

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

(1) R.S.A. No.2316 of 2003

Date of Decision: 4th - 9 - 2017

State of Haryana and othersAppellants

v.

Chattar SinghRespondent

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(2) Cross Objections No.10-C of 2003

State of Haryana and othersAppellants

v.

Chattar SinghCross Objector

CORAM: HON'BLE MR.JUSTICE RAJ SHEKHAR ATTRI

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

Mr.Dhirinder Chopra, Advocate
for the respondent-cross objector.

RAJ SHEKHAR ATTRI, J.

By this common judgment, I shall dispose off Regular Second
Appeal No.2316 of 2013 filed by the defendants as well as Cross Objections
No.10-C of 2003 preferred by plaintiff - Chattar Singh as both have
originated from the common judgments and decrees passed by the Courts

below.

The facts necessary for disposal of the appeal and the cross objections are that plaintiff-Chattar Singh was employed as a driver in the Haryana Roadways. While in service, he met with an accident on 21.1.1994. He moved an application Ex.D1 for getting himself medically examined on the ground that there always remains a pain in his hand while driving a vehicle. In pursuance thereof, a Medical Board was constituted which declared the plaintiff incapable to drive a vehicle vide its report dated 5.10.1995 (Ex.P2) which is as under:-

“He is an old case of injury Rt. forearm. Lateral condyle with irregular soar on Rt. Elbow. Oftener and lateral aspect with slight wasting of extensor muscle of forearm. Triceps muscle is avulsed on medial head. Power of Rt. upper limb is less as compared to left. Patient is unable to drive heavy vehicles. His vision is L-6/12P. R-6/12P. No improvement is with glasses. He is medically unfit and unfit for driving heavy vehicles.”

In pursuance thereof, the plaintiff was retired from service retrospectively vide impugned order Ex.P1 which is dated 17.6.1996 with effect from 5.10.1995.

He challenged the order of retirement through instant suit which was instituted on 30.8.1997 on the grounds, as set out in paragraph 2 of the plaint:-

- i) That three months' notice, as envisaged under Rule 3.26 of C.S.R. Volume I Part I was not served upon the plaintiff before passing order of retirement which is

obligatory.

- ii) That under the law it was optional for the plaintiff, in view of the instructions issued by the Transport Commissioner, Haryana, Chandigarh, in the light of judgment of Hon'ble Supreme Court in the case of Anand Bihari & others, either to choose for alternative job or to accept the compensation. The plaintiff was never offered alternative job and was thus deprived of his right of option.
- ii) That the impugned order has been passed against the mandatory Rules and principles of natural justice have been violated.

He sought the following retiral benefits along with interest at the rate of 18% per annum:-

- a) Balance payment of GP Fund due on 18.6.1996;
- b) Enhanced gratuity on 97% D.A. according to Haryana Govt. Instructions, since the plaintiff was retired after 1.4.1995;
- c) Interest on belated payment of G.P. Fund amounting of Rs.45,965/- made on 28.12.1996, due on 18.6.96;
- d) Interest on Rs.18,638/-, the amount relating to pension, which was paid after 15 months of retirement;
- e) Interest on Rs.16,800/- on belated payment of leave encashment made on 14.8.1996, although due on 18.6.1996;
- f) Interest on Rs.2230/- on the amount relating to G.I.S.

paid on 2.2.1997 although due on 18.6.96;

The suit has been contested by all the defendants (appellants in Regular Second Appeal No.2316 of 2003) inter alia pleading that the suit is barred by limitation and the impugned order dated 17.6.1996 (Ex.P1) has been passed in public interest under the provisions of Rule 5.18 of the Civil Services Rules Volume II (for brevity, 'the Rules'). On merits, it is admitted that the plaintiff met with an accident while on duty; that he was medically examined and was found unfit to drive a vehicle. However, it is added in the written statement that a sum of Rs.12,068/- as additional compensation has been paid to him in view of the judgment of Hon'ble Supreme Court of India in case **Anand Bihari v. Rajasthan State Road Transport Corporation and others**, 1991(2) SCT 44. However, it is added that the plaintiff is not entitled to interest and that the entire retiral benefits have been paid to him. The remaining averments of the plaint have been denied. Replication was filed controverting the averments of the written statement and reiterating that of the plaint.

