

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.21165 of 2015
Date of decision:18.07.2017

Gulab Singh

....Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Gurvinder Pal Singh, Advocate, for the petitioner.

Ms.Shruti Jain Goyal, AAG, Haryana, for respondent No.1.

Mr.Saurabh Goel, Advocate, for respondents No.2 & 3.

G.S. SANDHAWALIA, J. (Oral)

The petitioner seeks a writ of mandamus, directing the respondents to continue the petitioner in service and direct the respondents to grant him alternative employment of the same or equivalent status. The relief is claimed on the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, the '1995 Act').

The pleaded case of the petitioner is that he was appointed as Assistant Linesman (ALM) w.e.f. 18.10.2010 on contract basis through the contractor and was sent along with Shri Naresh Kumar, ALM and Shri Sansar, ALM, for repairing common pole cable of transformer of the Mumtajpur village. On reaching there, he was told by Gopichand, Lineman and Naresh Kumar, ALM that the electricity line had been switched off and he was told to remove the cable and repair the same. He was asked to climb up the poll and under the threat of losing his job, he climbed up the poll and brought down the cable. When he was joining the cable, he was electrocuted and fell down and got spinal injury and became permanently disabled. Reliance is placed upon the disability certificate (Annexure P-1) issued by the

Medical Board, Gurugram, wherein it was certified that he was 100% disabled, having post traumatic paraplegia. It is submitted that the petitioner belongs to Scheduled Caste category and the certificate is appended as (Annexure P-2) and certain benefits were granted under the Employees' State Insurance Act, 1948 and resultantly, provisions of Section 47 of the 1995 Act have been relied upon.

Reliance has also been placed upon the Division Bench judgment of the Rajasthan High Court in **Secretary, (Admn.), JVVNL, Jodhpur & others Vs. Ashok Kumar & another 2014 (4) DNJ [Rajasthan] 1324.** Resultantly, it has been pleaded that the public authorities especially those who are 'State' within the meaning of Article 12 of the Constitution of India, are bound to be fair and reasonable and the petitioner cannot be left to fend for himself by the respondent-Nigam, after becoming permanently disabled. Reference is also made to the repeated representations made and the recommendations made by the Minister for Power, for adjustment, which were of no avail. Resultantly, this Court has been approached.

Respondents No.2 & 3, in their reply, have taken the plea that the petitioner was never their employee but was employed through the Service Provider. It has been admitted that the disability has been suffered while performing his duties and the injuries were, accordingly, sustained but the fact of electrocution has been denied, on the ground that the electricity supply had been shut-down from 7.30 hrs to 12.10 hrs. Resultantly, on account of not being a regular employee, the liability, as

such, was sought to be denied and that the Service Provider was the person paying the salary and therefore, the respondents had no direct control. Regarding the Division Bench judgment of the Rajasthan High Court, it has been submitted that SLP-34283-2014 has been preferred, which is stated to be pending before the Apex Court. The fact that representations have been made are admitted to the extent of their pendency, as such, but it was denied to give assurance for consideration of his claim in view of the recommendations of the Minister.

It is to be noticed that it is not the case of the counsel for respondents No.2 & 3 that the Division Bench's order of the Rajasthan High Court stands stayed, in any manner. Counsel for the petitioner has referred to the same, to submit that the Division Bench took into consideration the provisions of the Industrial Disputes Act, 1947, to hold that the workman means any person employed by any industry by the employer on regular or contract basis, with such employer. It is, accordingly, pointed out that as per the Regulations of 1975 of the Jodhpur Vidhyut Vitaran Nigam Ltd., the definition of the workman was also akin to the definition, as referred in the 1947 Act. Reference was also made to the Dakshin Haryana Bijli Vitran Nigam Ltd. Employees (Conduct) Regulations, 2006 (for short, the '2006 Regulations'), to point out that an employee means a member of any of the Nigam services and includes any person in the employment of the Nigam on contract basis. Relevant regulation reads as under:

“3 (2) “Employee” means a member of any of the Nigam services and includes any person in the employment of the Nigam on

contract basis.”

It is submitted that in such circumstances, Section 47 of the 1995 Act would be applicable as the contractual employee would also be covered and therefore, the said provision would come into play and the services, as such, could not be dispensed with, if any employee has sustained the disability during his service. Section 47 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.”

The Division Bench, in appeal, upheld the judgment of the Single Bench, dismissing the challenge raised to the order of the Commissioner, who had directed that appointment be granted to the respondent-workman for any suitable post on account of the fact that he had lost both his hands while working as contractual employee. Similarly, the writ petition was allowed whereby directions had been sought to

implement the order of the Commissioner, passed under the 1995 Act. It was, accordingly, held that the concerned regulations nowhere excluded a contractual employee from being member of the establishment and therefore, the provisions of Section 47 of the 1995 Act were applied.

Relevant portion reads as under:

“16. The definition of “workman” is also prescribed under the Regulations of 1975 and as per clause (i) of regulation 3 of it, the 'workman' means any person (including and apprentice) employed in the Board to do any skilled or unskilled, manual, supervisory or technical work for hire or reward, who is employed on any post included in Appendix-I, whether the terms of his employment be expressed or implied, but does not include any such person: (i) who is employed mainly in managerial or administrative capacity; (ii) who being employed in supervisory capacity draws wages exceeding ₹ 500/- per mensem or exercises either by the nature of the duties attached to the office or by reasons of powers vested in him, functions mainly of a managerial nature; or (iii) who is employed on any post included in Appendix II.”

17. The definition of the “workman” given under the Regulations of 1975 is quite akin to the definition of the “workman” given under the Industrial Disputes Act, 1947.

18. The respondent petitioner in light of the definition of the “workman” as referred under the Industrial Disputes Act, 1947 and the Regulations of 1975 was a workman with electricity company. He was also a part of the establishment in light of the definition 10 prescribed under the Regulations of 1975. Suffice to mention here that the Regulations of 1975 nowhere excludes contractual employee from being member of the establishment, as such, the respondent petitioner was a workman on the establishment of the appellant respondent. Accordingly, we do not find any reason to exclude application of Section 47 of the Act of 1995 in the instant matter. The

discontinuation of the respondent petitioner from service and further denial to employ him on a suitable post as such is in violation of the provisions of Section 47 of the Act of 1995. Learned Single Bench, thus, rightly affirmed the order passed by learned Commissioner (disability) dated 22/23.3.2012. For the reasons given above, the appeal is bereft of merit, hence dismissed.
Appeal dismissed.”

Resultantly, keeping in view the above discussion and the view which has been taken by the Division Bench of the Rajasthan High Court and the 2006 Regulations, governing the respondent-Corporation, the present writ petition is allowed. Respondents No.2 & 3 shall take action on the representations filed by the petitioner and continue him in service on the same terms and conditions as he was employed with the contractor. It is made clear that it will be the responsibility of the respondent-Nigam to make payment of the amount which the petitioner was receiving from the Contractor, as per the provisions of Section 47 of the 1995 Act.

18.07.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes