

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP-25883-2022

Date of Decision : 24.01.2023

Karanvir Gandotra

..... Petitioner

Versus

U.T., Chandigarh and others

..... Respondents

**CORAM : HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH  
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

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Present : Mr. Divya Sarup, Advocate, Legal Aid Counsel  
for the petitioner.

Mr. Aman Bahri, Advocate with  
Mr. Mayank Sharma, Advocate  
for the respondents-UT, Chandigarh.

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**VIKRAM AGGARWAL, J**

1. The petitioner seeks a writ of mandamus directing the respondents to allot a booth to him under the provisions of Licencing of Bare Booth Sites/Built up Booths to the Persons with Disabilities Scheme, 2009 (Annexure P-2) (hereinafter referred to as 'the 2009 Scheme'). He further seeks the setting aside of Communication dated 19.09.2022 (Annexure P-9), passed by respondent No.3 by way of which his disability was taken to be 70% which as per the petitioner should have been taken as 90% in view of the disability certificate (Annexure P-1). He also seeks a direction to the respondents to reserve one booth for him out of the 29 booths which are yet

to be allotted.

2. The facts, as emanating from the writ petition are that the petitioner, who is a resident of Chandigarh for the last more than 25 years suffers from 90% disability as per the certificate dated 18.03.2016 (Annexure P-1), issued by the Post Graduate Institute of Medical Education & Research, Chandigarh (hereinafter referred to as 'PGIMER'). The Chandigarh Administration introduced the 2009 Scheme for the allotment of booths to unemployed disabled persons. Certain eligibility conditions were laid down which the petitioner fulfilled. Vide advertisement dated 31.08.2009 (Annexure P-3), the respondents invited applications for allotment of 113 built up booths in Sectors 38 and 40, Chandigarh. The petitioner applied for the same. At that time, his disability was 70% which was re-assessed by a Medical Board of PGIMER as 90% on 18.03.2016 and a certificate Annexure P-1 was issued. The petitioner submitted this certificate to the respondents and then moved representations on 04.05.2016 and 01.02.2019 (Annexures P-5 and P-6 respectively) requesting for allotment of a booth to him. Vide Communication dated 12.02.2019 (Annexure P-7), he was informed that his representation Annexure P-6 had been forwarded to the concerned authorities for necessary action. Since no booth was allotted to the petitioner, he submitted another representation dated 30.08.2022 (Annexure P-8) with the same request but still no action was taken. Vide communication dated 19.09.2022 (Annexure P-9), respondent No.3 stated that disability of the petitioner was 70%.

3. The case of the petitioner is that as per the 2009 Scheme, first preference was to be given to an applicant whose disability was more than

80%, thereafter to those whose disability was between 60% and 80% and so on. The petitioner claims that since his disability is 90%, his case should have been taken up on priority basis but the petitioner was being made to run from pillar to post for the last more than 10 years without allotment of a booth to him.

4. Contesting respondent No.3 filed a short reply taking the stand that the disability on the date of filing of application was to be considered which was termed as an 'Appointed Day' under the 2009 Scheme. Since the petitioner was having disability of 75% at the time of moving of the application i.e. on the 'Appointed Day', he would fall in the second category i.e. applicants having disability of 60% to 80%. It has been averred that the subsequent increase in disability after the 'Appointed Day' cannot be taken into consideration as there may be many other similarly situated persons whose disability may have increased after the 'Appointed Day' and considering all such applicants would upset the purpose of the scheme. It has been averred that 84 booths have already been allotted to eligible persons having disability between 80% and 100% and now the Administration is in the process of allotting booths to those having disability between 60% and 79% after receiving the exact status of availability of booths. The details regarding availability and allotments of booths till date have also been furnished in the reply.

5. We have heard learned counsel for the parties.

6. Learned counsel for the petitioner has submitted that the disability subsequently assessed by PGIMER should be taken into consideration as no allotment had been made to the petitioner till the time his

disability was assessed at 90%. It has been argued that even otherwise the respondents are guilty of having unnecessarily delayed the matter as the scheme had been floated in the year 2009 i.e. almost 14 years ago but still booths had been allotted only to those having disability between 80% and 100%. It has been contended that the respondents have made a mockery of the scheme by not making timely allotments to those persons who require timely assistance. It has been submitted that the petitioner deserves to be allotted a booth immediately taking his disability to be 90%.

