

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 9492 of 2008

Date of Decision : January 12, 2015

Kalyan Singh (dead through LRs) Petitioners

Vs.

State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE SATISH KUMAR MITTAL.

HON'BLE MR. JUSTICE DEEPAK SIBAL.

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Present : Mr. Jagdish Rai, Advocate
and Mr. Neeraj Vema, Advocate
for the petitioner(s).

Mr. Ravi Dutt Sharma, DAG, Haryana
for the respondents.

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DEEPAK SIBAL, J. :

Through the present writ, Kalyan Singh had approached this Court challenging the vires of notification dated 27.06.2005, issued by the Department of Social Justice and Empowerment, Government of Haryana. Through this notification, issued under proviso to sub-section (2) of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as – the Act), the posts of Drivers and Conductors in the Haryana Roadways were

exempted from the provisions of Section 47 of the Act. Kalyan Singh had further prayed for issuance of a writ in the nature of mandamus directing the respondents to protect his pay, which he was drawing as a Driver, prior to his appointment as a Chowkidar, after incurring disability while on duty. During pendency of the present writ, Kalyan Singh expired on 30.03.2010. On his death, his legal representatives were brought on record.

Late Kalyan Singh (hereinafter referred to as – the petitioner) joined as a Driver in the Haryana Roadways on 09.09.1994. On 30.03.1999, while he was driving the bus from Kaithal to Kurukshetra and was on duty, his bus suffered an accident, which resulted in injuring his right eye. As a result of this injury, he was considered unfit to discharge his duties as Driver and resultantly, vide order dated 08.03.2001, he was retired from Government service with immediate effect. This order further offered an alternative job of Chowkidar to him, which, if he was willing to accept, he was to give such acceptance within seven days of the receipt of the orders. If no such written acceptance was received by the concerned Authority, then as per the order, it would be presumed that he does not want alternative appointment as offered. The petitioner states that initially he requested for adjustment against a Class-III post, but simultaneously, also was willing to join on the post of Chowkidar, subject to protection of his pay scale. When none of the above options were accepted by the respondent, he approached this Court through **C. W. P. No. 4586 of 2001**.

That writ petition was dismissed as withdrawn on 27.03.2001. Even thereafter, the petitioner was not appointed as a Chowkidar, with protection of his pay, that he was drawing as a Driver prior to passing of the order dated 08.03.2001. He, therefore, again approached this Court through **C. W. P. No. 16050 of 2003**. This writ petition was disposed of on 16.03.2004 as under :-

“Mr. Laler states that the petitioner is willing to accept the post of Chowkidar with immediate effect. He also states that an amount of Rs.23,072/- which the respondents claim from the petitioner may be adjusted from his salary in installments of Rs.500/- per month. This plea is also accepted by Mr. Amol Rattan, on instructions from Mr. Balram, an Assistant in the office of the General Manager, Haryana Roadways Kaithal.

We thus dispose of this writ petition in the light of the statement of the petitioner's counsel. The petitioner will join the post of Chowkidar on 2.4.2004.”

In view of the above order, the petitioner joined the post of

Chowkidar, but his appointment was considered as fresh appointment on the Class-IV post of Chowkidar and accordingly, the pay scale, as applicable to the post of Chowkidar, was applied to him. His representations, asking the respondents to protect his pay scale, which he was drawing while he discharged his duties as a Driver, were rejected in view of impugned notification dated 27.06.2005. The said notification is reproduced below for ready reference :-

“No. GSR-/Const./Art.309/2004 – In exercise of the powers conferred by the proviso to sub section (2) of section 47 of the persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995 (Act 1 of 1996), the Governor of Haryana having regard to the type of work carried on hereby exempts the posts of drivers and conductors in the Haryana Roadways from the provisions of the said section.”

It is the above inaction on the part of the respondents, of not protecting the pay, that the petitioner was drawing as a Driver, while appointing him as a Chowkidar, is what is challenged in the present writ petition.

For the prayers made in the present writ petition, learned counsel for the petitioner relies upon the proviso to Section 47 (1) of the Act. The same is reproduced below for ready reference :-

“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.”

