

C.W.P No. 21126 of 2015

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 21126 of 2015

DATE OF DECISION:14.12.2016

Madan Lal

.....Petitioner

Versus

State of Punjab and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. PK Goklaney, Advocate
for the petitioner.

Mr. Rupam Aggarwal, DAG, Punjab.

DAYA CHAUDHARY, J.

C.M. No. 14512 of 2016

This application has been filed for placing on record replication along with Annexures P-13 to P-16.

Application is allowed and replication along with Annexures P-13 to P-16 is taken on record.

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The prayer in the present petition is for issuance of a writ in the nature of mandamus directing the respondents to grant benefit of transport (conveyance allowance) to the petitioner in view of instructions/letters issued by State Government from time to time.

Briefly the facts of the case as made out in the present petition are that the petitioner is a physically handicapped person to the tune of 86% and falls in the category of deaf and dumb. He is working as Centre Head

Teacher at G.P.S. Kaller Khera, Block Khuian Sarwar, District Fazilka. The petitioner is claiming conveyance allowance as admissible to blind and physically handicapped employees. On 9.1.2014, he moved a representation to the department through proper channel to grant the benefit of transport (conveyance allowance) as granted to other physically handicapped employees and in response thereto, a letter dated 30.1.2014 was issued by the District Education Officer (EE), Fazilka to the Director Public Instructions (EE), Punjab stating therein that a direction may be issued to release the physically handicapped allowance in favour of the petitioner. Thereafter in response to letter dated 30.1.2014, Director Public Instructions (EE), Punjab issued a letter dated 25.3.2014 to District Education Officer, Fazilka with a direction that the medical certificate in original be verified from the Civil Surgeon and thereafter the case be sent back. In view of direction issued by Director Public Instructions (EE), Punjab, the certificate of the petitioner was sent to the Civil Surgeon, Ferozepur for verification and the same was found to be genuine one. Thereafter the case of the petitioner was sent to higher authorities for consideration. A letter dated 12.8.2014 was issued by the office of Director Public Instruction (EE), Punjab to the Chief Secretary, Punjab Government seeking clarification as to whether the petitioner is entitled for the benefit or not. In response to said letter, the Punjab Government issued letter dated 30.10.2014 to the office of Director Public Instructions (EE), Punjab stating therein that the case of the petitioner be disposed of in the light of present rules and instructions. The petitioner again submitted a representation to the respondents on 18.2.2015 to grant him the benefit of transport (conveyance allowance) as granted to other physically handicapped employees but no

action was taken thereupon. When no action was taken by the respondents, the present petition has been filed for issuing directions to the respondents to grant benefit of transport (conveyance allowance) to the petitioner as granted to other physically handicapped employees.

Learned counsel for the petitioner contends that the petitioner is eligible and entitled for the release of transport (conveyance allowance) as granted to other physically handicapped employees but the same has not been granted to him rendering the action of the respondents violative of Articles 14 and 16 of the Constitution of India.

In response to notice of motion, reply on behalf of respondent-State has been filed and the same is on record.

Learned counsel for the respondent-State submits that the petitioner being deaf and dumb is not entitled for conveyance allowance as instructions dated 15.6.1982 relates to blind and orthopedically handicapped employees of State of Punjab and the claim of the petitioner is not covered under said instructions. Learned counsel further submits that there is neither any instruction nor any policy of the State Government under which the claim of the petitioner can be considered.

Heard the arguments advanced by learned counsel for the parties and have also gone through the documents available on file.

It is relevant to mention here that Hon'ble the Apex Court allowed the Writ Petition (Civil) No. 107 of 2011 titled as **Deaf Employees Welfare Association and another Vs. Union of India and others** on 12.12.2013 with a direction to the respondents to grant transport (conveyance allowance) to deaf and dumb persons also at par with blind and orthopedically handicapped employees of the Central and State

Governments and other establishments wherever such benefits have been extended to the blinds and orthopedically handicapped employees. As per direction issued by Hon'ble the Apex Court, the Government of India issued a letter dated 19.2.2014, vide which, directions of Hon'ble the Apex Court were ordered to be implemented and benefit of transport (conveyance allowance) was extended to deaf and dumb employees.

Similar issue was there before this Court in C.W.P. No. 7233 of 2010 titled as **Bhupinder Singh Vs. State of Punjab and others**, which was allowed vide order dated 25.5.2011 by holding that all the disabled persons be treated alike without any discrimination to achieve the objective of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as 'the Act'). Said judgment was challenged before Hon'ble the Apex Court but the same was dismissed on 16.9.2014.

The Disabilities Act does not create any barrier or discrimination among persons with disabilities. Sections 2(i) and (l) of the Disabilities Act defines the expressions 'disability' and 'hearing impairment' respectively, which read as follows:

“2(i). “disability” means-

- (i) blindness;
- (ii) low vision;
- (iii) leprosy-cured;
- (iv) hearing impairment;
- (v) locomotor disability;
- (vi) mental retardation;
- (vii) mental illness.

2(l). “Hearing impairment” means loss of sixty decibels or more in the better ear in the conversational range of frequencies.”

Section 2(o) defines “locomotor disability” which reads as follows:

“(o) “locomotor disability” means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy.”

Section 2(b) defines the expression “blindness” as follows:

“(b) “blindness” refers to a condition where a person suffers from any of the following conditions, namely:-

- (i) total absence of sight; or
- (ii) visual acuity not exceeding 6/60 or 20/200 (snellen) in the better eye with correcting lenses; or
- (iii) limitation of the field of vision subtending an angle of 20 degree or worse.”

