

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

207

CWP No.27158 of 2015 (O&M)

Date of decision: 27.09.2019

Harjit Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Dinesh Nagar, Advocate
for the petitioner.

Ms. Sunnit Kaur, AAG, Punjab.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the grievance which is being raised by the petitioner is that the petitioner has been retired vide order dated 11.07.2013 (Annexure P-2) on medical ground without giving him the benefit of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short as 'Act of 1995'). Although, in the writ petition, the petitioner is also praying for counting service rendered by him from 15.10.1981 to 06.02.1989 for pensionary benefits as well as for grant him extension upto the age of 60 years after attaining the age of superannuation but, at the time of arguments, the abovesaid reliefs has not been pressed and the only relief pressed is that the petitioner should be granted the benefit as envisaged under Section 47 of the 1995 Act.

The facts as stated in the writ petition are as under:-

The petitioner was selected and appointed as Helper with the Punjab Roadways on 06.10.1981, though he joined the duty on 15.10.1981. He continued working as such till 31.03.1989, when he resigned from service. Thereafter, in the year 1992, the petitioner was given fresh appointment and after joining on 01.04.1992, the petitioner continued working with respondents till 27.01.2010 when he unfortunately suffered a paralytic stroke due to which, the petitioner became unable to perform his duties. After suffering from the said paralytic stroke, the petitioner made a request to the respondents for granting him medical leave. For the grant of said medical leave, he was asked to appear before the Civil Surgeon, Ludhiana for his medical examination and after the medical examination report of the Civil Surgeon, Ludhiana dated 15.05.2013, it was found that the petitioner was unfit to discharge the duties of the post of Helper i.e. the post on which he was working with the respondents. Thereafter, once again, the petitioner was asked to appear before the Civil Surgeon and in the report dated 18.06.2013, it was stated that the petitioner is permanent disabled and his disability is not likely to improve.

Keeping in view the reports given by the Civil Surgeon, Ludhiana dated 15.05.2013 and 18.06.2013, the respondent No.3 passed an order on 11.07.2013 (Anneuxre P-2) retiring the petitioner on medical ground by exercising powers under Rule 5.11 and 5.12 of the Punjab Civil Services Rules Volume-II and was granted the benefit of pension. The said order dated 11.07.2013 (Anneuxre P-2) is under challenge in the present writ petition by the petitioner on the ground that even after becoming disabled and incapable of performing the duties of the post on which he was working, the respondents could not have retired the petitioner from service

till he attained the age of supernannuation and the petitioner was entitled for the benefits of full salary till date on which he would have retired, keeping in view of Section 47 of the 1995 Act.

Upon notice of motion, the respondents have filed the reply in which, it has been stated that keeping in view the medical certificate given by the Civil Surgeon wherein, the petitioner was declared medically unfit to discharge the duties of the post of Helper, the petitioner was retired while exercising powers under Rule 5.11 and 5.12 of the Punjab Civil Services Rule Volume-II and no fault can be found with the said action. The reply is totally silent about the claim of the petitioner for granting him the benefit under Section 47 of the 1995 Act, according to which the petitioner was entitled for full salary of the post on which he was working till he attained the age of superannuation.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The 1995 Act has been enacted to safeguard the interest of the employee who are differently abled. The employees who suffer any disability during the service career, are also protected for safeguard of their interests under the 1995 Act. The employees like the petitioner, who suffer any disability while discharging the duties have been protected under Section 47 of the 1995 Act. A large number of benefits have been provided to the employees who become disabled during their service career and one of the relief envisaged under Section 47 is that in case, the employee, who become disabled in performing the duties of the post, he should be shifted to some other post in the same pay-scale with the same service benefits and in case, it is not possible to adjust the employee anywhere else or he is not

capable of discharging the duties, he should be kept on a supernumerary post till he attained the age of superannuation. The employee who suffers disability cannot be thrown out of the service either by terminating the service or by retiring him from the service. The relevant Section 47 of 1995 Act is as under:-

“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.”

