar*** *(supra)* are extracted below:-

> "**68.** A discordant note struck by this Court having a direct bearing on the principle of reasonable accommodation finds expression in a two-Judge Bench decision of this Court in *V. Surendra Mohan* v. *State of T.N.* The proceedings before this Court arose from a judgment [*V. Surendra Mohan* v. *State of T.N.*, 2015 SCC OnLine Mad 2100] of the Madras High Court. **At issue was the decision of the Tamil Nadu Public Service Commission ("TNPC") to impose a ceiling of 40-50% visual/hearing impairment to be eligible to be appointed as a Civil Judge (Junior Division). Differently stated, a person whose visual/hearing impairment exceeded 50% was disqualified from being eligible for the said post. In the said case, the appellant's disability was 70%. The appellant's name was not included in the list of registered numbers who were provisionally admitted to the oral test**. He challenged this in the Madras High Court. By its judgment dated 5-6-2015, the Madras High Court held that as per the decision of the Government dated 8-8-2014 and Notification issued by the TNPC dated 26-8-2014, those partially blind with 40%-50% disability were only eligible and the appellant having 70% disability was not eligible to participate in the selection.
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> **69.** A two-Judge Bench of this Court held that a judicial officer in a State has to possess reasonable limit of the faculties of hearing, sight and speech in order to hear cases and write judgments and, therefore, stipulating a limit of 50% disability in hearing impairment or visual impairment as a

condition to be eligible for the post is a legitimate restriction. **This Court affirmed the submission of the Madras High Court that seeking to address the socially constructed barriers faced by a visually or hearing impaired Judge, whose disability exceeds 50%, would create "avoidable complications". As a result, the impugned ceiling was found to be valid.**

70. This judgment was delivered by this Court after India became a party to the UNCRPD and the 2016 RPwD Act, came into force. **The aforesaid view espoused by this Court is innocent of the principle of reasonable accommodation. This Court did not consider whether the failure of the TNPC to provide reasonable accommodation to a Judge with a disability above the impugned ceiling was statutorily or constitutionally tenable. There is no reference in this Court's judgment to whether the appellant would have been able to discharge the duties of a Civil Judge (Junior Division), after being provided the reasonable accommodations necessitated by his disability.**

71. The analysis by this Court in the portion excerpted above begs the question. Specifically, the relevant question, under the reasonable accommodation analysis, is not whether complications will be caused by the grant of a reasonable accommodation. By definition, "reasonable accommodation" demands departure from the status quo and hence "avoidable complications" are inevitable. The relevant question is whether such accommodations would give rise to a disproportionate or undue burden. The two tests are entirely different.

72. As we have noted previously**, the cornerstone of the reasonable accommodation principle is making adjustments that enable a disabled person to effectively counter the barriers posed by their disability. Conspicuous by its absence is any reasonable accommodation analysis whatsoever by this Court in *Mohan*. Such an analysis would have required a consideration of the specific accommodations needed, the cost of providing them, reference to the efficacy with which other Judges with more than 40-50% visual/hearing impairment in India and abroad can discharge judicial duties after being provided the necessary accommodations, amongst other factors.** In holding that the ceiling was reasonable on the application of the principle of reasonable accommodation, the ratio as expounded fails as "distinct exhortatory dimension that must always be kept in mind while determining whether an adjustment to assist a disabled person to overcome the disadvantage that she or he has in comparison to an able-bodied person is reasonable". It is persons with disabilities who have been the victim of this lapse.

