

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

C.W.P. No.19074 of 2017 (O&M)
DATE OF DECISION : 13.9.2018

Harneet Kaur

PETITIONER

VERSUS

Baba Farid University of Health Science, BFUHS, Faridkot

... RESPONDENT

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present:- Shri Inderjit Sharma, Advocate for the petitioner.

Shri Nitin Kaushal, Advocate for the respondent.

MAHESH GROVER, J.

This writ petition has been filed with a prayer for issuance of a writ in the nature of mandamus directing the respondent/University to consider the name of the petitioner in the second round of online counseling for the seat of MBBS/BDS Courses in the reserved category of Orthopedically Handicapped quota for the session 2017-18.

The petitioner qualified the NEET examination for the year 2017-18 and pressed her claim for admission to MBBS/BDS seat by claiming benefit in the physically handicapped quota of her disability which was assessed as 40% to 50%.

The respondent/University rejected the petitioner's candidature on the basis of the the Medical Board's report which on 13.7.2015 opined that she was

suffering with only 9% disability which is 'non-progressive' in nature.

The petitioner, on the other hand, relied upon the Medical Certificate dated 27.6.2017 issued by Vardhman Mahavir Medical College and Safdarjang Hospital, New Delhi, assessing her disability of lower limb as 40%. She also relied on a certificate issued by the Civil Surgeon, Gurdaspur dated 4.7.2017 and a certificate dated 1.9.2017 issued by the Medical Board of Guru Nanak Dev Hospital, Amritsar which also determined her disability to be at 40% and permanent in nature.

In view of the conflicting opinions of the Medical Board including the one of the College itself, the Writ Court referred the petitioner to be examined by the Medical Board of the PGIMER, Chandigarh which submitted its report on 22.9.2017 to record the petitioner's disability at 40%, but not permanent in nature. The Board also suggested that there is a separate Board available in the PGIMER to evaluate the nature of disability. This Court again vide order dated 14.9.2017 referred the petitioner to be examined by the Disability Board constituted by the PGIMER, Chandigarh and as per the opinion of the Disability Board, the percentage of disability of the petitioner was assessed at 40% and nature of disability as temporary.

Noticing this firm opinion of the Board, this Court opined that the petitioner does not qualify for admission against a seat reserved for physically handicapped quota. While doing so, the Court finally concluded as below :-

“5. In view of the fact that the Disability Board of the PGIMER too has opined that the petitioner is suffering with 40% disability of the body which is temporary in nature, we are satisfied that the petitioner does not qualify for admission against a seat reserved for Physically Handicapped candidates. Suffice to observe that the above stated reservation emanates out of Section 26 read with Section 39 of the Persons with

Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act, 1995. The benefit of such reservation has to be restricted to those candidates alone who suffer with permanent disability which is incurable. Those who are suffering with curable temporary disability constitute an altogether different class and cannot seek parity to those who are suffering with permanent disability. If the benefit of reservation is granted to the candidate suffering with temporary disability, in that case such benefit has to be extended to those candidates also who might suffer temporary disability due to accidental fall etc. As the nature of disability suffered by the petitioner is temporary in nature, the benefit of reservation cannot be extended to her.

6. No case to interfere with the impugned order is made out.

7. Dismissed.”

The matter was then agitated before the Hon'ble Supreme Court in S.L.P. where the petition was withdrawn with liberty to file a review petition. The present Review Petition was then filed and the writ Court while accepting the prayer for review, restored the writ to its original number and this is how the matter is before us.

The only ground on which the review petition has been filed, is that Section 58 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act, 1995 (hereinafter referred to as the 1995 Act) does not in any way prescribe a permanent disability. For the purpose of reference, Section 58 of the Act of 2016 is extracted here below :-

“Procedure for Certification.

58. (1) Any person with specified disability, may apply, in such manner as may be prescribed by the Central Government, to a certifying authority having jurisdiction, for issuing of a certificate of disability.

