

CWP No. 14331 of 2015

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

**CWP No. 14331 of 2015
Date of Decision : 16.12.2016**

Jai Singh (Retd.)

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Jasmer Singh Rozera, Advocate for the petitioner.

Mr. Harish Rathee, Senior Deputy Advocate General, Haryana.

Anupinder Singh Grewal, J.(Oral)

This petition impugns the order dated 31.12.2012 (Annexure P-4), whereby, the petitioner had been discharged from service with immediate effect.

The petitioner, who was working as a Driver with the Haryana Roadways, met with an accident on 07.07.2007, resulting in serious injuries to him. The petitioner suffered 70% disability in his lower limbs. Upon the alleged inability of the petitioner to report for duty, the respondents have passed the impugned order dated 31.12.2012 (Annexure P-4) discharging him from service.

Learned counsel for the petitioner has contended that the petitioner has suffered 70% disability due to the accident, which occurred in the course of his employment and, hence, he should have been allowed to

continue in service till the age of superannuation.

Per contra, learned State counsel contends that the petitioner neither produced the fitness certificate from PGIMS, Rohtak, nor reported himself for duty, as directed and, hence, he has been rightly discharged from service.

I have heard learned counsel for the parties and with their able assistance perused the writ petition.

Indisputably, the petitioner met with an accident on 07.07.2007, in the course of his employment as a Driver of a Bus of Haryana Roadways. He has suffered serious injuries on his lower limbs. His physical disability of the lower limbs has been assessed at 70% by the Civil Surgeon, Palwal. Rules 3 and 4 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996 (hereinafter referred to as 'the Rules of 1996') which provide for 'application' and 'issuance of disability certificate' are reproduced as under :

“3. Application for issue of disability certificate -(1) A person with disability desirous of getting a certificate in his favour shall submit an application in Form I, and the application shall be accompanied by-

- (a) proof of residence, and*
- (b) two recent passport size photographs.*

(2) The application shall be submitted to-

- (i) a medical authority competent to issue such a certificate in the district of the applicant's residence as mentioned in the proof of residence submitted by him with the application, or*
- (ii) the concerned medical authority in a government*

hospital where he may be undergoing or may have undergone treatment in connection with his disability:

Provided that where a person with disability is a minor or suffering from mental retardation or any other disability which renders him unfit or unable to make such an application himself, the application on his behalf may be made by his legal guardian.

4. *Issue of disability certificate – (1) On receipt of an application under rule 3, the medical authority shall, after satisfying himself that the applicant is a person with disability as defined in sub-clause(t) of section 2 of the Act, issue a disability certificate in his favour in Form II, Form III or Form IV as applicable.*

(2) The certificate shall be issued as far as possible, within a week from the date of receipt of the application by the medical authority, but in any case, not later than one month from such date.

(3) The medical authority shall, after due examination, -

(i) give a permanent disability certificate in cases where there are no chances of variation, over time, in the degree of disability, and

(ii) shall indicate the period of validity in the certificate, in cases where there is any chance of variation, over time, in the degree of disability.

(4) If an applicant is found ineligible for issue of disability certificate, the medical authority shall explain to him the reasons for rejection of his application, and shall also convey the reasons to him in writing.

(5) A copy of every disability certificate issued under these rules by a medical authority other than the Chief Medical Officer shall be simultaneously sent by such medical authority

to the Chief Medical Officer of the District.”

In Rule 3 (2) (ii), it is stipulated that the application shall be submitted to a medical authority competent to issue such a certificate in the district of the applicant's residence. Rule 4 provides that the medical authority shall consider the application and upon his satisfaction shall issue the disability certificate. The petitioner had applied to the Civil Surgeon, Palwal for issuance of the medical certificate. The Civil Surgeon, Palwal, had issued medical certificate on 18.01.2012, whereby physical disability of the petitioner in the lower limbs has been assessed at 70% and this certificate was valid for a period of two years. The petitioner again got himself examined before the Civil Surgeon, Palwal, who had issued another disability certificate on 19.03.2014 again assessing the disability at 70%, which was valid for a period of five years from the date of its issuance. In such circumstances, the contention of the respondents that the petitioner should have got himself examined at PGIMS, Rohtak, is devoid of merit. The petitioner had suffered serious injuries in the course of his employment. The petitioner had been residing at Palwal and, hence, the medical certificate issued by the Civil Surgeon, Palwal, had to be accepted by the respondents in the light of Rules of 1996.

At this juncture, it would be necessary to refer to Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as 'the Act'), which reads as under :-

“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.”

A bare reading of Section 47 of the Act, reveals that in case an employee acquires disability during his service, his services shall not be dispensed with and he has to be accommodated on a suitable post with the same pay scale and service benefits. The petitioner was working as a Driver in the Haryana Roadways and he should have been accommodated on another post with the same pay scale instead of being discharged from service. I draw support from judgment of a Division Bench of this Court in LPA No. 706 of 2012 titled ***Rajender Singh Vs. State of Haryana and others***, decided on 21.08.2013, wherein, it was held that the appellant therein who was also a Driver in the Haryana Roadways and had been compulsorily retired due to low vision, was entitled to be retained in service till the age of his superannuation. Reference can also be made to the

judgment of the Supreme Court in the case of ***Kunal Singh Vs. Union of India and another, 2003(4) SCC 524***, wherein, while relying upon the provisions of Section 47 of the Act, it was held that a disabled person cannot be completely invalidated from service and has to be provided with an alternative suitable job. Therefore, the action of the respondents in discharging the petitioner from service on account of his disability is clearly unsustainable in law.

Consequently, the petition is allowed and the impugned order dated 31.12.2012 (Annexure P-4) is set-aside. The petitioner would be entitled to be retained in service till the age of his superannuation. Consequential benefits shall also be disbursed to the petitioner within a period of three months from the date of receipt of certified copy of this order.

December 16, 2016.

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**(ANUPINDER SINGH GREWAL)
JUDGE**

Whether speaking/reasoned? Yes

Whether reportable? No