



CWP No. 10158 of 2017

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 10158 of 2017 (O&M)

Date of decision : January 14, 2020

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Gopi Ram through his wife Smt. Meena Devi

.....Petitioner

Versus

State of Haryana and others

.....Respondents

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Suresh Ahlawat, Advocate for the petitioner.

Mr. Harish Nain, AAG, Haryana.

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RITU BAHRI, J.

The petitioner has filed the present petition through his wife Meena Devi for issuance of writ in the nature of certiorari for quashing the impugned order dated 14.6.2004 (Annexure P-3) passed by Sub Divisional Educational Officer (Elementary), Julana, Jind-respondent no.4 vide which the petitioner who was working as Science Master in the Education Department, Haryana has been relieved /retired w.e.f 9.6.2004 from Government Service on the basis of medical report dated 9.6.2004 submitted by the Special Medical Board of PGIMS, Rohtak (Annexure P-2).

On 16.12.1988, petitioner was appointed as Science Master on

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ad hoc basis in the Department of Education Haryana and joined in Government High School Buwana Block, Julana Distt. Jind. His services were regularized on 1.1.1991. On 17.10.2002, when he was returning home after attending his duties in the school, unfortunately, he met with a fatal road accident and due to head injury, he remained in *COMA* for many months and remained under treatment. The petitioner according to Medical Report dated 9.6.2004 (Annexure P-2) submitted by the Special Medical Board of PGMIS Rohtak was found to be permanently incapacitated for further service in the department as Science Master on account of *Dementia*. On 9.6.2004, the petitioner was subsequently retired from service vide order dated 14.6.2004 (Annexure P-3) on medical ground mentioning that the petitioner was declared incapacitated for further service with the department as per the medical certificate issued by the Special Medical Board, PGIMS, Rohtak. After relieving the petitioner w.e.f 9.6.2004, the service benefits i.e gratuity/DCRG of the petitioner amounting to Rs.94,202/- has been calculated for total service of 15 years 5 months 21 days i.e 16.12.1988 to 8.6.2004 vide certificate and report dated 11.8.2005 (Annexure P-4) issued by the Accountant General Haryana. Petitioner, thereafter, was granted invalid pension under Rule 5.11 of Punjab Civil Services Rules Volume-II w.e.f 9.6.2004.

By way of the present writ petition, the petitioner has prayed that he should have been extended the benefits flowing from the provision of **Section 47 of The persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995** (hereinafter referred to as 'the Act') and treated in service by creating supernumerary post and petitioner should have been paid regularly the salary which would have

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otherwise been paid had he continued in service in normal course. Section 47 of the Act is hereby reproduced as under:

**Section 47 in The Persons with Disabilities
(Equal Opportunities, Protection of Rights and
Full Participation) Act, 1995**

47. Non-discrimination in Government employment.—

(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service: Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits: Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability: Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

Counsel for the petitioner while referring to the report of the Medical Board contends that even though the petitioner was found to be unfit for the service as Science Master but the certificates does not declare that he is completely unfit for any kind of service. Reference was made to a judgment in the case of *Satbir Singh vs. Uttari Haryana Bijli Vitran*

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Nigam Ltd. And another 2007(1) SCT 743, wherein the petitioner was a regular employee of the respondent-Nigam and while in the employment of the respondents, at the time of changing the transformer, he suffered an electric shock. The petitioner, thereafter remained under treatment till 26.11.1999 in the PGIMS, Rohtak. Thereafter, he was declared unfit and retired from service vide order dated 7.4.2000 as the official had been declared incapacitated for further service of the Nigam as per Medical Certificate. This Court held the petitioner entitled to the benefit under Section 47 (1) of the Act. It was held that the petitioner cannot be denied the benefit of the mandatory provisions of the Act simply on the ground that the department cannot be allowed to be burdened with the salary/remuneration of an incapacitated person.

Further reference was made to a judgment of this Court in the case of ***Santoshi Sondhi @ Sonia vs. State of Punjab and others, 2015 (3) PLR 710***, wherein the husband of petitioner acquired disability during his service. It was held that the 1995 Act is a beneficial piece of legislation. It casts an obligation on the employer and correspondingly confers right on the employee. Even if husband of the petitioner is retired under Rule 5.11 of the Punjab Civil Services Rules, Volume - II , that will not stand in the way for granting him relief as is available to him under Section 47 of the Act as there is no estoppel against the statute. Action of the respondents was held to be illegal. Respondents were directed to grant all benefits available to the employee concerned in terms of Section 47 of the Act.

