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

**CWP-1306-2015 (O&M)
Date of Decision : 07.03.2017**

PARSHOT SINGH

..... Petitioner

Versus

THE STATE OF HARYANA AND ANOTHER

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Ajay Sharma, Advocate
for the petitioner.

Mr. Indresh Goel, Addl. AG, Haryana.

AJAY TEWARI, J. (Oral)

In this petition the petitioner has challenged the action of the respondents in retiring him on invalid pension w.e.f 21/11/2012 which is against the provision 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 petitioner was working as Lecturer and is admittedly affected with 70% disability. The medical report was issued by the Special Medical Board of Pandit B.D.Sharma, P.G.I.M.S., Rohtak in which they opined as follows:

"The Special Medical Board considers Sh./Smt. Parshot Singh completely permanently incapacitated for further service in the department of.....as Lecturer in Commerce on account of flexion

deformities of left knee (=70 o) fixed flexion deformities of B/L elbows & swelling, tenderness of B/L Neuists & PIP Jts of both hands and mechanical deformities of finders. He requires regular medication and surgical intervention for correction of deformities.

His capacity does not appear to me (us) to have been caused by irregular or intemperate habits Special Medical Board is of the opinion that Sh./Smt. Parshot Singh is UNFIT further service as Lecturer in Commerce in the deptt. of.....(at present)"

In reply the only stand taken is that the certificate does not specifically lay down that the petitioner is entitled to the benefit under Section 47(1) and (2) of the Act. Section 47 of the Act is as follows:

"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."

In my opinion, the condition mentioned in the written statement that the Medical Board has to certify that the petitioner is entitled for the benefits under Section 47 of the Act cannot be used to deny the benefits to the petitioner. Firstly, the medical certificate clearly lays down that the petitioner is completely permanently incapacitated. This should be enough

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medical corroboration that the requirement of Section 47 of the Act have been met. Moreover, if the respondents feel that any further corroboration is required that should be prescribed in the form of medical certificate. Counsel for the petitioner pointed out that the exact choice of words which are used by the Medical Board is between the respondents and the Government doctors and a person like the petitioner can hardly direct the Medical Board to use a particular terminology.

In the circumstances, the petition is allowed. The impugned order is set aside and the respondents are directed to grant the benefits of Section 47 (1) and (2) of the Act to the petitioner.

Let the necessary exercise be carried out within a period of three months from the date of receipt of a certified copy of this order, failing which, the petitioner would be entitled to claim interest @ 12 % per annum on the amount/s from the date/s it fell due.

Since the main case has been decided, the pending Civil Misc. Application, if any, also stands disposed of.

March 07, 2017
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No