7. On the other hand, learned counsel representing respondent No.3 has argued that the process for allotment of booths to those having disability between 60% and 80% is being started very soon and the petitioner will have a chance of allotment under the said allotments depending upon the number of available booths and number of applicants.

8. The disability of the petitioner, which was initially 70% at the time of submission of application in the year 2010, was assessed at 90% by PGIMER, Chandigarh vide certificate dated 18.03.2016 (Annexure P-1) as the petitioner had again met with an accident. The 2009 Scheme was notified by the Chandigarh Administration for the preferential allotment of booths to persons with disability in the Union Territory of Chandigarh. Section 3 (ii) of the 2009 Scheme defines "Appointed Day" as under:-

*"Appointed Day" means the day on which notice inviting applications for allocation of bare booth site/built up booth under the scheme is published in the newspaper;*

Section 4 of the 2009 Scheme deals with eligibility and lays down as under:-

***"4. Eligibility, - An unemployed person with disability of***

*not less than 40% shall be eligible for grant of license under this scheme if:—*

- (i) the applicant is a bona fide resident of Chandigarh and has continuously resided in Chandigarh for the last five years as on the appointed day for which he/she shall have to furnish sufficient proof;*
- (ii) the applicant has attained the age of 18 years on the appointed day for which he/she shall have to furnish sufficient proof;*
- (iii) the applicant does not own any commercial site/building in his/her name or in the name of his/her spouse or any dependent family member anywhere in the India;*
- (iv) the applicant possess a certificate with regard to his disability as defined in Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995 duly issued by the Competent Authority of Chandigarh Administration;*
- (v) annual family income of the applicant does not exceed rupees one lakh for which he/she shall have to furnish an affidavit duly attested by the Executive Magistrate, Chandigarh to this effect.*

Section 5 of the 2009 Scheme deals with criteria for allotment which lays down as under:-

*5. Criteria for Allotment,—Depending on the availability of the bare booth sites/built up booth, first preference shall be given to the applicants with disability of 80% and above followed by those with disability between 60% and 80% and thereafter, those with disability between 40% and 60% shall be considered.”*

9. A perusal of Section 5 of the 2009 Scheme shows that the first preference in allotment of bare booth sites/built up booth would be given to applicants with disability of 80% and above followed by those with disability between 60% and 80% and thereafter the persons with disability between 40% and 60% would be considered. Section 3 (ii) of the 2009 Scheme states that the 'Appointed Day' means the day on which the notice inviting applications for allocation of the bare booth sites/built up booth is to be published in newspaper.

10. Admittedly, there is no dispute with regard to the eligibility of the petitioner or his having applied for the allotment of a booth in the year 2010. However, on the 'appointed day', the disability of the petitioner was 70%. (Though the petitioner has chosen not to append the said disability certificate but the same is not in dispute.) His disability was reassessed at 90% in the year 2016 when his application was pending with the respondents. The stand of the respondents that since his disability had been reassessed subsequently, the same could not be considered, appears to be justified because in the matters of allotment/admissions etc, a cut off date is to be prescribed. Subsequent change in circumstances or subsequent events cannot be taken note of as there would be then no end to such revisions in the status/category/eligibility/entitlement etc. of applicants. Still further, as per the respondents, 84 booths have already been allotted to the applicants having disability of 80% to 100% and now the process to allot booths to the applicants having disability between 60% and 80% is going to start shortly. The petitioner will have a fair chance in the said allotments subject to the number of booths, number of applicants etc. which, of course, shall be done

as per law. We do not, therefore, find any reason to give a direction to consider the petitioner in the category of applicants having disability of above 80%.

11. For the reasons, aforementioned, we do not find any merit in the present writ petition and the same is hereby dismissed. However, before parting with the judgment, we would wish to express our dismay that it has taken the respondents almost 14 years for allotting booths/booth sites to persons with disabilities under the 2009 Scheme which was enacted for the betterment of such persons. We hope that the Chandigarh Administration will wake up from its slumber and speed up the process of allotment of booths/booth sites to all the eligible applicants as per the provisions of the 2009 Scheme and complete the exercise expeditiously.

**(AUGUSTINE GEORGE MASIH)**  
**JUDGE**

**(VIKRAM AGGARWAL)**  
**JUDGE**

**24.01.2023**  
mamta

Whether speaking/reasoned  
Whether Reportable

Yes/No  
Yes/No