From the pleadings of the parties, the following issues were framed:-

1. Whether the order dated 17.6.1996 is illegal, null and void and the same is liable to be set aside? OPP
2. If the impugned order is found to be valid then whether the plaintiff deserves for the retirement benefit as detailed in para no.3 of the plaint? OPP
3. Whether the plaintiff has no cause of action to file the present suit? OPD
4. Whether the present suit is bad for non-joinder of

necessary parties? OPD

5. Whether the present suit is time barred? OPD
6. Whether the plaintiff has no locus standi to file the present suit?OPD
7. Relief.

On appreciation of the evidence, the suit was partly decreed directing the defendants to make payment of interest at the rate of 12% per annum on the delayed payments of all the retiral benefits within a period of two months from the date of passing the decree till actual payment.

The said judgment has been assailed by the plaintiff by filing the first appeal before the District Judge which was partly allowed and the rate of interest was enhanced from 12% to 18% per annum.

I have heard learned counsel for the parties and gone through the record.

Learned counsel for the defendants (appellants in Regular Second Appeal No.2316 of 2003) has vehemently contended that the plaintiff-respondent has first time raised the plea with regard to taking the benefit of the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for brevity, 'the Act'); that the plaintiff has accepted additional compensation of Rs.12,068/-, as such, he is estopped to question the validity of order Ex.P2; that the first Appellate Court has enhanced the rate of interest without any reason and the same is liable to be set aside.

On behalf of plaintiff/cross objector it has been strenuously contended that it was the duty of the State to apply the provisions of the Act; that no suitable post was provided to the plaintiff after he was declared

medically unfit to drive a vehicle; that the benefits of Section 47 of the Act have not been given to the plaintiff and now he is entitled to full pay from the date when he was compulsory retired till superannuation; and that the impugned order Ex.P1 has been passed retrospectively, therefore, the same is bad in the eyes of law. In support of his submissions, learned counsel has placed reliance on **Kunal Singh v. Union of India & Anr.**, 2003(4) SCC 524; **Anil Kumar Mahajan v. Union of India Through Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi and others**, 2013(7) SCC 243; **Sudarshan Rajpoot v. U.P. State Road Transport Corporation**, 2015(2) SCC 317; **Mohd. Laiquiddin v. Kamala Devi Misra (Dead) By L.Rs & Ors.**, 2010(2) SCC 407; and **Hari Shankar Rastogi v. Sham Manohar & Ors.**, 2005(3) SCC 761.

This Court has given its thoughtful consideration to the rival submissions. In this case, it is an admitted fact that plaintiff – Chattar Singh met with an accident while in service and he was declared medically incapable to drive a vehicle. But the extent of disability has not been assessed. However, a certificate has been issued by the defendants-appellants that no alternative post was available for adjustment of the plaintiff after his retirement. It is also not disputed that additional compensation of Rs.12,068/- has been paid to plaintiff as per the scheme formulated in view of the guidelines issued by the Hon'ble Apex Court in **Anand Bihari's case (supra)**.

When plaintiff has accepted the additional compensation for a sum of Rs.12,068/- as calculated under a policy formulated by the State, therefore, he is not entitled to derive the benefit of Section 47 of the Act. An

analogous matter came before the Hon'ble Supreme Court in the case of **Sohan Lal v. State of Haryana and others**, 2014(16) SCC 68. In that case, Sohan Lal was a regular driver with Haryana Roadways who sustained injuries as a result of an road accident while in service. He was found to be unfit to discharge his duties by the Medical Board. Therefore, a notice was issued to him and he was retired from service w.e.f. 31.3.1997 on medical ground because no alternative post was available to adjust him. He challenged the said order. Hon'ble Supreme Court held that he has already accepted the additional compensation, therefore, he is not entitled to protection of Section 47 of the Act. It has been observed in paras 7 to 11 as under:-

“7. In *Anand Bihari* this Court was confronted with the issue of termination of the services of a large number of drivers in Rajasthan State Road Transport Corporation on account of a singular medical disability, namely, defective/poor eyesight, a disability attributable to the stringent nature of the duties performed. On consideration of the totality of the facts of the case before it in *Anand Bihari*, this Court directed Rajasthan State Road Transport Corporation to frame a “scheme” to deal with such cases. Specifically, it was directed that before dispensing with the services of an employee on medical grounds attributable to the service rendered, an attempt must be made to find alternative employment to accommodate the workman/employee, failing which, additional compensation is to be paid for the period of service left at the rates indicated in the order of the Court.

8. Following the judgment of this Court in *Anand Bihari*, as already noticed, a “scheme” engrafting the essential parameters prescribed by this Court had been brought into force in the State of Haryana by memorandum dated 20-8-1992. The said scheme, as applicable to the State of Haryana, creates an

obligation on the employer (Haryana Roadways) to find suitable alternative employment for an employee proposed to be discharged on the ground of medical disability if such disability is attributable to the service rendered. The norms contained in the aforesaid memorandum dated 20-8-1992 also obligates the employer to make alternative employment available up to one year from the date of cessation of service. If such alternative employment cannot be provided, compensation at the rate prescribed in the said memorandum dated 20-8-1992 is required to be paid to the employee concerned.

9. In the present case, the order dated 27-3-1997 by which the service of the appellant has been dispensed with recites that no alternative employment was available under the General Manager of Haryana Roadways commensurate with the qualifications and skills of the appellant. The appellant could not also be appointed in the workshop as he did not have any technical qualification. In the said order it has also been recited that additional compensation, as prescribed by the memorandum dated 20-8-1992, has been calculated and is being paid to the appellant. There is no dispute that such compensation has since been paid.

10. In so far as the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 are concerned, we are of the view that the appellant having retired in the meantime the said provisions of the Act will have no application. As the appellant has already been granted additional compensation under the scheme in force, we do not consider it appropriate to examine the entitlement of the appellant to any further benefits under the Act.

11. The facts of the present case clearly go to show that the appellant was found to be medically unfit to continue to work as a driver. His case for alternative employment in terms

of the memorandum dated 20-8-1992 was duly considered. No such alternative employment was available. Consequently, additional compensation payable to the appellant in terms of the memorandum dated 20-8-1992 was calculated and paid.”

The ratio decidendi in **Sohan Lal's case (supra)** would squarely cover the facts of the case in hand. Herein also additional compensation was granted to the plaintiff who accepted the same without any objection. Now he is estopped from challenging his retirement. Similar view was expressed by this Court in the case of **Rawat Singh v. State of Haryana and ors.**, 2012 (2) SLR 841.

However, it has come to the notice of this Court that vide order dated 17.6.1996 (Ex.P1), the plaintiff was retired from service retrospectively w.e.f. 5.10.1995. He was on authorised leave before retirement. Thus, he was in service for all intends and purposes up to 17.6.1996. In this view of the matter his retirement retrospectively is bad in the eyes of law. My this view is supported by the pronouncement of Hon'ble Supreme Court in **R. Jeearatnam v. State of Madras**, 1967 SLR 657 in which it has been held as under:-

“The order dated October 17, 1950 directed that the appellant be dismissed from service with effect from the date of his suspension, that is to say, from May 20, 1949. In substance, this order directed that (1) the appellant be dismissed, and (2) the dismissal do operate retrospectively as from May 20, 1949. The two parts of this composite order are separable. The first part of the order operates as a dismissal of the appellant as from October 17, 1950. The invalidity of the second part of the order, assuming this part to be invalid, does not affect the first part of the order. The order of dismissal as from October 17, 1950 is valid and effective. The appellant has been lawfully

dismissed, and he is not entitled to claim that he is still in service.