The case of the petitioner is squarely covered for the grant of benefits under Section 47 of 1995 Act. Once the respondents found that the petitioner is unable to discharge the duties of the post of Welder/Helper i.e. the post on which he was working prior to becoming disabled, it was incumbent upon the respondents to adjust the petitioner in a suitable job within the department in the same pay-scale with same service benefits and in case, the respondents failed to do so, still, the petitioner was to be kept on a supernumerary post till he attained the age of superannuation but under no circumstances, the petitioner could have been retired by the respondents

as has been done in the present case.

Learned counsel for the respondents argues that Rule 5.11 and 5.12 of the Punjab Civil Services Rule Volume-II clearly envisage retirement on medical ground and therefore, the respondents are well within their rights to retire the petitioner from the service after the petitioner was found to be incapable of discharging the duties of the said post and further the petitioner, was retired on his own request.

In respect of the argument raised by learned counsel for the respondents that they were well within their rights to retire the petitioner on medical ground under Rule 5.11 and 5.12 of the Punjab Civil Services Rule Volume-II, the same cannot be accepted for the reason that once 1995 Act, which is superior to the Punjab Civil Services Rules, grants a particular benefit, the same would over-ride the provisions of the Punjab Civil Services Rules. Benefits for which the petitioner becomes entitled under 1995 Act, cannot be declined to the petitioner by exercising powers under the Punjab Civil Services Rules. The rules are subordinate to the Act and the Act will prevail over rules and therefore, if the petitioner is entitled for any benefit under 1995 Act, the same will prevail over Punjab Civil Services Rules. Section 47 of 1995 Act will supersede the provisions of Rules 5.11 and 5.12 of the Punjab Civil Services Rules. Therefore, the petitioner had a right to be considered to continue in service till he attained the age of superannuation with the same service benefits under Section 47 of 1995 Act and therefore, the argument raised by learned counsel for the respondents that the respondents were well within their rights to retire the petitioner under Rule 5.11 and 5.12 of the Punjab Civil Services Rules, is rejected.

Learned counsel for the respondents further states that the petitioner made a request for the retirement and therefore, now, he cannot turn around and claim the benefit as envisaged under Section 47 of the 1995 Act. This argument came for consideration before the Hon'ble Supreme Court in the case of Bhagwan Dass and another Vs. Punjab State Electricity Board, 2008(1) SCT 623 on 04.01.2008. Hon'ble Supreme Court of India while considering a similar argument held that it is the duty of the employer to take care of a disabled employee. Once, an employee is entitled for a benefit under the Rules or the Act, it is the duty of the employer to extend the same. The relevant paragraph of the judgment is as under:-

“Appellant No.1 was a Class IV employee, a Lineman. He completely lost his vision. He was not aware of any protection that the law afforded him and apparently believed that the blindness would cause him to lose his job, the source of livelihood of his family. The enormous mental pressure under which he would have been at that time is not difficult to imagine. In those circumstances it was the duty of the superior officers to explain to him the correct legal position and to tell him about his legal rights. Instead of doing that they threw him out of service by picking up a sentence from his letter, completely out of context. The action of the concerned officers of the Board, to our mind, was deprecable.”

In the present writ petition, though, the request for retirement was made by the petitioner but it was incumbent upon the respondent to grant the petitioner benefit under Section 47 of 1995 Act which was beneficial to him. Being a benevolent state, it was the duty of the respondents to grant the petitioner the benefits, which are most suitable to a disabled employee, therefore, an application on behalf of the petitioner to grant him medical leave cannot take away his rights which have been

granted to him under Section 47 of 1995 Act.

This Court had an occasion to consider Section 47 of 1995 Act while deciding CWP No.17911 of 2011, titled 'Santoshi Sondhi @ Sonia Vs. State of Punjab and others', on 20.02.2015. In the said case, the wife had approached this Court seeking the benefit of Section 47 of the 1995 Act in respect of her husband, who had become disabled while in service, whose services were terminated by the respondent. A Co-ordinate Bench of this Court, while dealing with Section 47 as well as Rule 5.11 of the Punjab Civil Services Rules held that:-

“24. In terms of the provisions of Section 72 of the Act and the Rules made thereunder, the Act shall be in addition to, and not in derogation of any other law for the time being in force or any rules, order or any instructions issued thereunder, enacted or issued for the benefit of persons with disabilities. Hence, as the provisions of the Act are more beneficial, the same have to be given effect to in preference to the provisions contained in the service rules in terms of which an employee can be discharged from service while granting him disability pension, in case he acquire disability during service.

