

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

CWP No.1297 of 2018 (O&M)

Date of Decision.06.09.2019

Kamaljeet

...Petitioner

Vs

The State of Haryana and others

...Respondents

Present: Mr. Govind Chauhan, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

Grievance of petitioner in present writ petition is one-fold that owing to provisions of policy framed and circulated by the Transport Commissioner Haryana, Chandigarh now designated as Director General, State Transport Haryana dated 20.08.1992 and Notification dated 27.06.2005, his services as Driver on account of having found medically unfit were dispensed with vide impugned order dated 29.12.2017 (Annexure P-8).

Facts which emanate from pleadings are that petitioner in the year 1990 obtained driving licence for driving a Heavy Motor Vehicle and was selected as Driver in Haryana Roadways. At the time of appointment, petitioner was also medically examined by the Civil Surgeon, Karnal and found fit for the aforementioned post as per fitness certificate dated 29.03.1995 and during this period has also been granted ACP on having completed 16 years of service vide order dated 28.07.2017.

Mr. Govind Chauhan, learned counsel appearing on behalf of the petitioner submitted that w.e.f. 10.06.1997, petitioner was made

permanent and had been discharging duties with full satisfaction of his superiors without any incident of accident, in other words, had an impeccable record. The General Manager, Haryana Roadways Karnal vide communication dated 30.11.2017 requested the Civil Surgeon for conducting medical examination of the petitioner on receipt of the application that he was not able to see from left eye. In pursuance of aforementioned request and various other subsequent letters, Civil Surgeon vide communication dated 11.12.2017 (Annexure P-6) on medical examination found that petitioner was able to count finger from half meter, therefore, as per guidelines was not declared to be medically fit. Petitioner, in this regard, vide representation dated nil (Annexure P-7) requested for alternative job but instead of adhering to aforementioned request, his services have been terminated. In support of aforementioned contention, referred to order dated 22.04.2015 (Annexure P-9) where in identical case one Kalyan Singh, who was appointed Driver on contract basis and after having regularized was declared medically unfit, thus, retired from service but was given alternative job as Chowkidar. At the time of passing of the impugned order, age of the petitioner was 49 years. Reliance has been placed on judgment of Hon'ble Supreme Court rendered in **State of Haryana and others Vs. Hawa Singh 1995(3) SCT 354.**

Per contra, learned counsel appearing on behalf of respondent-State refuted argument of Mr. Chauhan by supporting the impugned order on the premise that Notification dated 27.06.2005 (Annexure R-1) exempted posts of Drivers and Conductors in the Haryana Roadways from applicability of provisions of Section 47(2) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act,

1995. Disability of petitioner has not been occurred on account lapse on the part of respondent-State/employer. In such circumstances, request of the petitioner for providing alternative job was not acceded to.

I have heard learned counsel for both parties, appraised paper book and of the view that it is a fit case where direction is required to be issued to respondents for providing alternative job to the petitioner.

As regards issuance of appointment letter to Kalyan Singh, there is no specific denial in written statement to ground No.C raised in writ petition. For the sake of brevity, ground No.C in paragraph 14 of writ petition and corresponding para in written statement is reproduced herein below:-

*“C. BECAUSE in the similarly situated case, the Government of Haryana earlier appointed the unfit drivers on the other posts and granted the similar pay scale to them as of driver on the direction of this Hon'ble Court. In this regard, the order dated 22.4.2015 is being filed herewith as **Annexure p-9**.*

Written Statement.

C. That contents of sub para No.(C) of para No.14 of the writ petition are wrong and denied. It is further submitted that the ratio of judgment mentioned in this para is not applicable to the facts of the present case due to the reason that Kalyan Singh, Driver was found unfit vide order dated 09.02.2001, the notification dated 27.6.2005 (Annexure R-1) was not in operation.”

Thus, authenticity of Annexure P-9 issuing alternative appointment to Kalyan Singh vide order dated 22.04.2015 has gone

unrebutted.

Coming down to applicability of judgment relied upon by Mr. Chauhan, it squarely covers case of petitioner. It is not a case where petitioner had become medically unfit owing to disease connected to employment but is related to nature of duties. Since petitioner is a driver and has a weak eye sight, therefore, has become unfit for driving a heavy motor vehicle but it cannot be stated that he has become totally *nakara* i.e. totally unfit to do any kind of service. The controversy which cropped up before the Hon'ble Supreme Court in the judgment cited above was against the judgment of this Court where direction was given to provide suitable job to dependent of petitioner, who had lost his eye sight. The aforementioned direction has been converted into offering an alternative job as per the dictum laid down in **Anand Bihari Vs. Rajasthan State Road Transport Corporation (1991) 1 SCC 731.** The instant case is also of such nature where petitioner during employment has become handicap owing to vision problem and there is no such material on record to establish that he has become unfit to do any other job. He would also not be deprived of the retiral benefits.

The argument of Mr. Hitesh Pandit regarding applicability of provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, in my view, is not able to cut ice, as the impugned order is dated 29.12.2017. The aforementioned Act was replaced by the Rights of Persons with Disabilities Act, 2016, which was made effective from 27.12.2016. Rather Section 20 (4) of the 2016 Act would come to rescue of the petitioner, which is reproduced herein below:-

“(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:

Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall 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.”

It is also matter of record that written statement is bereft of any explanation whether the Government has framed any policy in terms of provisions of sub-section 5 of Section 20 of the 2016 Act.

In view of aforementioned facts and circumstances, the impugned order is quashed. Respondents are directed to provide alternative job to the petitioner on same terms as has been given in Kalyan Singh's case with a period of one week from the date of receipt of certified copy of this order.

The writ petition stands disposed of in above terms.

(AMIT RAWAL)
JUDGE

September 06, 2019

Pankaj*

Whether speaking/reasoned Yes

Whether reportable No