

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-8387-2012 (O&M)

Date of decision: 23.02.2017

Sukhdev Singh (lineman)

.....Petitioner

versus

Punjab State Power Corporation Limited and another

.....Respondents

CORAM: Hon'ble Mr. Justice Kuldip Singh

Present: Mr. Pawan Kumar Mutneja, Advocate for the petitioner
Mr. R. L. Sharma, Advocate for the respondents

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ? yes*
2. *To be referred to the Reporters or not ? yes*
3. *Whether the judgment should be reported in the Digest? yes*

Kuldip Singh, J. (Oral)

Petitioner, who is 100% disable, has sought the writ of certiorari quashing his retirement order dated 23.6.2010 (Annexure P3) and the pension payment order dated 17.08.2010 (Annexure P4) being violative of Section 47 of the Person with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995 (for short, 'the Disability Act of 1995'). He has also sought the writ of mandamus for directing the respondents to treat him on his job continuously and allow him full salary along with all the consequential service benefits.

The present petition depicts the condition of a helpless person who suffered 100% disability while performing the official duties and is brought to knees by the department to submit the request for voluntary retirement and thereafter got rid of him by paying him special pension.

The facts of the case as gathered from the petition and the written statement are that petitioner was working as a lineman with the Punjab State Electricity Board now succeeded by Punjab State Power Corporation Limited since 19.5.1997. His date of birth is 1.3.1969. On 1.8.2009, the petitioner was working on the electricity pole at a height of approximately 30 feet, when somebody switched on the electricity current. The petitioner got a severe electric shock and fell on the ground. His spinal chord was fractured at three places. He remained hospitalized for 1 ½ months due to the accident and was rendered 100% disabled. Disability certificate dated 30.10.2009 (Annexure P1) was issued by the competent authority. It is also the claim of the petitioner that he was not paid salary from 31.10.2009 to 19.10.2010. The respondent Board has a policy issued vide circular No.2/2007 dated 24.7.2007 (Annexure R3), according to which, in case one becomes 100% disable, he is to be paid solatium, special pension and other retiral benefits to which such employee is entitled, after obtaining report of 100% disability from the Medical Board. It also comes out from the 'letter that the Supdt. Chief Engineer (South) Patiala addressed a communication to the Investigating Engineer Patiala (No.8776 dated 18.12.2009 (Annexure P12), giving the following directions:-

“With regard to the above mentioned subject the employee gave the photocopy of his 100% disablement certificate along with his application but the employee has not mentioned any thing in his application with regard of taking retirement from the services of the Board due to 100% disability. The copy of 100% disablement certificate along with application is being sent to your office and it is further mentioned that as per the instructions of the Board you are asked to get from the employee the consent of getting retired on medical base and submitted in the department secreterate office

part II Patiala as per the instructions mentioned in circular No.2/2007 dated 24.7.2007. Case must be completed in every manner and memorandum must be prepared and submitted in the office for further process as soon as possible. So that the further proceedings may be initiated.”

According to the petitioner, one employee approached him thereafter and obtained his signatures on an affidavit, which he did, whereas according to the respondents, the petitioner voluntarily submitted the application for retirement on 11.1.2010 (Annexure R1), supported by an affidavit. It was followed by reminder dated 24.2.2010 (Annexure R2). Thereafter, vide order No.120 dated 23.6.2010 (Annexure P3), the retirement of the petitioner was approved in terms of circular No.2/2007 dated 24.7.2007 (Annexure R3). Accordingly, pension payment order (Annexure P4) was issued thereafter. The petitioner claims that he was approached by the employee to submit the said application. He was helpless at that time and he was told that if he want any assistance, he should sign the application and affidavit, which he did. It is claimed that the retirement of the petitioner is prepared contrary to Section 47 of the Disability Act of 1995. However, the respondents have taken the stand that the said application for retirement on account of 100% disability was voluntarily submitted, accompanied by the affidavit and medical certificate and that the petitioner also issued the reminder. Consequently as per policy of the Board, the petitioner was retired from service. Petitioner being 100% disable is otherwise due to retire at the age of 60 years i.e. on 31.3.2029.

I have heard learned counsel for the parties and have also carefully gone through the file.

Section 47 of the Disability Act of 1995 lays down 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 matter was considered by the Hon'ble Supreme Court in Bhagwan Dass and another vs. Punjab State Electricity Board, (2008) 1 Supreme Court Cases 579. In the said case also, it was noticed that employee had submitted a request for retirement. The relevant observations are as under:-

8. *The matter appears to have lain dormant for sometime and then it is stated that the appellant by his letter dated July 17, 1996 requested the Board to retire him from service. As a matter of fact by this letter the appellant sought to explain his absence from duty and requested that his wife might be employed in his place. But it was made the basis for denying the appellant his lawful dues. Since the whole case of the respondents is based on this letter it would be appropriate to reproduce it in full :*

Sir,

I explain as under the subject cited unnatural happening which I met, When I was returning home after performing

my duty on 17-1-94 then vision of my eyes lessened suddenly. I got treatment from far and near for eye-sight/lessening of vision of my eyes. But I became completely blind. Now I cannot perform my hard work duty. I want to retire from service. I may be retired and my wife may be provided with suitable job against me. Yourself will be genesis to me.