(2) On receipt of an application under sub-section (1), the certifying authority shall assess the disability of the concerned person in accordance with the relevant guidelines notified under section 56, and shall, after such assessment, as the case may be,-

- (a) issue a certificate of disability to such person, in such form as may be prescribed by the Central Government ;
- (b) inform him in writing that he has no specified disability.

(3) The certificate of disability issued under this section shall be valid across the country.”

It is thus contended that once the certifying authority had issued the necessary certificate, it had to be termed valid across the country and the only way of disputing it was by virtue of an appeal under Section 59 of the 1995 Act. On the strength of it, it is argued that the College could not have denied admission by relying on any other material once the certificate issued from the authorised certifying authority was issued and relied upon by the petitioner. It is further argued that the College could not have subjected the petitioner to any further medical examination in view of the disability certificate issued by the certifying authority.

The respondents, in turn, defend their action and contend that the

prospectus issued by the College clearly provided 3% seats to be allocated to the physically challenged candidates, but preference was to be accorded under this category only if a person had a permanent disability. In support of their plea they refer to the rules framed under the Act where in the appended Forms relating to the certificate of disability, permanent disability has clearly been mentioned while giving out the list of impairments. For the purpose of reference, the relevant extract from the Form is given below :-

(A) he/she is a case of Multiple Disability. His/her extent of permanent physical impairment/disability has been evaluated as per guidelines (..... number and date of issue of the guidelines to be specified) for the disabilities ticked below, and is shown against the relevant disability in the table below :

Sr.No.	Disability	Affected part of body	Diagnosis	Permanent physical impairment/ mental disability (in%).
1.	Locomotor disability	@		
2.	Muscular Dystrophy			
3.	Leprosy cured			
4.	Dwarfism			
5.	Cerebral Palsy			
6.	Acid attack victim			
7.	Low vision	#		
8.	Blindness	#		
9.	Deaf	£		
10.	Hard of hearing	£		
11.	Speech and Language disability.			
12.	Intellectual Disability			
13.	Specific Learning Disability.			
14.	Autism Spectrum Disorder			
15.	Mental illness			
16.	Chronic Neurological Conditions			

17. Multiple sclerosis
18. Parkinson's disease
19. Hemophilia
20. Thalassemia
21. Sickle Cell disease

(B) In the light of the above, his/her overall permanent physical impairment as per guidelines (..... number and date of issue of the guidelines to be specified), is as follows :-

In figures : percent.”

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We have heard the learned counsel for the parties.

In force now is the Act of 2016 (hereinafer known as the Act) and Rights of Persons with Disabilities Rules, 2017.

The persons with disability have been defined in Section 2((r),(s),(t) of the Rights of Persons with Disabilities Act, 2016. These definitions are extracted here below :-

"2.

(r) “person with benchmark disability” means a person with not less than forty percent 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 ;

(s) “person with disability” means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and

effective participation in society equally with others ;

- (t) “person with disability having high support needs” means a person with benchmark disability certified under clause (a) of sub-section (2) of section 58 who needs high support ;”

The rules were framed vide notification dated 15.6.2017 which go by the nomenclature of Rights of Persons with Disability Rules, 2017. The counsel for the petitioner contends that the word 'permanent disability' is not defined anywhere. Consequently, the denial for admission to the petitioner by treating his disability to be of temporary nature, would be erroneous, as no such distinction can be made once a person has been certified to be having a disability. It is his specific case that the Rules and the Act are silent in this regard.

Rule 18 talks of issuance of a certificate of disability. The relevant portion of this rule is extracted here below :-

“18. **Issue of certificate of disability.-**

... ..

(3) The medical authority shall, after due examination - -

- (i) issue a permanent certificate of disability in cases where there are no chances of variation of disability over time in the degree of disability ;
- or
- (ii) issue a certificate of disability indicating the period of validity, in cases where there is any chance of variation over time in the degree of disability.”

This is the limited argument raised before us in this regard.

When we examine the provisions of the 2016 Act and Rule 18 of

2017 Rules rules defining a person with disability, it categorises persons afflicted

with disability under three separate headings.