Section 2(t) of the Act defines ‘person with disability’, which reads as follows:

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

Chapter V of the Act provides for the appropriate Governments and local authorities to provide children with disabilities free education, makes schemes and programmes for non-formal education etc. Chapter VII of the Act deals with the reservation of posts for the “persons with disabilities”. Section 32 of the Act states that the appropriate Government

shall identify posts in the establishments which can be reserved for the persons with disabilities and also periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the developments in technology. Section 33 of the Act deals with the 'Reservation of Posts'. Section 38 of the Act provides that the appropriate Government and local authorities shall, by notification, formulate schemes for ensuring employment of persons with disabilities. Section 39 provides for all government educational institutions to reserve seats for persons with disabilities.

Chapter VII deals with "Affirmative Action". Section 42 of the Act says that the appropriate Governments shall, by notification, make schemes to provide aids and appliances to persons with disabilities. Section 43 deals with the "Schemes for preferential allotment of land for certain purposes" and reads as follows:

"43. Schemes for preferential allotment of land for certain purposes.- The appropriate Governments and local authorities shall by notification frame schemes in favour of persons with disabilities, for the preferential allotment of land at concessional rates of –

- (a) house;
- (b) setting up business;
- (c) setting up of special recreation centres;
- (d) establishment of special schools;
- (e) establishment of research centres;
- (f) establishment of factories by entrepreneurs with disabilities."

Chapter VIII of the Disabilities Act deals with “Non-Discrimination”. Section 44 of the Act deals with the ‘Nondiscrimination in transport (conveyance allowance)’, which reads as follows:

“44. Non-discrimination in transport (conveyance allowance).- Establishments in the transport (conveyance allowance) sector shall, within the limits of their economic capacity and development for the benefit of persons with disabilities, take special measures to –

- (a) adapt rail compartments, buses, vessels and aircrafts in such a way as to permit easy access to such persons;
- (b) adapt toilets in rail compartments, vessels, aircrafts and waiting rooms in such a way as to permit the wheel chair users to use them conveniently.”

Sections 45, 46 and 47 of the Disabilities Act are also relevant, which reads as follows:

“45. Non-discrimination on the road.- The appropriate Governments and the local authorities shall, within the limits of their economic capacity and development, provide for –

- (a) installation of auditory signals at red lights in the public roads for the benefit of persons with visually handicap;
- (b) causing curb cuts and slopes to be made in pavements for an easy access of wheel chair users;
- (c) engraving on the surface of the zebra crossing for the blind or for persons with low vision;

- (d) engraving on the edge of railway platforms for the blinds or for persons with low vision;
- (e) devising appropriate symbols of disability;
- (f) warning signals at appropriate places.

46. Non-discrimination in the built environment.- The appropriate Governments and the local authorities shall, within the limits of their economic capacity and development, provide for-

- (a) ramps in public buildings;
- (b) adaptation of toilets for wheel chair users;
- (c) Braille symbols and auditory signals in elevators or lifts;
- (d) Ramps in hospitals, primary health centres and other medical care and rehabilitation institutions.

47. Non-discrimination in government employment.—(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.”

Chapter XIII deals with “Social Security”. Section 68 deals with the ‘Unemployment allowance’, which reads as under:

“68. Unemployment allowance.- The appropriate Governments shall within the limits of their economic capacity and development shall by notification frame a scheme for payment of an unemployment allowance to persons with disabilities registered with the Special Employment Exchange for more than two years and who could not be placed in any gainful occupation.”

It was held in the said judgment that when a person is having any of the disabilities as mentioned in Section 2 (i), which is certified by the Medical Doctor, he is entitled to the benefits of all the schemes and benefits provided by the Government and there cannot be any further discrimination among the persons with varied or different types of disabilities. There cannot be further discrimination between a person with disability of 'blindness and a person with disability of 'hearing impairment'. Such discrimination has not been envisaged under the Act. All the categories of persons mentioned in Section 2 (i) have their own disadvantages, peculiar to themselves. A 'visually impaired person' cannot be equated with 'hearing impaired person' and vice versa. Both have different type and mode of disability. For a blind person, visibility may be poor but would be able to

hear and understand what is going on in and around him. In case of deaf and dumb person he/she could see but would not be in a position to talk and hear as to what is going around him/her. The nature of disability of those categories of persons may not be same but the disabilities they suffer are to be addressed with care and compassion. The nature of disabilities may be different from person to person but all such persons are categorized as a group of “persons with disabilities”. It has been mentioned in **Deaf Employees Welfare Association's case (supra)** that the Government of Kerala and Andhra Pradesh have extended benefit of travel (conveyance allowance) to deaf and dumb persons at par with physically handicapped employees. Moreover, the human dignity of a person, who is deaf and dumb is harmed when he/she is being marginalised, ignored or devalued on the ground that the disability which he/she suffers is less than a visually impaired person, which in my view, clearly violates Article 21 of the Constitution of India. There is no rationale in not granting same benefit of travel (conveyance allowance) to one category and not to other category.

In the present case also, there is no policy of the State Government for grant of conveyance allowance to deaf and dumb employees, whereas, the same is being given to other physically handicapped persons.

Under the facts and circumstances of the same, the present petition is allowed and respondent-State is directed to frame a policy for grant of transport (conveyance allowance) to deaf and dumb persons also at par with blinds and orthopedically handicapped employees of the State Government and other establishment as these benefits have been extended to blinds and orthopedically handicapped employees. The necessary

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exercise be done within a period of four months from the date of receipt of copy of the order.

December 14, 2016
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes