

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDI GARH

CM No. 6382-CWP-2019 and
Civil Writ Petition No. 6862 of 2018 (O&M)
DATE OF DECISION: 01.05.2019

Hari Chand, Advocate

.... Petitioner

versus

State of Punjab and others

..... Respondents

CORAM: - HON'BLE MR. JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Hari Chand, Advocate/petitioner-in-person

Ms. Rameeza Hakim, Additional Advocate General,
Punjab with Ms. Monica Chibbar Sharma, Sr. DAG,
Punjab
Shri Sharad Aggarwal, AAG, Haryana

KRISHNA MURARI, CHIEF JUSTICE: (Oral)

This petition in the nature of a public interest has
been filed seeking the following main reliefs: -

"(ii) and to issue a Writ of Mandamus or any
other appropriate writ, direction or
order, for directing the respondents to
evolve some scheme for payment of
reasonable amount of financial
assistance every month to the persons
suffering from severe locomotive
disability, and who are confined to bed
and are unable to perform even their
daily chores (including bathing,
defecation and urination etc.)

themselves, thereby requiring constant care or help from some attendant, on the pattern of the scheme evolved by the States of Punjab and Haryana for giving monthly financial assistance to acid attack victim, with severe facial injuries, inter-alia on the grounds that (i) the normal disability pension which is being paid to disabled persons by the States of Punjab and Haryana is totally inadequate to meet the requirement of such persons suffering from severe locomotive disability; and (ii) the two instances of such virtually disabled persons suffering from severe locomotive disability, one each in the State of Punjab and Haryana, are given along with their photographs as Annexure P-1 and Annexure P-3 respectively;

(iii) And to issue a further Writ of Mandamus or any other appropriate writ, direction or order, for directing the respondents to evolve some other effective scheme for physical, mental and financial care/assistance of such 100% locomotive disabled persons, at the cost of the State Government;”

During the pendency of the petition, an application bearing CM No.6382-CWP of 2019 has been filed to issue appropriate directions to respondent Nos.1 and 2 to decide the entitlement of respondent Nos.3 and 4 in letter and spirit of the provisions contained in Section 38 of The Rights of Persons with Disabilities Act, 2016 (for short, "the Act"). It is pertinent to point out that section 38 contains special provisions for persons with disabilities with high support needs. The said section reads as under: -

"38. (1) Any person with benchmark disability, who considers himself to be in need of high support, or any person or organisation on his or her behalf, may apply to an authority, to be notified by the appropriate Government, requesting to provide high support.

(2) On receipt of an application under sub-section (1), the authority shall refer it to an Assessment Board consisting of such Members as may be prescribed by the Central Government.

(3) The Assessment Board shall assess the case referred to it under sub-section (1) in such manner as may be prescribed by the Central Government, and shall send a report to the authority certifying the need of high support and its nature.

(4) On receipt of a report under sub-section (3), the authority shall take steps to provide

support in accordance with the report and subject to relevant schemes and orders of the appropriate Government in this behalf. "

A perusal of the aforesaid provisions goes to show that section 38 makes provisions for persons with disability requiring high support to make application and also empowers any other person or organisation to make such application on his or her behalf before an authority to be notified by the appropriate government for providing high support as may be required and assessed in terms of section 2(l) of the Act.

The petitioner, appearing in person, points out that though the provisions of section 38 are in place but till date neither any authority nor any Assessment Board, in terms of the aforesaid section, has been notified by the State Government. Even Learned Senior Deputy Advocate General, appearing for the State of Punjab, is not in a position to state as to whether the "authority" and "Assessment Board" as specified in section 38 of the Act have been created or not.

At this stage, Ms. Rameeza Hakim, Learned Additional Advocate General, Punjab, intervened in the matter and states that in case the "authority" and the "Assessment Board", as provided under section 38, have not been notified by the State Government, the same shall be done within a period of six weeks from today.

In view of the statement made by Learned Additional Advocate General, Punjab, we dispose of the writ petition by directing that as soon as the "authority" and "Assessment

Board" are notified by State Government, it shall be open to respondent Nos.3 and 4 or, for that matter, the petitioner himself to make an application seeking high support in accordance with the provisions of section 38 of the Act before the appropriate authority so notified. We have no reason to doubt that in case such an application is made suitable orders shall be passed thereon in accordance with the provisions contained in section 38 of the Act.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

01.05.2019
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NOTE:

Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO

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