

119

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

**LPA No.346 of 2018 (O&M) in
CWP No.14331 of 2015
Date of Decision: 07.03.2018**

State of Haryana and others

..... Appellants

Versus

Jai Singh

..... Respondent

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE B. S. WALIA**

Present: Mr. Samarth Sagar, Addl. A.G., Haryana.

RAJESH BINDAL J.

1. The order passed by the learned Single Judge dated 16.12.2016 allowing the writ petition by quashing the order dated 31.12.2012, discharging the respondent from service on account of disability suffered by him in an accident, has been impugned in the present intra Court appeal. Along with the appeal, an application seeking condonation of delay of 396 days in filing the appeal has also been filed.

2. For seeking condonation of delay in filing the appeal, it has been stated in the application that after the writ petition was allowed by learned Single Bench of this Court on 16.12.2016, opinion was given by the Advocate General, Haryana, Chandigarh on 04.05.2017 opining this to be a fit case for filing appeal. Legal Remembrancer & Law Secretary to Government Haryana vide memo dated 31.05.2017 advised the Government that the case is not fit for filing appeal. He disagreed with the

opinion given by the Advocate General's office. Thereafter the file moved like a shuttle cock between different departments. The instructions were issued to the Advocate General, Haryana, Chandigarh on 17.01.2018 to file the appeal. Appeal was filed thereafter on 15.02.2018. The aforesaid explanation given in the application can hardly be accepted to condone huge delay of 396 days in filing the appeal.

3. We could leave the case at this stage only as once the application seeking condonation of delay is dismissed, consequently, appeal is automatically dismissed, but we are constrained to observe on merits of the controversy involved, which clearly shows total insensitiveness of the officers of different departments involved in the process of examining the order passed by this Court for the purpose of filing appeal against the same.

4. It is a case in which undisputedly the respondent, who was working as Driver with Haryana Roadways, suffered injuries in an accident on 09.07.2007, while on duty. As a result, he had to remain on leave for a long time. The department impressed upon him to produce fitness certificate to enable him to join back duty. As a result, show cause notice dated 01.10.2012 was issued to him, which is in the following terms:-

“You Shri Jai Singh driver No.328 due to accident occurred on dated 09.07.2007 you are unfit to drive the vehicle. After considering your request sympathetically your duty was placed on Hodal Hassanpur Chowk, because you can have the salary for this period and after getting the treatment you become fit. But you have not submitted the fitness

certificate for taking the charge as a driver. You were written by this office vide letter No.2791 ECD dated 02.07.2012 for conducting medical checkup from Post Graduate Medical Institute, Rohtak medical fitness certificate. You were issued reminder vide letter dated 03.08.2012 by this office vide letter No.3472/ECD for depositing the medical certificate. But inspite of receiving you did not submitted the same. Therefore, it seems that you have not able to drive the bus that's why medical examination was not submitted so far Haryana State Roadways service fall under important service and there is shortage of driver in this depot. So keeping in view the department interest and public interest you Shri Jai Singh driver No.328 was served with three months show cause notice why you have been retire from the service. It is also clarified that if you wants to remain in service in the department then after deposition of medical certificate from the Director, PGIMS, Rohtak upon you demand as a compensate you will be consider for the appointment for the post of watchman/chowkidar on instruction from GM Haryana, Chandigarh vide memo No.4392-4410 EPO/dated 20.08.1992.

So you Shri Jai Singh driver No.328 submit your reply within one month in this office otherwise you will be retired from services after completion of three months.”

5. Order dated 31.12.2012, which was set aside by the learned Single Judge, vide which the respondent was discharged from service, records that show cause notice though served upon the respondent was not replied and the medical fitness certificate was not produced. It has further been recorded that respondent had not driven the bus from 09.07.2007 till

date. Facility of transport is a public service for which the drivers are compulsorily required. Keeping in view the interest of the department and public, he was discharged from service.

6. A perusal of the notice issued to the respondent shows that he was being directed to produce the medical certificate from PGIMS, Rohtak. The respondent had in fact disability certificate issued by the Office of Civil Surgeon, Palwal (Annexure P-5) finding that he had 70% disability.

7. Keeping in view the above factual matrix and also 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 learned Single Judge set aside the order dated 31.12.2012 passed by the General Manager, Haryana State Roadways, Palwal and directed the appellant to reinstate him back in service with all consequential benefits.

8. The fact that the respondent had suffered injuries while on duty and consequently disability in discharge of his official duty is not in dispute. Nor it could be disputed that in terms of Section 47 of the 1995 Act, a person who acquires disability during his service, can neither be discharged nor reduced in rank in service. Despite aforesaid mandatory provisions of the 1995 Act and complete facts being in the knowledge of the General Manager, Haryana Roadways, Palwal, the respondent was discharged from duty. This action of the General Manager shows total insensitiveness towards an employee, who during the course of his employment had suffered injuries.

9. Lot of employees are made to face these types of actions by the authorities on account of their inability or lack of knowledge of the relevant provisions of the various statutes which confer certain rights on them. Similar issue came up for consideration before this Court in **Santoshi Sondhi @ Sonia vs. State of Punjab and others, (2015) 3 PLR 710.**

10. In the aforesaid case also the employee, who suffered disability during the course of his service was granted the benefits of Section 47 of the 1995 Act. It was noticed that lack of knowledge amongst the employees is one of the major reason for non grant of benefits under the 1995 Act. Certain directions were given in terms of which the employer was made duty bound to inform an employee, who suffered disability during service to apprise him of rights under the 1995 Act. The 1995 Act has now been repealed and replaced by the Rights of Persons with Disabilities Act, 2016. Para 26 of the Judgment in Santoshi Sondhi @ Sonia's case (supra) is extracted below:-

“Before parting with the judgment and considering the fact that number of cases come before this Court from which it is evident that the employee who acquires disability during service are not aware of their rights, it shall be the duty of the head of the department concerned or the immediate boss of such employee to apprise him rights under the Act which casts a duty on the employer.”

11. In the case in hand as well the respondent had not been apprised of his rights, as a result of which, he had to face agony of discharge from service and litigate in Court for years to get the relief.

Though the order was passed by the learned Single Judge on 16.12.2016 i.e. more than one year back, learned counsel for the appellants is not aware of the fact whether the respondent has been reinstated back in service or not.

12. Hence, even on merits, the appeal is totally frivolous and filing thereof has resulted in wastage of Court time. To append different opinions on file declaring the case to be fit for filing appeal or unfit, a lot of time must have been utilized which could be utilized for some productive work.

13. Hence, the appeal is dismissed with cost of ₹ 50,000/- to be recovered from the officer, who finally opined the case fit for filing appeal. The amount be deposited with the Registry of this Court within two months along with report of recovery thereof.

14. In case of failure to deposit the cost along with the report within the time granted, the case be listed before the Court.

(RAJESH BINDAL)
JUDGE

(B. S. WALIA)
JUDGE

07.03.2018

rittu

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No