25. For the reasons mentioned above, the action of the respondents in granting disability pension to the husband of the petitioner having declared him unfit for service is held to be illegal. The respondents shall grant all the benefits available to the employee concerned in terms of Section 47 of the Act. The arrears be paid to him within a period of four months. On failure, interest @ 9% per annum shall be payable from the date of judgment till actual payment.”

The same question again came for hearing before this Court in CWP No.21828 of 2014, on 31.03.2015 titled 'Dr. Anil Kumar Kundu Vs. Kurukshetra University and others', wherein this Court held that an employee who becomes disabled during the service, is entitled for the

benefit under Section 47 till he attained the age of superannuation. The relevant paragraphs of the judgment are as under:-

“Learned counsel has further relied upon a decision of this Court in CWP No. 8641 of 2012 [Malkit Singh Sidhu v. State of Punjab and others](#) decided on 26.08.2014. In that case also an employee had suffered an accident and had become disabled. This Court held as follows:-

" The provisions of the Act as extracted above would obligate the State to ensure that the service of an employee visited with disability during his service is neither dispensed with nor his status reduced in rank. Rather efforts are to be made to accommodate such an employee in other areas if he is unable to meet the rigors of duties which he was performing prior to acquiring a disability. It further contemplates the creation of supernumerary post in the eventuality of a suitable post not being available till the time he attains the age of superannuation.

Implicit in the clear language of the statute is an obligation cast upon the respondents to rehabilitate the employee who has suffered a disability during his service. The laudable objective behind all this is to ensure that an employee does not fall on bad times and his family not reduced to a state of penury. Unfortunately due to the act and conduct of the respondents these are the very consequences which have been visited upon the petitioner. Despite the attempt made by this court to show sufficient light to the respondents to remedy the situation the needful has not been done.

The court would like to elaborate on the provisions of Section 47 (1) of the Act. Section 47 though it mentions an acquisition of a disability by an employee does not envisage the extent thereof. Evidently bare reading of the provisions would indicate that a person who suffers a disability but is still able to perform some functions even though not the ones to which he was assigned would be accommodated in a different assignment. But what happens to an employee who is reduced to a vegetative state with 90 per cent to 100 per cent disability unable to perform the rigors

of the assignment which he was holding or even a lesser assignment. In such a situation would the employer be able to write off the employee altogether. A person with this kind of disability as the one suffered by the petitioner reducing him to a vegetative state on account of severe damage to functionality of the brain, metaphorically may have joined the league of dead but continues to live thereby adding to the constraints of the family who would now be struggling to hold on to him without any financial support. It is these very contingencies which the Act seeks to redress.

The employer would have no right to deny benefits under Section 47(1) of the Act to an employee placed in such unfortunate circumstances."

7. *In my opinion this judgment completely covers the case of the petitioner.*

8. *Resultantly the petition is allowed and the respondent-University is directed to consider the petitioner to be on duty till such time as he attains the age of superannuation and to grant him all consequential benefits. It is made clear that in case the amount/s falling due to the petitioner are not paid within three months, the petitioner would be entitled to claim the same with interest at the rate of 8% p.a. from the date/s the amount/s is due to the petitioner."*

The case of the petitioner is squarely covered for the grant of benefit under Section 47 of 1995 Act keeping in view the principles of law mentioned herein before and therefore, the action of the respondents in retiring the petitioner vide order dated 11.07.2013 is contrary to the settled principle of law and is accordingly, set aside. The respondents are directed to grant the petitioner benefits of the pay, which the petitioner was getting at the time, when he became disabled at the time when he was retired by the impugned order, till he attained the age of superannuation which is 31.03.2015.

Let the calculation of the arrears of salary for which the petitioner becomes entitled under this Rule be done within a period of 2 months from the receipt of copy of this order and the amount so calculated by the respondents shall be released to the petitioner within a period of one month thereafter.

The writ petition is allowed in above terms.

27.09.2019
D.Bansal

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes