

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

CWP No. 20917 of 2012 (O&M)

Date of decision: 30.07.2015

Madan Pal

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. J.S. Maanipur, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

Jitendra Chauhan, J. (Oral)

By way of the present petition, the petitioner seeks quashing of the impugned order dated 29.07.1998 (Annexure P-1), passed by respondent No.3 and the order dated 18.09.2012 (Annexure P-5), passed by respondent No.2, whereby the petitioner was compulsorily retired on medical grounds.

Briefly, the facts of the present case are that the petitioner joined the respondents' Department on regular basis on 15.10.1985. In the month of October, 1997, the petitioner suffered from Cirrhosis (an eye disease). On account of the disease suffered, he was declared medically unfit by the doctor of the PGIMER, Chandigarh to drive heavy vehicle. On the basis of medical certificate issued by the Civil Surgeon, Ambala, the petitioner was declared medically unfit for driving vehicles and ultimately, he was compulsorily retired, vide

order dated 29.07.1998 (Annexure P-1). Aggrieved against the order dated 29.07.1988, the petitioner preferred an appeal before the competent authority when no action was taken on the appeal filed, the petitioner approached this Hon'ble Court by filing CWP No. 14422 of 2012, wherein a direction was issued to respondent No.2 to decide the appeal within a stipulated period. In pursuance of the order passed, the respondent No.2 decided the appeal filed by the petitioner and rejected the same, vide order dated 18.09.2012 (Annexure P-5), whereby the said appeal was rejected.

The learned counsel for the petitioner states that the impugned orders are liable to be set aside as the disability suffered by the petitioner is attributable to service. He refers to Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short 'the Act') which provides that the service of an employee cannot be dispensed with prematurely and if it is not possible to adjust him 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. The learned counsel further contends that as per the doctor of PGI, Chandigarh, the petitioner had been advised to perform the light duties and the petitioner was willing to continue his services on a suitable post but the Department chose to compulsorily and illegally retired him at the age of 45 years forcing the petitioner to suffer a

huge financial loss and emotional stress. Therefore, the impugned orders dated 29.07.1998 (Annexure P-1) and dated 18.09.2012 (Annexure P-2) are liable to be set aside, being illegal and contrary to law.

On the other hand, the learned State counsel vehemently argued that the petitioner had been declared unfit for the post of driver by the Civil Surgeon, Ambala, vide order dated 21.05.1998. The Board of doctors had also held that he was unfit to drive. In pursuance to the declaration/advice of the doctor, the competent authority compulsorily retired the petitioner in accordance with Government instructions dated 20.08.1992 (Annexure R-1) and in accordance with Rule 5.18 of the Punjab Civil Services Rule Vol.-II. He further asserts that no suitable alternative job was available with the Department at the relevant time which could be allotted to the petitioner after his retention. The learned State counsel further submits that as per the amendment in second proviso of Section 47 of the Act, vide notification dated 27.06.2005 (Annexure R-2), the post of driver has been exempted as per the provision of Section 47 (2) proviso of the Act, therefore, the case of the petitioner does not fall within the parameters as laid down in the Act.

I have heard the rival contentions of learned counsel for the parties and have gone through the record minutely.

It is not in dispute that the petitioner while in service of

the respondents'-Department suffered 'Cirrhosis'. He was declared medically unfit for the post of driver by the Civil Surgeon, Ambala, vide order dated 21.05.1998. Thereafter, the petitioner was compulsorily retired at the age of 45 years on 29.07.1998.

Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 reads as under:-

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.

As is evident from the record, the petitioner being a driver had been declared medically unfit to drive. In the normal course, the petitioner would have retired on 31.07.2012, however, due to his ailment, he was compulsorily retired on 29.07.1998, at the age of 45 years. The petitioner served the Department with total devotion for 13 long years. During his service period, no charge sheet or inquiry was ever initiated against him. The argument of learned State counsel that as per the amendment in the Act, the

petitioner does not fall within the purview of the Act, lacks merit as the petitioner was compulsorily retired in the year 1998, whereas the amendment in the Act was carried out in the year 2005, vide notification dated 27.06.2005 (Annexure R-2).

The petitioner suffered the disease while serving the Department, therefore, the disease being attributable to service, he cannot be deprived of the benefits which otherwise would have accrued to him, in view of Section 47 (1) of the Act. Except the bald denial, the Department has not placed any evidence or report on record to establish that in fact some exercise was carried to rehabilitate the petitioner on suitable post. Therefore, the action of the respondent is in complete violation of Section 47 of the Act.

Accordingly, the present petition is allowed. The impugned order dated 29.07.1998 (Annexure P-1), passed by respondent No.3 and the order dated 18.09.2012 (Annexure P-5), passed by respondent No.2, are set aside. The respondents are directed to pay the salary to the petitioner from the date when he was compulsorily retired from service till his retirement along with all consequential benefits. The necessary benefits shall be released within four months from the date of receipt of certified copy of this order.

30.07.2015

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(JITENDRA CHAUHAN)
JUDGE

Whether to be referred to reporter: Yes / No