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

Civil Writ Petition No.592 of 2015

Date of decision: 14.09.2017

Randhir Singh ALM

...Petitioner

Versus

State of Haryana and others

...Respondents

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

Present: Mr. Aditya Yadav, Advocate for the petitioner.

Mr. Harish Rathee, Senior Deputy Advocate General, Haryana

Mr. R.D.Bawa, Advocate for respondents no.2 to 4.

G.S.SANDHAWALIA, J. (Oral)

The petitioner challenges the order dated 5.11.2014 (Annexure P/6) whereby his representation dated 4.3.2014 (Annexure P/4) objecting to his retirement with effect from 15.2.2001 on account of 100% disability having been suffered by him in view of the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as "1995 Act"). The same has been rejected on the ground that it is a case of delay and the petitioner has slept over his right and he has represented on 4.3.2014 whereas he had retired on 14.2.2001 and therefore, it was a stale claim.

The said order is absolutely unjustified keeping in view the fact that the petitioner was seeking his statutory rights which would be a recurring cause of action which would affect him regarding his retiral benefits which would continue till his life time. It is not disputed that he had met with an accident while he was working as Assistant Lineman on

regular basis and had suffered electric shock and his left arm was amputated. It is admitted that the petitioner was retired on 14.2.2001 (Annexure R/8) on medical grounds. It was bounden duty as such of the respondents to consider his case as per provisions of 1995 Act which has now been superseded by the Right of Persons with Disabilities Act, 2016.

Section 47 of the 1995 Act 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 said provision was also mentioned in his representation dated 4.3.2014 (Annexure P/4) which has not even been touched by the respondents. Once the petitioner was covered by provisions of Section 47 of 1995 Act, his services could not be dispensed with and he was to be adjusted against any other post and if it was not possible to adjust him he should have been kept on a supernumerary post till he attained the age of superannuation.

In such circumstances, the impugned order dated 5.11.2014 (Annexure P/6) is not liable to be sustained and the same is quashed. The respondents shall decide the representation dated 4.3.2014(Annexure P/4) afresh keeping in view the provisions of Section 47 of the 1995 Act. Since the petitioner has now already attained the age of superannuation, the financial benefits which shall accrue to him will be subject to payment already made. The said exercise shall be completed within a period of three months from the date of receipt of certified copy of this order.

With the aforesaid provisions, the present writ petition is disposed of.

September 14, 2017
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No