

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

LPA No. 408 of 2010

DATE OF DECISION : 01.07.2015

State of Haryana and others

.... APPELLANTS

Versus

Tara Singh (deceased) through LRs

.... RESPONDENT

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

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present : Ms. Kirti Singh, DAG, Haryana,
for the appellants.

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SATISH KUMAR MITTAL, J. (Oral)

The State of Haryana and its officers have filed this intra-court appeal under Clause X of the Letters Patent against the order dated 30.10.2009 passed by the learned Single Judge, whereby the writ petition (CWP No. 8261 of 2008) filed by Tara Singh (respondent), was allowed and the appellants were directed to consider his case in the light of the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as 'the Act'), especially under the provisions of Section 47 of the Act. As a consequence, the respondent was ordered to be reinstated in service and the entire salary due to him was to be released, with liberty to the appellants to adjust the amount paid to the respondent as a pension or pensionary

benefits. It was ordered that the appellants would be at liberty to treat the respondent on a supernumerary post.

During the pendency of the instant appeal, the respondent died and vide order dated 05.12.2013, his legal heirs were ordered to be impleaded as party – respondents.

Respondent Tara Singh was working with the appellants on the post of Mali since 1983. On 28.05.2007, he was ordered to be compulsorily retired on medical grounds under Rule 5.11 of the Punjab Civil Service Rules, Volume II, which regulates the grant of invalid pension to a Government employee who bodily or on account of mental infirmity is permanently incapacitated for public service.

The respondent challenged the order of his compulsory retirement being illegal, unlawful and unjust, in view of the provisions contained in the Act. Section 47 of the Act provides that no establishment shall dispense with or reduce in rank any employee, who acquires disability during his service. There is a proviso under this Section which says that if an employee after acquiring disability is not suitable for a post he was holding, then he could be shifted to some post with the same pay scale and service benefits. There is yet another proviso which says that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until suitable post is available or he attains the age of superannuation, whichever is earlier.

The appellants contested the writ petition filed by the respondent on the ground that the disability suffered by the respondent is not covered by the definition of 'disability' as contained in Section 2 (i) of the Act, because as per the medical record, the respondent was declared unfit for the post of Mali. It was opined that the respondent was not able to move and was stated to be lying on the bed in an unconscious state of mind, and as such, he was not able to perform duties relating to light or alternative jobs. Therefore, in view of the aforesaid medical report, the respondent was rightly ordered to be compulsorily retired, by giving the benefit of pension.

The learned Single Judge, while relying upon the decision of this Court in CWP No. 12623 of 2009 (*Suresh Chander Vs. State of Haryana and others*), decided on 25.09.2009, and a decision of the Supreme Court in *Kunal Singh Vs. Union of India and another*, 2993 SCC (L&S) 482, found the order of compulsory retirement of the respondent as illegal, being contrary to the mandatory provision of Section 47 of the Act. As far as Rule 5.11 of the Punjab Civil Service Rules, Volume II, and Rule 38 of the CCS (Pension) Rules, are concerned, it was held that these Rules can not over-ride Section 47 of the Act, while observing as under :

“In the background of law as discussed above, it is now to be seen how the person who has suffered a disability, which has rendered him unfit for employment is to be dealt with. Section 47 would provide a complete answer. This Section makes a provision for non discrimination in Government employment. It provides that no establishment shall dispense

with, or reduce in rank, an employee who acquires a disability during his service. This Section, in my view, has taken care of the situation like the one is before this Court by way of proviso, it is provided that if an employee, after acquiring disability is not suitable for the post he was holding, he could be shifted to some other post with the same pay scale and service benefits. The next proviso further says and would take care of the situation directly appearing in the present case. This proviso says 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. The service to which the petitioner belongs is not exempted from the operation of the Act. The petitioner, as such, could always be adjusted by creating a supernumerary post till the time he attains the age of superannuation. The petitioner has concededly suffered a disability during service. He may not be in a position to work but the manner in which he has been treated would certainly lead to violation of the provisions and the spirit of Section 47 of the Act. Merely because there are Rules under which the petitioner can be granted pension would not be a ground to deny protection mandatorily available to the petitioner under the provisions of this Act. The action of the respondents, thus, in not taking into account the provisions of the Act, is certainly not sustainable.”

Learned counsel for the appellants has raised the similar arguments, which were raised on behalf of the State before the learned Single Judge. She argued that in the facts and circumstances of the case,

particularly the disability suffered by the respondent, who as per the medical report was not able to move and was lying on the bed in an unconscious state of mind, and was unfit for the post of Mali, and was also not able to perform duties relating to light or alternative jobs, the appellants were well within their right to pass the order of compulsory retirement of the respondent, in view of the Service Rules applicable to him. This argument has rightly not been accepted by the learned Single Judge. Section 47 of the Act clearly provides that if it is not possible to adjust an employee against any post due to the disability suffered by him during service, he may be kept on a supernumerary post until suitable post is available or he attains the age of superannuation, whichever is earlier. Therefore, the appellants were bound by the mandate of Section 47 of the Act and could not have compulsorily retired the respondent. Section 47 of the Act casts a statutory obligation on the employer to protect an employee acquiring disability during service. This protection cannot be denied on the ground that the person has been granted invalid pension under the Pension Rules. Learned counsel for the appellants could not point out any illegality or infirmity in the impugned order passed by the learned Single Judge. Learned counsel for the appellants also did not controvert the fact that the disability was suffered by the respondent during his service. In that situation, the appellants are bound to provide all protections available to such disable employee, as provided under the provisions of the Act, which is a social beneficial

enactment.

In view of the above, we do not find any ground to interfere with the order passed by the learned Single Judge.

No merit. Dismissed.

**(SATISH KUMAR MITTAL)
JUDGE**

July 01, 2015
ndj

**(HARINDER SINGH SIDHU)
JUDGE**