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

CWP-1634-2021

Date of decision : 26.04.2023

Ranjeet Singh

..... Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Sherry K. Singla, Advocate
for the petitioner.

Mr. Inderpreet Singh Kang, AAG, Punjab.

Mr. Naresh Gopal Sharma, Advocate for
Mr. Arshdeep Singh, Advocate
for respondent No.3.

PANKAJ JAIN, J. (Oral)

By way of present writ petition filed under Articles 226/227 of the Constitution of India, the petitioner prays for issuance of a writ in the nature of certiorari seeking quashing of the impugned order dated 24.12.2020/05.01.2021 (Annexure P-8) issued by respondent No.2 claiming that the right of the petitioner for extension of benefit of enhancement of retirement age from 58 years to 60 years has been wrongly rejected. Further prays for issuance of a writ in the nature of mandamus directing the respondents to grant the extension of benefit of circular dated 19.11.2014 (Annexure P-3).

2. Counsel for the petitioner has drawn attention of this Court to the definition clause enumerated in the Act especially the provision as contained in Section 2(r), 2(s) and 2(t) to submit that under 2016 Act,

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disability as was under 1995 Act and thus claims that the petitioner would be entitled for the extension in retirement age from 58 years to 60 years in terms of circular dated 19.11.2015 (Annexure P-3) and the insistence by the respondents on the benchmark of 40% is illegal and thus unsustainable.

3. In order to hammer forth his contention, reliance has been placed upon judgment rendered by Apex Court in '**Avni Prakash vs. National Testing Agency (NTA) & others**' reported as **2023(2) SCC 286**.

4. I have heard counsel for the parties and have gone through the records of the case.

5. In order to appreciate the arguments raised by counsel for the petitioner, it will be apt to peruse the relevant legal framework as enacted under 2016 Act. Relevant provisions read as under:-

“2(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;

(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.

CHAPTER VI

SPECIAL PROVISIONS FOR PERSONS WITH BENCHMARK DISABILITIES

31. Free education for children with benchmark

disabilities-(1) Notwithstanding anything contained in the Rights of Children to Free and Compulsory Education Act, 2009, every child with benchmark disability between the age of six to eighteen years shall have the right to free education in a neighbourhood school, or in a special school, of his choice.

(2) The appropriate Government and local authorities shall ensure that every child with benchmark disability has access to free education in an appropriate environment till he attains the age of eighteen years.

32. Reservation in higher educational institutions.-(1)

All Government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five per cent seats for persons with benchmark disabilities;

(2) The persons with benchmark disabilities shall be given an upper age relaxation of five years for admission in institutions of higher education.

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;

(ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and

(iii) undertake periodic review of the identified posts at an interval not exceeding three years.

34. Reservation.-(1) Every appropriate Government shall appoint in every Government establishment, not less than four per cent. of the

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total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:—

(a) blindness and low vision;

(b) deaf and hard of hearing;

(c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;

(d) autism, intellectual disability, specific learning disability and mental illness;

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be

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carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.

35. Incentives to employers in private sector.—

The appropriate Government and the local authorities shall, within the limit of their economic capacity and development, provide incentives to employer in private sector to ensure that at least five per cent. of their work force is composed of persons with benchmark disability.

36. Special employment exchange.—The appropriate Government may, by notification, require that from such date, the employer in every establishment shall furnish such information or return as may be prescribed by the Central Government in relation to vacancies appointed for persons with benchmark disability that have occurred or are about to occur in that establishment to such special employment exchange as may be notified by the Central Government and the

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establishment shall thereupon comply with such requisition.

37. Special schemes and development programmes.—The appropriate Government and the local authorities shall, by notification, make schemes in favour of persons with benchmark disabilities, to provide,—

(a) five per cent. reservation in allotment of agricultural land and housing in all relevant schemes and development programmes, with appropriate priority to women with benchmark disabilities;

(b) five per cent. reservation in all poverty alleviation and various developmental schemes with

priority to women with benchmark disabilities;

(c) five per cent. reservation in allotment of land on concessional rate, where such land is to be used for the purpose of promoting housing, shelter, setting up of occupation, business, enterprise, recreation centres and production centres.”

6. The 2016 Act has been enacted recognizing international obligations of the country and to provide a dignified life and to weed out discrimination against specially abled persons. In recognition of such right, various duties have been casted upon employer relating to various steps to be taken in education, skill development & employment, social security, health, rehabilitation and recreation. The Act also provides for special provisions for ‘persons with benchmark disabilities’ and for ‘persons with disabilities with high support needs’.

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7. Chapter VI of the 1995 Act dealt with employment and provided for identification of posts which can be reserved for persons with disabilities, reservation of posts, special employment exchange, vacancies not filled up to be carried forward and other duties casted upon the employers for ensuring employment of 'persons with disabilities'. Section 2(t) of 1995 Act defined 'person with disability' as under:-

“person with disability” means a person suffering from not less than forty per cent of any disability as certified by a medical authority;”

8. Corresponding to the aforesaid provisions made in 1995 Act. Chapter VI of 2016 Act deals with special provisions for 'persons with benchmark disabilities'. Meaning thereby that special provisions during the course of employment have been provided for 'persons with benchmark disabilities' as defined under Section 2(r).

9. State of Punjab in recognition of such right under 1995 Act issued circular dated 16.03.1995, wherein extension in age of superannuation was granted to blind persons. However, the same was challenged on the ground of discrimination and this Court in '*Bhupinder Singh vs. State of Punjab*' reported as **2011(4) SCT 55** held that all the disabled persons were entitled. In terms of the aforesaid judgment, circular dated 16.11.2014 was issued.

10. Mr. Singla is right in contending that once Act of 1995 stands substituted by 2016 Act, the definition as enumerated under 2016 Act would be applicable and not that as enumerated under 1995 Act. However, under 2017 Act, persons with disability have been dealt under

three different categories:-

- A. Person with disability
- B. Person with benchmark disability.
- C. Person with disability having high support needs.

11. There are certain rights recognized under the 2016 Act which are available to all the persons with disability. Further, certain rights are available only to ‘person with benchmark disability’ and furthermore certain rights have been reserved only for ‘person disability having high support needs’. Chapter VI deals with ‘persons with benchmark disability’.

12. Thus, any right recognized by the State in terms of Chapter VI will be available only to the person with benchmark disability and not to a broader class of ‘person with disability’.

13. In view of above, since the petitioner admittedly does not fall within the definition of ‘persons with benchmark disability’, the circular dated 19.11.2014 (P-3) would not be applicable to enure benefit to him merely because he is a ‘person with disability’.

14. Consequently, the present writ petition is dismissed.

(PANKAJ JAIN)
JUDGE

26.04.2023
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes