

CWP-18435-2020(O&M)

Date of decision : January 25, 2021

Ram Pal

.....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Parminder Singh, Advocate for the petitioner.

Mr. Ashish Yadav, Addl. AG, Haryana.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

The petitioner is aggrieved of benefit of two years extension in service not being afforded to him. Petitioner joined as Additional District Attorney on 06.05.1999. He was promoted to the post of Deputy District Attorney on 12.09.2016 and ultimately superannuated on 31.10.2020. Petitioner, it is stated, suffers from vision problem, osteoarthritis, hypothyroid and cervical spondylosis. Learned counsel submits that petitioner sought extension in service as per conditions of Persons with Disabilities (Equal Opportunities Protection of Right and Full Participation) Act, 1995 (for short – ‘Disability Act 1995’). Disability certificate issued by the Medical Board constituted by the Chief Medical Officer, Kurukshetra is attached as Annexure P-8. It is stated that as per the Disabilities Act 1995, persons with disabilities means persons suffering from not less than 40% of any disability as certified by the medical authorities. It is averred that petitioner is not being given extension in service in an absolutely illegal and arbitrary manner despite his clear cut entitlement thereto.

Learned counsel for the petitioner vehemently argues that petitioner admittedly suffers from 12% locomotor disability and 30% visual disability, therefore, he clearly suffers disability to the extent of 42%. As per disability certificate dated 26.10.2020, it is wrongly mentioned that the petitioner is suffering from 38% disability, despite noting locomotor and visual disability of the petitioner to the extent of 12% and 30% respectively. Learned counsel for the petitioner has also referred to some mathematical calculations purportedly downloaded from the internet to submit that method of calculation and rounding off of numbers would clearly suggest that disability of the petitioner has been wrongly assessed by the Medical Board as per certificate (Annexure P8). It is, thus, prayed that this writ petition be allowed.

It is relevant to note at this stage that Disability Act, 1995 stands repealed as per Section 102 of The Right of Persons with Disabilities Act, 2016. However, in the interest of justice, matter has been examined to verify whether the petitioner is entitled to any relief. It is the case of the petitioner himself that a person suffering from disability not less than 40% is entitled to claims and benefits provided by the Government and cannot be discriminated by providing for a benchmark of disability higher than 40%. It is to be noted that there is no reliance on any particular scheme floated by the respondent – State neither has any reference been made thereto, wherein such a benchmark has been prescribed. Nevertheless it is considered expedient to examine the averment on behalf of the petitioner that his disability should be assessed as 42% and not 38%.

Though notice of motion has not been issued, learned counsel for the State was asked to produce the guidelines according to which disability is calculated and which are specifically referred to in the disability certificate dated 26.10.2020.

Learned counsel for the State has circulated a copy of the guidelines dated 08.07.2015 issued by the Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India which are followed for assessing disability. Method of calculation of disability in the case of a person suffering from multiple disabilities is mentioned in clause 40.2. It is specifically mentioned that in order to arrive at total percentage of multiple disabilities, the formula to be used is;

“ $a+b(90-a)/90$, ‘a’ being the higher score and ‘b’ the lower score.”

It is further clarified that maximum total percentage of multiple disabilities shall not exceed 100%. Reliance by learned counsel for the petitioner on the so-called method of evaluation and rounding off numbers attached as Annexure P9 is clearly misconceived. First and foremost, learned counsel for the petitioner is unable to point out the authority, if at all, which has issued the said guidelines. It is merely some literature downloaded from the internet without a modicum of authenticity, which would have no application in the present case, keeping in view the fact that there are specific guidelines for evaluation of disabilities as in the present case. Unfortunately, in the present case disability of the petitioner calculated as per the specific guidelines laid down for assessment is 38%. Extension of service, needless to say, is not a vested right and has to be afforded within the parameters of rules and provisions of law. Learned counsel for the petitioner is unable to point out any provision, rule or regulation at this stage for granting the relief as sought in the writ petition.

No other argument has been addressed.

Present writ petition is dismissed with no order as to costs. Needless to say, in case the petitioner is entitled to the benefit under the The Right of

Persons with Disabilities Act, 2016 or any other scheme/provision/regulation of the respondent- State not brought before this Court, he is at liberty to approach the respondent - authorities for grant thereof in accordance with law.

January 25, 2021
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No