(Emphasis added)

The reference was also made by Hon'ble Supreme Court to the instructions of the Board in this regard and accordingly the order of retirement was quashed by passing the following order:-

20. In light of the discussions made above, the action of the Board in terminating the service of the disabled employee (Appellant No.1) with effect from March 21, 1997 must be held to be bad and illegal. In view of the provisions of Section 47 of the Act, the appellant must be deemed to be in service and he would be entitled to all service benefits including annual increments and promotions etc. till the date of his retirement. The amount of terminal benefits paid to him should be adjusted against the amount of his salary from March 22, 1997 till date. If any balance remains, that should be adjusted in easy monthly installments from his future salary. The appellant shall continue in service till his date of superannuation according to the service records. He should be reinstated and all due payments, after adjustments as directed, should be made to him within six weeks from the date of presentation of a copy of the judgment before the Secretary of the Board.

It comes out that in the present case, the facts speaks for itself. Petitioner met with an accident on 1.8.2009. His spinal chord was fractured from three places and he became 100% disable. He remained hospitalized for 1 ½ months. From 31.10.2009 to 19.10.2010, nothing was paid to him and averments in this regard in the petition were not specially controverted

in the written statement. In this way, the petitioner was virtually made to starve and brought on knees by the department. He was desperate in seeking some assistance. The department had issued a letter dated 18.12.2009 (Annexure P12), reproduced above, to get his consent. Since, the petitioner might be spending lot of money on his treatment and was not paid any salary before the said letter, therefore, apparently he was made to write the said letter (Annexure R1), seeking pre-mature retirement accompanied by the affidavit and medical certificate. The petitioner having spinal injury was unable to move and therefore, it can be safely assumed that he signed that letter and affidavit while in bed.

Now, the question would arise as to whether the plea of the respondents can be accepted that the said letter was voluntarily in nature?

I am of the view that the letter got signed from a 100% disabled person, who is confined to bed, cannot be called to be voluntarily and is deemed to be addressed under coercion. Admittedly, the petitioner was not in position to go somewhere to get the affidavit typed and obtained medical certificate. Therefore, somebody might have done it on his behalf. Therefore, the letter (Annexure R1), accompanied by affidavit and the following reminder (Annexure R2), are held to be involuntary act of the petitioner. The department in place of taking compassionate view in view of Section 47 of the Disability Act of 1995 decided to rest upon their instructions (Annexure R3), which provides for solatium, special pension and other retiral benefits. This is in violation of Section 47 of the Disability Act of 1995. Under the said Act, if a person is suffering from disability, his services could not be terminated or he could not be pre-maturely retired and if necessary, a supernumerary post is to be created until a suitable post is

available or he attains the age of superannuation, whichever is earlier. Instructions (Annexure R3) are apparently contrary to Section 47 of the Disability Act of 1995 and are to be ignored, being illegal, to the extent these are repugnant to Disability Act of 1995

Similarly, the consent having been held to involuntarily act and given under coercion, the application for retirement cannot be treated as waiver of right under Section 47 of the Disability Act of 1995. In fact it is a case of exploitation of a helpless employee, who became disabled while performing his duties. The Board should have preferred to follow the mandate of Section 47 of the Disability Act of 1995 rather than using arm twisting method in the shape of stopping salary and bringing the employee to his/her knees to submit application for retirement.

It being so, the impugned order of retirement dated 23.6.2010 (Annexure P3), retiring w.e.f. 31.10.2009, is hereby quashed. The pension payment order dated 17.08.2010 (Annexure P4) is also quashed. The petitioner is reinstated in service with continuity of service and all the consequential service benefits, including annual increment and promotion etc. with immediate effect. The respondents have already released some terminal benefits to the petitioner. Keeping in view the medical condition of the petitioner, it is ordered that the terminal benefits already released to the petitioner shall be adjusted against the amount of his salary, without any interest, from the date of his retirement i.e. 1.11.2009 till date. The balance, if any, shall be adjusted in easy installments from the future salary. It is again reiterated that the petitioner shall continue in service till the date of his superannuation in terms of the Disability Act of 1995. The respondents are directed to comply with this order within one month from the date when the

certified copy is served upon them on or behalf of the petitioner. The arrears and back wages shall also be released to the petitioner within one month of his joining the service.

23.02.2017
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:	Yes
Whether Reportable:	Yes