(1) Clause (i) talks of a person with benchmark disability to mean a person with not less than forty percent of a specified disability if the specified disability has not been defined in measurable terms and also includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority.

(2) Clause (ii) talks of persons with disability to mean a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others.

(3) Lastly, Clause (iii) talks of a person with disability having high support needs means a person with benchmark disability certified under clause (a) of sub-section (2) of section 58 who needs high support.

Similarly, Section 58 of the 1995 Act talks of a specified disability.

Evidently, the object of both the Acts is to enable effective participation of a person with disability in society equally with others not only by providing him a preference in matters of admission, employment, but also to enable him to more avenues in employment so that he can lead a dignified life independent of societal support driven by sympathy.

The classification as noticed above, clearly centers around a permanent disability, the weight of which an individual has to carry through his entire life. It does not talk of disability which is a temporary affliction and liable to dissipate or be reduced either with the passage of time or with appropriate treatment. The reason is too apparent as such a person with temporary disability carries neither weight, nor stigma which a person with permanent disability carries. When the provision of the Act is read with the afore-extracted Rule 18(3)(i) & (ii), it becomes abundantly clear that certificate of disability means a certificate of permanent disability. For the very same reason 1995 Act also has to be held to be referring to a permanent disability.

Learned counsel for the petitioner has made much about the afore-extracted Rule 18(3)(i), (ii) to contend that the word 'permanent disability' does not find mention therein.

We are of the opinion that in view of the categoric provision of the Act, three categories of persons with disability have been set out which suggest a long term disability. There is no escape from such a conclusion of the Act with the Rules too prescribing a preferential opening for those with permanent disability alone. The language of Rule 18(3)(i) is defective and we would read it to mean that the medical authority shall after due examination, issue a certificate of permanent disability. The word permanent disability occurring in clause (i) is to qualify the disability and not the certificate. It is for this reason that in continuation it notes that “where there are no chances of variation or disability over time in the degree of disability”. Similarly, clause (ii) states issuance of a certificate of disability indicating the period of validity where there is any chance of variation over time in degree of the disability. Clause (ii), therefore, also talks of a permanent disability, but with chances of variation and reduction in degree.

The certificate issued by the PGIMER authorities indicates percentage of disability as forty percent of the body with nature of disability as temporary.

In this view of the matter, the respondent's stand cannot be faulted with.

The petition in this regard has, therefore, to be rejected.

We are, however, confronted with a situation where the petitioner rightly or wrongly did get admission in the MBBS Course and has by now completed one year. In so far as the second year is concerned, the petitioner has filed an application with a certificate from the College that she has attended the lectures, which is strongly refuted by the respondent who state that after the

petition was dismissed, the admission of the petitioner was cancelled and it is quite possible that she might have attended a few classes, but even if this accepted, she clearly falls short of the requisite attendance, which would deprive her of her participation in the second academic year.

It is also candidly conceded by the respondent that the seat has remained unutilised.

After giving our thoughtful consideration to this aspect, we are of the opinion that it would be a travesty of justice to deprive the petitioner of her chance to complete her course. Purely on equitable ground and without setting a precedent, but simply with a consideration that the petitioner has studied for one year and partially attended the classes for the second year, and particularly when the seat has remained unutilised, we would deem it appropriate to direct the College to permit her to complete the course. Needless to say that the petitioner would have to satisfy the requirements of the College and acquire eligibility of participation in the remaining course. Possibly the petitioner might loose a year, if she has to complete the requisite attendance, but this is a situation that cannot be helped. If the petitioner is so desirous of pursuing her course, she shall be permitted to do so against her own seat which otherwise would remain unutilised by joining classes for the second year along with the current batch undergoing the second year. We make it clear that this shall not be treated as a precedent and this is in an extraordinary situation that we have passed this order.

Ordered as above.

(MAHESH GROVER)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

September 13, 2018
GD

Whether speaking/reasoned	Yes
Whether reportable	Yes/No