Reference was made to another judgment passed by a Coordinate Bench of this Court in the case ***Virender Singh vs. State of Haryana and others (CWP No.8150 of 2009)*** decided on ***12.12.2011***. In

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this case, the petitioner was retired from service as he was suffering with a chronic disease *Rheumatoid Arthritis*. The petitioner pleaded that he should not have been retired from service on account of his disability rather a supernumerary post should have been created till he attained the age of superannuation. It was observed by this Court that the intended purpose of Section 47 of the Act is beneficial in nature and is inclined benevolently towards the persons/employees who acquire disability during the service and the purpose is obviously to protect their rights and ensure their adjustment elsewhere by giving them a different assignment which will not be in conflict with their disability. It was held that such a beneficial legislation has to be interpreted liberally so that the flow of intended benefit is not obstructed. The petition was allowed and the respondent was directed to consider the claim of the petitioner in terms of the observations made above and also in terms of the mandate of Section 47 of the Act.

The stand taken by the respondents is that the petitioner had retired vide order dated 14.6.04 (Annexure P-3) and has filed the present writ petition on 10.4.2017 after a delay of 13 years and this writ petition should be dismissed on the ground of delay. Learned state counsel has further submitted that he has been granted the benefit of invalid pension as per Rule 5.11 of Punjab Service Rules Volume-II and his services cannot be continued beyond 6 months under Rule 5.18 of Punjab Civil Services Rules, Volume -II which reads as under:

“5.18. A Government employee, who has submitted a medical certificate of incapacity for further service shall, if he is on duty, be invalidated from service,

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from the date of relief of his duties which should be arranged without delay on receipt of the medical certificate or, if he is granted leave under rule 8.18 of Punjab Civil Services Rules, Volume I, Part I, on the expiry of such leave. If he is on leave at the time of submission of the medical certificate, he shall be invalided from service on the expiry of that leave or extension of leave, if any, granted to him under rule 8.18 of Punjab Civil Services Rules, Volume I, Part I. Note 1.—The report required by this rule may in the case of head constable and constable of Police be submitted to the Inspector-General of Police instead of to the Government. Note 2.—When a Government employee is retained in service, after he has submitted a medical certificate of invalidment, and is, thereafter, granted leave under rule 8.18(c) of Volume I(Part I) of these rules, the maximum period up to which, he can be allowed under this rule to count for pension, the service after the date of medical certificate shall not exceed six months.

Learned State counsel has referred to a judgment in the case of ***Government of West Bengal vs. Tarun K. Roy reported at (2004) 1 SCC 347***, wherein it has been opined by Hon'ble Supreme Court of India that the persons who approach the Court at a belated stage placing reliance upon an order passed in some other case earlier can be denied the discretionary relief

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on account of delay and laches.

After hearing learned counsel for the parties and carefully going through the records of the case, in my opinion, the present writ petition deserves to be allowed. At the outset, reference can be made to judgment of the Supreme Court in **Bhagwan Dass and another vs. Punjab State Electricity Board 2008 (1) SCT 623**. In this case, appellant no.1, who was a class IV employee completely lost his vision. Board relieved the employee from service from the date of issuance of Medical Certificate. While examining the provisions of Section 47 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) At, 1995, it was held that when an employee acquires disability during the service and he was not aware of any protection under the Law, it was the duty of the Superior Officers to explain to the employee the correct legal position and to tell him about his legal rights. The action of the officers concerned was held to be deprecatable. In paragraphs 12 & 13, Hon'ble the Supreme Court observed as under:

12.Appellant No.1 was a Class IV employee, a Lineman.

He completely lost his vision. He was not aware of any protection that the law afforded him and apparently believed that the blindness would cause him to lose his job, the source of livelihood of his family. The enormous mental pressure under which he would have been at that time is not difficult to imagine. In those circumstances it was the duty of the superior officers to explain to him the correct legal position and to tell

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him about his legal rights. Instead of doing that they threw him out of service by picking up a sentence from his letter, completely out of context. The action of the concerned officers of the Board, to our mind, was deprecable.

13. We understand that the concerned officers were acting in what they believed to be the best interests of the Board. Still under the old mind-set it would appear to them just not right that the Board should spend good money on someone who was no longer of any use. But they were quite wrong, seen from any angle. From the narrow point of view the officers were duty bound to follow the law and it was not open to them to allow their bias to defeat the lawful rights of the disabled employee. From the larger point of view the officers failed to realise that the disabled too are equal citizens of the country and have as much share in its resources as any other citizen. The denial of their rights would not only be unjust and unfair to them and their families but would create larger and graver problems for the society at large. What the law permits to them is no charity or largess but their right as equal citizens of the country.

