

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

Civil Writ Petition No.15488 of 2012

Date of Decision: May 19, 2015

Hari Singh

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Mohit Garg, Advocate,
for the petitioner.

Mr.Keshav Gupta, AAG, Haryana,
for the State.

AMIT RAWAL, J. (Oral)

The challenge in the present writ petition is to the order dated 1.2.2002 (Annexure P-4), whereby the petitioner has wrongly been retired from service on medical ground, which, according to the petitioner is in contravention of provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act (1 of 1996) (for short "the Act"). Prayer in the petition is also for issuance of a writ of mandamus directing the respondent-authorities to take the petitioner back in service with all consequential benefits.

The petitioner was appointed on the post of Conductor in Haryana Roadways, Sirsa on 12.11.1982. During the service, he contracted the disease, namely, 'diffuse brain atrophy and parkinsonism'. In view of

such disease, the petitioner remained absent and was accordingly suspended from his post and subsequently the department authorities, after reviewing the case of the petitioner, reinstated him into service but the petitioner could not join the duties and submitted his leave along with the medical certificates. The case of the petitioner was referred for medical examination by the Chief Medical Officer, Yamuna Nagar, who further referred the case to the Chief Medical Officer, Ambala and Medical Board constituted at Ambala, after examining the petitioner, found that the petitioner was actually suffering from the aforementioned disease and 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, vide impugned order, his services have been dispensed with, in essence, has been compulsorily retired as per Rule 5.12 of the Civil Services Rules Vol.II, Part 1.

Mr.Mohit Garg, learned counsel appearing for the petitioner, in support of his submissions, has relied upon the provisions of Section 47 of the Act, which reads as under:-

“Section 47:- Non-discrimination in Government employments-(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.”

He further submits that in view of the aforementioned provisions, the petitioner should have been adjusted on some other suitable post, where he could have performed his duties and the manner in which his services have been dispensed with ought not to have been resorted to. In support of his contention, relied upon the judgment rendered by the Hon'ble Supreme Court in **Bhagwan Dass and Anr. Versus Punjab State Electricity Board**, AIR 2008 Supreme Court 990 to contend that even where the petitioner has been drawing the pension, the other person after having knocked the door of the court has been given benefit of the provisions of Section 47 of the Act.

Mr.Keshav Gupta, learned Assistant Advocate General, Haryana appearing on behalf of the State submits that the writ petition is liable to be dismissed on the ground of delay and laches and since the petitioner had been drawing the pension, therefore, he is not liable to be reinstated, much less, retained into service. He has further referred to Annexure R-8 to submit that the petitioner, during the period he remained in service, was served with a charge sheet and the charges pertained to the embezzlement.

I have heard the learned counsel for the parties and appraised

the paper book.

The language of Section 47 of the Act is plain and ambiguous and there is no dispute to that. Similar controversy arose in the matter pertaining to adjustment of an employee, who was suffering from disability in Bhagwan Dass' case (supra) and the Hon'ble Supreme Court, while noticing the contentions, held as under:-

“ 12. From the materials brought before the court by none other than the respondent-Board it is manifest that notwithstanding the clear and definite legislative mandate some officers of the Board took the view that it was not right to continue a blind, useless man on the Board's rolls and to pay him monthly salary in return of no service. They accordingly persuaded each other that the appellant had himself asked for retirement from service and, therefore, he was not entitled to the protection of the Act. The only material on the basis of which the officers of the Board took the stand that the appellant had himself made a request for retirement on medical grounds was his letter dated July 17, 1996. The letter was written when a charge sheet was issued to him and in the letter he was trying to explain his absence from duty. In this letter he requested to be retired but at the same time asked that his wife should be given a suitable job in his place. In our view it is impossible to read that letter as a voluntary offer for retirement.

13. 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 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.

14. 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.”

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 factors, the writ petition cannot be dismissed on the ground of delay and laches and it is a statutory right of the employee to be given a suitable post as per the provisions of Section 47, *ibid*. Rather, it was the duty of the employer to apprise the petitioner qua his statutory legal right and since the authority has failed in its duty, the petition cannot be thrown out on the ground of delay and laches, particularly the authority being State. The drawing of pension shall not come into the way of the petitioner in seeking employment on a suitable post in view of the provisions of Section 47 of the Act as the Legislature in its wisdom drafted/came out with such provisions keeping in view the hardship being faced by such employees, who unfortunately contracted disease while in service.

In view of what has been observed above, the writ petition is allowed. The impugned order dated 1.2.2002 (Annexure P-4), being illegal and against the mandate of provisions of Section 47 of the Act, is hereby quashed. The respondent-authorities are directed to offer a suitable post where the petitioner can perform his duties. The petitioner shall also be entitled to all consequential benefits, if permissible in law.

It is made clear that the benefit of pension already taken by the petitioner shall be adjusted.

May 19, 2015
ramesh

(AMIT RAWAL)
JUDGE