We may now notice the cases relied on by counsel for the appellant. In **Hemanta Kumar v. S.N.Mukherjee, 1953 58 C.W.N. 1**, the Calcutta High Court had occasion to consider an order dated April 29, 1952 by which a civil servant had been placed under suspension with retrospective effect from January 16, 1951. While holding that the order of suspension for the period, January 16, 1951 up to April 28, 1952 was invalid and should be quashed, the Court held that the order of suspension was valid and effective as and from April 29, 1952 and this part of the order should be upheld. As a matter of fact, the validity of the suspension as from April 29, 1952 was not even questioned by counsel for the parties. Far from supporting the appellant, this decision is against him on the point under consideration. In **Abdul Hamid v. The District School Board, 24-Parganas, (1957)1 C.W.N. 880**, the Calcutta High Court had occasion to consider an order dated April 18, 1952 discharging a teacher employed by a District School Board from service with effect from July 15, 1951, the date on which he had been arrested in connection with a pending criminal case against him. While holding that the dismissal from the period from July 15, 1951 up to April 17, 1952 was invalid, the High Court also held that the order of dismissal was entirely bad and was not effective even from April 18, 1952. The High Court observed:

“It appears to me that when the real intention of the Board was to discharge the petitioner with effect from the date when he was put under arrest it is not within the jurisdiction of the Court to substitute a different intention and maintain the order of discharge in a modified form. The order must stand or fall in toto. In this view of the matter it appears to me that the order of discharge as

passed by the Board cannot stand.”

Apart from it, the retirement of the plaintiff retrospectively is not in consonance with the provisions of Rule 5.18 of the Rules which reads as under:-

“5.18. A Government employee, who has submitted a medical certificate of incapacity for further service, shall, if he is on duty, be invalided from service, from the date of relief of his duties which should be arranged without delay on receipt of the medical certificate, or if he is granted leave under rule 8.18 of Punjab Civil Services Rules, Volume I, Part I, on the expiry of such leave. If he is on leave at the time of submission of the medical certificate, he shall be invalided from service on the expiry of that leave or extension of leave, if any, granted to him under rule 8.18 of Punjab Civil Services Rules, Volume I, Part I.”

In this view of the matter, plaintiff – Chattar Singh is entitled to the benefit of salary, pension and other retiral benefits upto 17.6.1996 i.e. the date of his retirement on medical grounds.

The law cited on behalf of the plaintiff does not provide any help to the case of the plaintiff. In none of the cases, additional compensation has been granted. Thus, the judgments referred to on behalf of the plaintiff with regard to grant of benefit of Section 47 of the Act are distinguishable on facts.

Now coming to the award of interest. Learned trial Court has awarded the interest at the rate of 12% per annum on the delayed payments of all kinds of retiral benefits. However, the rate of interest was enhanced at the rate of 18% per annum by the first Appellate Court. This Court keeping in view the entire facts and the harassment suffered by the plaintiff is of the

opinion that the plaintiff is entitled to interest at the rate of 18% per annum as awarded by the first Appellate Court.

As a result, the appeal filed by the State of Haryana and others (RSA No.2316 of 2003) is hereby dismissed with costs. However, the Cross Objections No.10-C of 2003 preferred by Chattar Singh plaintiff are partly allowed holding that his retirement be deemed w.e.f. 17.6.1996 and he is entitled to salary and all other retiral benefits upto 17.6.1996 along with interest at the rate of 18% per annum till realisation. The decree of the first Appellate Court stands modified accordingly.

September 4th , 2017.

**(RAJ SHEKHAR ATTRI)
JUDGE**

RC

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>Yes</i>