73. In light of the fact that the view of this Court in ***Mohan* was rendered in a case under the 1995 Act which has now been replaced by the 2016 RPwD Act and in light of the absence of a reasonable accommodation analysis by this Court, the *Mohan* judgment stands on a legally vulnerable footing. It would not be a binding precedent, after enforcement of the 2016 RPwD Act.**"

(Emphasis supplied)

26. Seen on the touchstone of the principles laid down in ***Vikash Kumar*** *(supra)* to the present case, the stipulation prescribing a maximum disability limit of 60% for appointment to the post of ADA is clearly arbitrary, having no nexus with the nature of duties to be performed. This upper limit of disability has clearly been prescribed in sheer ignorance of the principle of reasonable accommodation and hence the same cannot be sustained in law. The fact that the appellant has been practicing law successfully for nearly a decade despite suffering from 90% locomotor disability in his left shoulder, clearly demonstrates that a higher degree of locomotor disability does not necessarily translate into compromising the functionality of a law professional. The judgment of the High Court would not pass muster as it is based on a precedent which has since been overruled. Furthermore, by failing to assess the appellant's claim in the light of the doctrine of reasonable accommodation, the respondent authorities as well as the High Court have adopted an approach that is manifestly arbitrary and inconsistent with the guarantees of Articles 14 and 16 of the Constitution of India.

27. The percentage of disability, by itself, cannot be treated as determinative of a candidate's capability or suitability for public employment. The statutory framework under the RPwD Act, 2016 enjoins upon the State a positive obligation to ensure equal opportunity and to provide reasonable accommodation so that persons with disabilities are not excluded merely on account of their physical condition.

28. In the present case, the appellant has already demonstrated his competence by successfully clearing the selection process and securing the highest position among the candidates in the physically handicapped category. In such circumstances, the fixation of an upper cap of disability, resulting in the exclusion of the appellant, is not only unjustified and arbitrary but also runs in clear contravention of the constitutional and statutory mandate.

29. The issue can also be examined from another perspective.

30. If the appellant had applied under the general category and had successfully cleared the written examination as well as the interview and secured a

position in the merit list, could the respondents have denied him appointment solely on account of the extent of his disability?

31. The answer, evidently, would be in the negative. The advertisement does not contain any stipulation which even remotely suggests that a candidate belonging to the general category, who has otherwise qualified in the selection process, may be denied appointment merely because of a certain degree of disability. The selection process includes the component of interview where the suitability of a candidate can be best adjudged. Evidently, the appellant passed muster in the said test with flying colors. Hence, there was no doubt about his suitability for the post.

32. The principle that professional capability must be assessed on actual functional competence rather than a mere percentage of disability has been examined extensively by this Court in the cases of ***Om Rathod v. Director General of Health Sciences***[7], ***Anmol v. Union of India & Ors***[8] and ***Kabir Pahariya v. National Medical Commission***

[7] 2024 SCC OnLine SC 3130.
[8] 2025 SCC OnLine SC 387.

& Ors[9]. Although those matters arose in the context of medical education, the underlying legal principle remains the same *i.e.,* the State cannot rely on arbitrary medical disability percentages to create an insurmountable barrier to professional entry.

33. In the cases of ***Om Rathod*** *(supra)* and ***Anmol*** *(supra)*, where candidates were denied admission in MBBS courses despite standing in merit, this Court intervened by directing their medical examinations to objectively assess whether the candidates were actually suitable for the rigors of the MBBS course, rather than relying on abstract disability figures.

34. Similar exercise was conducted in the case of ***Kabir Pahariya*** *(supra),* where the appellant was having multiple deficiencies in both hands as well as in left foot owing to birth complications. In spite thereof, when the appellant was subjected to review by a medical board, he was able to demonstrate various skill techniques in simulation laboratory, including chest compressions, intravenous cannulation, assembly of a laryngoscope, intubation, and suturing. Taking note of these crucial facets of

[9] 2025 SCC OnLine SC 1025.

disability issues, this Court directed the National Medical Commission to revise its guidelines in light of the law laid down in ***Om Rathod*** *(supra)* and ***Anmol*** *(supra)* so as to ensure that systemic discrimination of persons with benchmark disability, whether direct or indirect, is eliminated and that their capabilities are assessed through an individualised and evidence-based process rather than stereotypical assumptions. This Court in ***Kabir Paharia*** *(supra)* observed as follows:-

