

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CWP-4366-2017

Date of decision : 08.12.2017

Surjeet Singh

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.N.K.Malhotra, Advocate
for the petitioner.

Mr. R.K.S. Brar, Addl.A.G. Haryana.

AMOL RATTAN SINGH, J.(ORAL)

The petitioner has challenged in this petition, the order Annexure P-16, vide which he has 'been retired from Government service' from the date of receipt of an "unfit certificate" from the PGIMS Rohtak, i.e. with effect from 24.01.2017, with the government exercising jurisdiction for retiring the petitioner under Rule 31(b) of the Haryana Civil Services (Leave) Rules, 2016 and Rule 26 of Haryana Civil Services (Pension) Rules, 2016.

Learned counsel for the petitioner however relies upon Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, which reads as follows:-

47. Non-discrimination in Government employments.—

(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.”

He submits that the petitioner had been appointed as a Jail Warder in the respondent department on 08.01.2003 and had met with a motor vehicle accident on 13.10.2013, rendering him 90% disabled. Therefore, in terms of the 2nd proviso to sub section (1) of the aforesaid statutory provision, he was entitled to continue in service till the normal date of his superannuation.

Notice having been issued in the petition, Mr. R.K.S. Brar, Addl.A.G. Haryana, has filed in Court today an affidavit of Sh. Som Nath Jagat, Superintendent, Central Jail-II, Hisar (respondent no.2), stating therein that upon the opinion of the Board of Doctors, PGIMS, Rohtak, having been obtained on 24.11.2017, it has been held by the Board that the petitioner is fit to perform sitting duty as a diary despatcher and is also capable of making any statement or to stand trial in any Court of law.

Therefore, in the light of the aforesaid opinion of the Board of Doctors, he has been taken back in service with all consequential benefits except arrears of salary for the period that he remained out of service, such

arrears being denied on the principal of “no work no pay”. His period of absence between the date of passing of the impugned order dated 29.12.2013 and the date of reinstatement on 05.12.2017, has been treated to be extraordinary leave.

Learned counsel for the petitioner further submits that the petitioner could not have been disengaged in the first place in terms of Section 47 of the Act of 1995, and therefore he is entitled to all arrears of salary.

He also relies upon a judgment of a Division Bench of this Court in *Kalyan Singh vs. State of Haryana and others*, 2015(2) PLR 672, in which, after considering the aforesaid provision of the Act of 1995, the petitioner therein was also held entitled to the benefit of pay protection, as also arrears of salary for the period that he remained out of service.

In the opinion of this Court, other than the fact that the Division Bench has held as above, which is binding on this Bench, the respondents having 'retired the petitioner' against the aforesaid statutory provision, i.e. Section 47 of the Disabilities Act 1995, they cannot deny him the benefit of wages that would otherwise have been due to him in the course of his employment from which he was illegally removed.

The provisions of the aforesaid two sets of rules of 2016 promulgated by the State, cannot take precedence over Section 47 of the 'Disabilities Act', which would over ride any rules promulgated even by way of subordinate legislation.

This petition already having been rendered infructuous as regards the main relief sought, in view of the order dated 05.12.2017 annexed with the affidavit of the Superintendent, Central Jail-II, Hisar, to the extent of the

reinstatement of the petitioner in service, it is further allowed as regards even the arrears of salary to be paid to the petitioner and the manner in which the period he remained out of service is to be treated.

As already noticed hereinabove, the petitioner being out of service contrary to the provisions of Section 47 of the Disabilities Act, he would be entitled to the full salary for the period that he remained out of service, from the date he was relieved till the date he was reinstated. He would also be paid interest @ 6% per annum, thereupon. He would also be treated to have never remained out of service for the said period, and thus it would not be treated as a period on extraordinary leave.

An order making payment of the arrears to the petitioner, as also treating him to be in service throughout the interim period, be passed by the competent authority within a period of 2 months from the date of receipt of a certified copy of this order.

(AMOL RATTAN SINGH)
JUDGE

December 08, 2017.

Davinder Kumar/dinesh

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No