

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

111

CWP-9512-2024

Date of decision: 26.04.2024

RAM CHANDER

.....Petitioner

VERSUS

UNION OF INDIA AND ANOTHER

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Vikas Saini, Advocate
for the petitioner.

(Through Video Conferencing)

Mr. Harmanjot Singh, Advocate
for the respondent-Union of India.

VINOD S. BHARDWAJ, J. (Oral)

1. The petitioner has sought direction to the respondents to decide representation dated 03.07.2022 and 16.09.2023 regarding recognition of epilepsy as a “specified disability” under Section 2 (zc) read with schedule of the Rights of Persons with Disabilities Act, 2016,

2. The petitioner, who is Clerk in the sub -Treasury, Narwana and suffering from Epilepsy since 2004 submitted the above representation for recognition of Epilepsy as disability under the Act of 2016 and aggrieved of lack of decision thereof, the present writ petition has been preferred. In support of his contentions, learned counsel for the petitioner has made a reference to the notification dated 04.01.2018 and 21.12.2016 issued by the respondent No.1, however, when the accompanying Annexures P-5 and P-6 are examined, the said

notification does not make a reference to Epilepsy while recognizing other type of disability. Learned Counsel for the petitioner contended that the patient suffering from Epilepsy would fall in the definition of a person who suffers from mental illness and/or in the definition of intellectual disability and specific learning disability. A generalized argument was raised that Epilepsy is a disability and obstructs a person from discharging his daily activities, however, such a submission is too vague to be accepted as such an argument can be raised with respect to any other sort of ailment or disease. The aspect of intellectual disability or mental illness cannot be attributed to a person who suffers from a disease where he may be potentially suffering from seizure. Epilepsy cannot be classified as a disease or specific learning disability since the patient is a fully grown and mentally able person. Further, it cannot also be termed as mental illness since a mental illness necessarily requires a serious disorder in personal behaviour or thinking. The same relates to various clinical disorders. Epilepsy cannot thus be equated to a mental condition since the mental ability of the person is not parolinearly compromised but is only a temporary loss of control over certain muscular movements at the time of seizure.

3. The object of giving such benefit under the Rights of Persons with Disabilities Act, 2016 is to provide protection, support and care of the State where an irreversible process due to physical disability or mental incapacity has taken place leading to an element of constant dependency.

4. The classification of the disabilities is an act of the experts and calls for a legislative action. The definition of intellectual disability

has also been provided for in the Gazette of India alongwith the procedure for disability calculation. Similarly, specific learning disability has also been defined by way of respective definitions which are as under:-

21. Intellectual Disability

21.1. Definition Intellectual disability, a condition characterised by significant limitation both in intellectual functioning (rasoning, learning, problem solving) and in adaptive behaviour which covers a range of every day, social and practical skills.

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22 Specific Learning Disability (SLD).

22.1. Definition.- "specific learning disabilities" means a heterogeneous group of conditions wherein there is a deficit in processing language, spoken or written, that may manifest itself as a difficulty to comprehend, speak, read, write, spell, or to do mathematical calculations and includes such conditions as perceptual disabilities, dyslexia, dysgraphia, dyscalculia, dyspraxia and developmental aphasia;

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23. Definition: "mental illness" means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, but does not include retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence.

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25.1. Definition:

(i) "multiple sclerosis" means an inflammatory, nervous system disease in which the myelin sheaths around the axons of nerve cells of the brain and spinal cord are damaged, leading to demyelination and affecting the ability of nerve cells in the brain and spinal cord to communicate with each other: (ii) "parkinson's disease" means a progressive disease of the nervous system marked by tremor, muscular rigidity, and slow, imprecise movement, chiefly affecting middle-aged and elderly people associated with degeneration of the basal ganglia of the brain and a deficiency of the neurotransmitter dopamine.

5. It is evident from the perusal of the aforesaid definitions which are exhaustive clearly shows that various parameters have been kept in mind while classifying the schedule disability. There is no material placed on record by the petitioner on the basis of which seizure due to epilepsy may be held to fall under the said category. Further prayer has been sought for issuance of directions to the authorities including the Union of India to take decision on the representation Annexure P-3. For the purpose of issuance of any such direction, it is required to be prima facie established that the authority to whom such a direction is sought is under an obligation to decide the same and that any right accrued in favour of the petitioner which is required to be considered and to be decided. A writ of mandamus cannot be issued merely because a representation has been submitted to the authority. Such a writ is required to be issued only when the authority fails to do

but the law enjoins to do. The nature of change asked for is even otherwise in the nature of delegated legislation and that the High Court would not, under Article 226 of the Constitution of India issue any direction for carrying out a legislative Act. The prayer asked for could have only been considered and adjudicated in the event the petitioner would have succeeded in establishing his claim under any of the respective disorders defined above.

6. Counsel for the petitioner has not been able to refer to any unimpeachable medical study or any binding material which could be relied upon for issuance of any direction and has failed to refer to the statutory provisions under which the respondents, to whom the representation has been addressed are mandated and competent to take a decision on the same.

The present writ petition is accordingly dismissed.

(VINOD S. BHARDWAJ)
JUDGE

APRIL 26, 2024

Vishal sharma

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