Learned counsel for the petitioner challenges the impugned notification dated 27.06.2005 to say that the same is arbitrary and discriminatory and thus, violative of Article 14 of the Constitution of India. Learned counsel argues that there is no rationale basis to classify Conductors and Drivers in the Haryana Roadways viz-a-viz all other employees within the same Department to deny them the benefits, as granted under Section 47 of the Act. Learned counsel submits that once the impugned notification is held to be ultra vires Article 14 of the

Constitution of India, then under the proviso to Section 47 (1) of the Act, the petitioner is entitled to protection of pay on his appointment to a post, after having incurred disability while on duty. Learned counsel for the petitioner has placed reliance on the following judgments for the proposition of law sought to be advanced by him :-

1. **Gurbachan Singh vs. State of Haryana and others** reported as **2006 (3) S. C. T. 347,**
2. **Dhanmati Devi vs. State of Haryana and others** reported as **2008 (6) SLR 250,**
3. **Rupender Singh vs. State of Haryana and others** reported as **2007 (3) S. C. T. 13,**
4. **Baljeet Singh vs. Delhi Transport Corporation** reported as **2000 (2) S. C. T. 318,**
5. **Narendra Kumar Chandla vs. State of Haryana** reported as **1994 (2) S. C. T. 571,**
6. **Kunal Singh vs. Union of India and another** reported as **(2003) 4 Supreme Court Cases 524,**
7. **Bhagwan Dass and another vs. Punjab State Electricity Board** reported as **(2008) 1 Supreme Court Cases 579,**
8. **Makhan Singh vs. State of Punjab and others** reported as **2006 (3) S. C. T. 510,**
9. **Abhey Ram vs. State of Haryana and others** reported as

2009 (4) PLR 100 and

10. **Sahib Singh vs. Uttar Haryana Bijli Vitran Nigam Limited and others** reported as **2013 (2) SLR 754.**

Per contra, learned counsel appearing on behalf of the State has sought to oppose the petition by stating that the prayer made by the petitioner in the present writ petition should have been made by him in the earlier two writ petitions filed by him and he once he had not pressed the issue raised by him in the present writ, at the time when his earlier two writ petitions had been decided, he was precluded from raising such an issue through the present writ. On merits, the impugned notification was defended to say that the Conductors and the Drivers of the Roadways Department formed a separate class in themselves and the Article 14 of the Constitution of India did not prohibit classification. It was submitted that such classification was based on intelligible differentia, and therefore, the plea of the petitioner was liable to be rejected.

We have heard learned counsel for the parties and with their able assistance, have gone through the record of the case.

So far as the challenge to the vires of the impugned notification dated 27.06.2005 is concerned, we are of the view that the same being issued after the accident incurring of disability and subsequent appointment of the petitioner as Chowkidar, the same would not apply to the facts of the case in hand. It is undisputed before us that the petitioner met with an

accident on 30.03.1999, he was retired on 08.03.2001, he was appointed as Chowkidar in the year 2004 and that the impugned notification is dated 27.06.2005 is not retrospective in operation. That being so, according to us, the impugned notification would not apply to the facts of the case in hand.

Once the notification exempting Drivers and Conductors from purview of Section 47 of the Act is not applicable to the facts of the case in hand, then the petitioner would be entitled to the benefits so granted under the proviso to Section 47 (1) of the Act. On perusal of proviso to Section 47 (1) of the Act (as reproduced above), it is clear that on adjustment of an employee against a suitable post after he has incurred disability while in service, his pay is required to be protected. That being so, we have no difficulty in holding that from the date the petitioner joined on the post of Chowkidar, he would be entitled to protection of the pay that he was drawing as a Driver before he was retired vide order dated 08.03.2001.

The plea raised by learned counsel appearing on behalf of the State, with regard to non-maintainability of the present writ qua the issue of pay protection as the same had not been pressed in the earlier two writ petitions by the petitioner, is concerned, the same needs to be considered only to be rejected. In the first writ petition, no effective order was passed. So far as the second writ petition i.e. **C. W. P. No. 16050 of 2003** is concerned, in that writ petition, only the issue with regard to the appointment of the petitioner was considered and decided. The issue of pay

protection would only arise after the petitioner would be appointed on the subsequent post and not granted the benefit of pay protection. Thus, the cause of action, so raised by the petitioner through the present writ petition, came into being only after the disposal of the second writ petition, when he was appointed as Chowkidar and not granted the benefit of pay protection, which the respondents were obliged to give under proviso to Section 47 (1) of the Act. The representation to the same effect so made by the petitioner was also rejected after the disposal of the second writ petition giving the petitioner a valid cause to approach this Court through the present writ petition.

In view of the above, the present writ petition is allowed. The petitioner is held entitled to the benefit of pay protection, as prayed for by him, with all consequential benefits. The arrears be now paid to the legal heirs of the petitioner, as brought on the record vide order dated 18.08.2011, within three months from the date of receipt of certified copy of this order.

(SATISH KUMAR MITTAL)
JUDGE

(DEEPAK SIBAL)
JUDGE

January 12, 2015
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