> "**14.** We further direct that the National Medical Commission shall forthwith and not later than within a period of two months from today and at any cost before the counselling for the 2025-2026 session commence, complete the process of revising the guidelines in light of judgments of this Court in ***Om Rathod v. Director General of Health Sciences*** and ***Anmol v. Union of India*** so that no deserving candidate in the PwBD category is denied admission into the MBBS course in spite of his/her/their entitlement**. <u>It must be ensured that systemic discrimination against persons with benchmark disabilities, whether direct or indirect, is eliminated and that the admission process upholds their right to equal opportunity and dignity.</u>**
>
> **15.** The constitutional promise of equality is not merely formal but substantive, requiring the State to take affirmative measures to ensure that PwD and PwBD can meaningfully participate in all spheres of life, including professional education.

> **We emphasize that reasonable accommodation is not a matter of charity but a fundamental right flowing from Articles 14, 16, and 21 of our Constitution. When administrative authorities create arbitrary barriers that exclude qualified PwBD candidates, they not only violate statutory provisions but also perpetuate the historical injustice and stigmatisation. The fundamental rights and the dignity of PwD and PwBD candidates must be protected by ensuring that assessment of their capabilities is individualised, evidence-based, and free from stereotypical assumptions that have no scientific foundation**."
>
> (Emphasis supplied)

35. Tested on the touchstone of the above principles, the action of the respondents in the present case, clearly runs foul of the constitutional and statutory mandate and thus cannot be upheld. On going through the pleadings of the respondents, we do not find that any such exercise or scientific assessment was undertaken by the State before fixing the upper limit of 60% disability for the purpose of granting reservation to persons with benchmark disabilities in the subject selection process.

36. Manifestly, we are at a loss to comprehend as to what could have been the rationale behind fixing this

upper limit of disability in leg or arm for appointing a person to perform the duties of an ADA. The job description as portrayed in the advertisement indicates that an ADA is supposed to conduct litigation on behalf of the State Government in various courts of law, teach law in the various institutions of H.P. Government and also to advise Government in legal matters. For performing the said duties, the disability in arm, whatever the percentage be, could never be an impediment, as the said job would primarily require mental alacrity, legal acumen and analytical ability.

37. In fact, even the High Court in the impugned judgment expressed reservations regarding the approach of respondents in fixing 60% ceiling for the said post. The relevant findings are extracted below:-

> "The only aspect which now remains to be examined in the instant case is regarding the mode and manner of determining the maximum limit of disability. In ***(2009) 14 SCC 546***, titled ***Union of India vs. Devender Kumar Pant,*** Hon'ble Apex Court held that intention of the Disabilities Act is not to accept reduced standards of efficiency in performance of functions of a particular post merely because the employee suffers from a disability. In the instant case respondents No. 1 and 2 in their reply have simply submitted that head of every establishment has the competency to

prescribe conditions or restrictions for assessing suitability of a person for a post, keeping in view the nature of job, work, duties, functions to be performed by the incumbent of a post. **The action of respondent No. 2 in placing a cap of 60% as benchmark disability of one leg/one arm for the post of ADA has been sought to be justified on the ground that ADA is required to perform multifarious duties and functions. The respondents have not placed on record any material to show as to how and by adopting what process, under which of the provisions of the Act/instructions etc., the ceiling limit of 60% disability was fixed by them for determining the eligibility of a candidate belonging to physically handicapped (locomotor impaired) category for the post of Assistant District Attorney. How the issue was deliberated, who deliberated the issue, whether any Committee of experts in the concerned field of medicine (locomotor disability) was constituted to determine the maximum eligibility limit of disability for the post of ADA, whether any decision in that regard was taken, is not forthcoming from the reply**. In fact, following para of the reply reflects the confusion writ large in respondent No. 2-department about fixation of 60% disability as maximum eligibility limit for the post of ADAs: -

> *".....it is submitted that the upper limit of disability of 60% has been incorporated keeping in view the legitimate aim on suitability of a candidate to a particular post. However, the matter is being taken up with the Department of Social justice & Empowerment i.e. Administrative*

Department to provide the detail of identification of posts and extent of disability and the replying respondent, reserves its right to file supplementary reply at any stage hereinafter, as and when the outcome of the deliberations is received....”

