

***IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH***

***CWP No.14221 of 2016 (O&M)
Date of decision:21.07.2016***

Mrs. Anju Bala

... Petitioner

Vs.

State of Haryana & others

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Tejpal Dhull, Advocate for the petitioner.

...

TEJINDER SINGH DHINDSA, J.

The petitioner, who was appointed as a JBT Teacher in the year 2011 has filed the instant petition seeking issuance of a writ of mandamus to grant her medical leave and for further directions to be granted benefit as envisaged under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter to be referred to as 'the 1995 Act').

Learned senior counsel would advert to a communication dated 02.06.2016 appended and placed on record at Annexure P-10 which is in the nature of a medical report. Perusal of the same reveals that a Board of Doctors of the Department of Neurology, PGIMS, Rohtak have examined the petitioner and have opined that she is suffering from Post Encephalitic sequelae with seizure (seizures controlled on treatment) with borderline intellectual function (IQ-74) with regressed behavior and impaired verbal comprehension. As per such report, it has also been opined that in the future significant improvement as regards the medical condition of the petitioner is less likely.

It has been argued that on the strength of such opinion rendered by a Board of Doctors, the petitioner's claim to be adjusted against a suitable post under Section 47 of the 1995 Act has to be considered and the respondent/authorities cannot sit over the matter. Further argued that in case the petitioner is not found suitable to be adjusted against any other post then she would be entitled to invalid post.

During the course of arguments, learned senior counsel has been confronted with a position in law wherein the benefits under the 1995 Act would be admissible only to “the persons with disability”. Section 2(t) defines “persons with disability” and reads in the following terms:

“Section 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.”

Counsel was called upon to produce the requisite certificate issued by the competent Medical Authority to demonstrate that the present petitioner is a “*person with disability*” so as to be covered and entitled for benefits as envisaged under the 1995 Act.

It was further put to the counsel that the communication dated 02.06.2016 at Annexure P-10 does not assess the disability of the petitioner in terms of percentage as would be the mandate of Section 2(t) of the 1995 Act.

Under such circumstances, the claim set up by the petitioner in the instant petition cannot be considered at this stage.

Faced with such a situation, counsel seeks liberty to withdraw the instant petition and prays for indulgence of this Court for issuance of directions that in the eventuality of a representation being preferred before

the competent Medical Authority for assessment of her disability in terms of percentage then necessary action thereupon be taken forthwith.

In the light of the medical condition that the petitioner is suffering from as would be apparent from the document dated 02.06.2016 at Annexure P-10, this Court is inclined to accept the limited prayer made by learned senior counsel during the course of hearing.

The present petition is, accordingly, disposed of as withdrawn.

It is clarified that dismissal of the present petition as withdrawn would not be construed as an expression of opinion of this Court as regards her claim under Section 47 of the 1995 Act.

It is further directed that in case the petitioner moves a representation before the Medical Superintendent, Pt. B.D. Sharma, PGIMS, Rohtak for assessment of her disability in terms of percentage, the same would be acted upon and the petitioner would then be examined by the competent Authority/Board of Doctors as deemed fit by the Medical Superintendent and the requisite certificate reflecting disability of the petitioner, if any, and in terms of the percentage would be issued to her.

Such exercise would be completed within a period of two weeks from the date of submission of a representation/claim of the petitioner to the Medical Superintendent, Pt. B.D. Sharma, PGIMS, Rohtak.

Disposed of.

21.07.2016

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**