In the facts of the present case, the petitioner, as per the

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disability certificate Annexure P-2 dated 9.6.2004 was held to be completely incapacitated for further service in Department of Education on account of *Dementia* and immediately thereafter vide order dated 14.6.2004, he was retired from service and as per the short reply filed by the Principal Accountant General (A&E), Haryana-respondent no.5 his due date of retirement was 31.5.2024 and hence as per the provisions of the Act, even he is found not fit to do any job under the provisions of Section 47, he could be kept on a supernumeric till he attains the age of superannuation. However, this benefit has not been extended to the petitioner and he is to retire in 2024. In the case of ***Parvesh Devi vs. State of Haryana and others (CWP No.5715 of 2005)*** decided on 10.10.2006, a Division Bench of this Court was considering the case of an employee who was working on the post of Sanskrit Teacher in Samaj Kalyan High School Rohtak (Sonepat). The husband of the petitioner was found to be completely and permanently incapacitated for further service in the Department as Sanskrit master according to the medical report submitted by the Special Medical Board of PGIMS, Rohtak on account of the head injury suffered by him. Accordingly, he was relieved from service on 4.6.2002. When his case was sent for grant of pension, Accountant General-respondent no.4 did not sanction any pension to him on the ground that he had worked as a government employee only for a period of 7 years 10 months. The writ petition was allowed by this Court while observing that as per Section 47 of the Act, if an employee after acquiring the disability is not suitable for the post which he was holding then he may be shifted to some other post with the same pay scale and service benefits as he was enjoying before acquiring the disability. The provision clearly stipulates that a person with disability

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is to superannuate on attaining the ordinary age of superannuation. Orders dated 4.6.2002 (Mark A) relieving the petitioner from service and order dated 15.2.2005 (Annexure P-8) declining the request of the husband of the petitioner for grant of pension were quashed. Respondents were directed to pay salary to the petitioner as per the rates by deeming fiction as if he is in service and has been working against a supernumerary post every month till the date of superannuation.

Reference can be made to another Division Bench judgment of this Court in the case of *Haryana Vidyut Prasaran Nigam (HVPN) and others vs. Smt. Roshni Devi in LPA No.823 of 2012* decided on 5.7.2012, wherein an appeal was directed against the judgment and order dated 6.3.2012 of the Single Judge who while denying quashing of the order of premature retirement passed on 10.7.2002 (P-6) by the appellant against late Vijay Sudarshan Sharma, husband of the petitioner-respondent has, however, directed consideration of the case of petitioner's son for compassionate appointment on the premise that the retirement was made on account of physical unfitness. It was held by the Division Bench that the order of premature retirement/termination cannot be legally sustained being in violation of Section 47 of the 1995 Act. In another judgment passed by a Division Bench of this Court in *Nirmal Rani vs. Union of India and others 2008 (4) SCT 689* in which the services of Yash Pal were terminated w.e.f 13.8.1994 on a finding that for all practical purposes he had been declared permanently incapacitated vide medical report dated 5.8.1994 and declared unfit for service. The termination order was passed on 11.6.2002 with retrospective effect from 13.8.1994. The claim for terminal benefits and for compassionate appointment was turned down by the employer and the

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Tribunal in the original application brought for redressal of the grievance. The issue before the Court was whether in the face of Section 47 of the 1995 Act, the services of an employee acquiring disability during service could be terminated. Since, it was not disputed that the order of termination was passed in 2002 after coming into force of the the 1995 Act, the same was held to be in violation of the provisions of Section 47 of the 1995 Act and thus could not be sustained

In the case of *Hari Singh vs. State of Haryana and others* (CWP No. 15488 of 2012) decided on 19.5.2015, the petitioner who was working on the post of Conductor in Haryana Roadways Sirsa, during the service, contracted the disease, namely, 'diffuse brain atrophy and parkinsonism'. The respondent-authorities after obtaining the opinion from the department of PGI, Rohtak found him to be not fit for the post of Conductor and accordingly he was compulsorily retired from service. This Court allowed the writ petition while observing that the state of mind/depression a person undergoes when being contracted with such deadly disease is tremendous and the plight of the person is undefinable and, therefore, keeping in view the aforementioned facts, the writ petition cannot be dismissed on the ground of delay and laches and it is statutory right of the employee to be given a suitable post as per the provisions of Section 47 of the Act. The respondent-authorities were directed to offer a suitable post where the petitioner can perform his duties. The petitioner was also held entitled to all the consequential benefits as per law.

In view of all that has been discussed above and in view of all the aforementioned judgments, this writ petition is allowed and a direction is being given to the respondents to consider the claim of the petitioner in

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terms of the observations made above and also in terms of the mandate of Section 47 of the Act. Respondents are directed to pay salary to the petitioner as per the rates by deeming fiction as if he is in service and has been working against a supernumerary post. The arrears of pay as was being drawn by the petitioner be calculated from 9.6.2004 up to date and the payment be made to the wife of the petitioner in accordance with the rules within a period of one month from the date certified copy of the order is produced before the respondents. The salary shall be paid to the petitioner every month till the date of superannuation. The respondents shall also be liable to pay interest @ 8% on the arrears of salary from the date the salary was due i.e 9.6.2004 till the date of its payment. The amount of gratuity/DCRG already paid to the petitioner shall be set off from the arrears of salary. On attaining the age of superannuation, the respondents shall pass an order of retirement along with an order calculating the pension of the petitioner in accordance with law. The wife of the petitioner shall also be entitled to the family pension in accordance with the Rules.

January 14, 2020
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No