Respondents, it appears are themselves not clear about the extent of maximum disability which should have been prescribed for physically handicapped category candidates for the post of ADA. The Act is a beneficial legislation enacted for the welfare of persons with disabilities. It was incumbent upon the respondents to deliberate over the issue with experts for determining the maximum extent of disability vis-a-vis the eligibility of disabled persons for the posts in question. **Such determination should not be solely left to the discretion of the employer. We have the example of this case where even after the completion of selection process, respondents are themselves not certain about soundness of prescribing 60% as the maximum eligible limit of disability.** We, therefore, direct the respondent-State through respondent No. 1 personnel department to issue necessary directions to all concerned departments etc. for henceforth fixing maximum eligibility limit of disability for persons belonging to physically handicapped category, for the posts reserved for them under 2016 Act, only after due deliberation over the issue with Department of Social Justice & Empowerment in consultation with committee of experts in the concerned field of medicine to be constituted by the State for the said purpose.”

(Emphasis supplied)

38. A perusal of the above observations makes it evident that even the High Court noted the absence of any tangible material to demonstrate the foundational basis on which the 60% disability ceiling had been fixed. The respondents were unable to indicate whether the issue had been deliberated upon with the Department of Social Justice and Empowerment or whether any expert committee in the field of locomotor disability had been consulted prior to prescribing the said limit. The pleadings filed on behalf of the respondents, as noticed by the High Court, in fact reveal a certain degree of uncertainty regarding the justification behind prescribing such a ceiling.

39. Thus, it becomes evident that the fixation of the 60% upper limit of disability for selection against the posts reserved for persons with disability in the subject advertisement was not preceded by any objective evaluation of the functional requirements of the post or by any expert consultation as contemplated under the statutory scheme of the RPwD Act, 2016. In the absence of any rational basis or intelligible criterion for prescribing such a

restriction, the said upper limit of disability was clearly unjust and invalid.

40. In view of the above discussion, we are of the considered view that denial of appointment to the appellant for the post of ADA, in spite of having succeeded in the competitive examination and the interview and having been recommended for appointment, was arbitrary, unjustified and in gross violation of the fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India and so also the mandate of the RPwD Act, 2016.

41. Accordingly, the impugned judgment dated 29th September, 2020 does not stand to scrutiny and is hereby set aside.

42. The respondent No.1-State of Himachal Pradesh shall forthwith, and not later than within a period of two weeks from today, issue the appointment letter to the appellant for the post of ADA in the subject recruitment process.

43. *Vide* order dated 8th November, 2021 passed by this Court, the vacancy stated to be existing was directed not to be filled up and to be kept reserved for the appellant, who shall be appointed against the said post. In the event that the designated vacant

post is unavailable for any technical reason, respondent No.1-State shall create a supernumerary post to accommodate the appellant.

44. The appointment of the appellant shall relate back to 19th September, 2019, and the appellant shall be entitled to all notional benefits from the said date.

45. Considering the fact that the appellant, despite standing in merit was unjustly denied appointment and compelled to pursue prolonged litigation, we deem it appropriate to impose costs of Rs. 5 lakhs on respondent No.1-State of Himachal Pradesh, which shall be paid to the appellant within a period of four weeks from today.

46. The appeal is allowed accordingly.

47. Pending application(s), if any, shall stand disposed of.

.....J.
(VIKRAM NATH)

.....J.
(SANDEEP MEHTA)

NEW DELHI;
MARCH 11, 2026.