

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

Sr. No.124

RSA-460-2021 (O&M)
Date of decision:04.08.2021

Baljeet Singh

....Appellant

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Deepak Agnihotri, Advocate
for the appellant.

* * *

DEEPAK SIBAL, J. (Oral)

The matter has been taken up through video conferencing.

The present second appeal has been preferred against the judgment and decree dated 08.10.2015 passed by the Civil Judge (Junior Division), Bhiwani, (for short – the Trial Court). Also under challenge is the judgment and decree dated 11.12.2019 passed by the Additional District Judge, Bhiwani (for short – the Appellate Court) dismissing the appellant's appeal filed by him against the aforesaid judgment and decree of the Trial Court.

Before the Trial Court, the case set up by the appellant/plaintiff was that on 20.06.2008 he had been appointed as a driver in the Haryana Roadways; on 25.12.2008, the bus that he was driving met with an accident which was not caused due to his fault; as a result of the accident the appellant incurred 75% physical disability as a result whereof he was

declared unfit to drive; the respondents got signed from him certain blank papers and thereafter appointed him as a Chowkidar; he could not be reinstated as Chowkidar since the post of Driver is a class-III post whereas the post of Chowkidar is a class IV post; he could have only been reinstated on a post which was equivalent to the post which he was holding at the time of incurring the physical disability; on his reinstatement his pay was not protected; rather, it was considerably reduced and the salary for the 04 months that he remained out of job due to the accident was also not paid.

In the light of the above, the appellant sought issuance of directions to the respondent-State to pay him salary for the 04 months when he remained absent from duty on account of his accident; appointment against a class III post; protection of the pay scales that he was getting prior to his reinstatement after the accident and for arrears of salary/other benefits (alongwith interest) in the correct pay scale.

On being put to notice, the respondents, who were the defendants in the appellant's suit, appeared before the Trial Court and submitted that within four months of his appointment as a driver of the Haryana Roadways, on contractual basis, the appellant caused an accident on 25.10.2008; such accident was on account of the appellant's negligence; due to the accident the bus remained in the custody of the police from 26.12.2008 to 25.02.2009 due to which the respondents had to bear a loss of Rs.4,42,120/- (approximately); as a result of the accident the appellant incurred 75% physical disability and was declared unfit to drive; the appellant, through written representations, requested the respondents to appoint him as a Chowkidar; on a sympathetic consideration of his request he was appointed as a Chowkidar and that at the time of his accident the

appellant was not on the regular pay rolls and was a contractual employee.

The Trial Court dismissed the appellant's suit. The appeal preferred by the appellant against the dismissal of his suit by the Trial Court met the same fate giving him a cause to knock the doors of this Court through the present second appeal.

Learned counsel for the appellant contended that in view of Section 47 of the Persons with Disabilities (equal opportunities, protection of rights and full participation) Act, 1995 (for short – the Act), the appellant, on becoming disabled while in service of the respondents, could have not been offered a post or placed in a pay scale which was lower than what he was holding/drawing at the time he incurred the disability; prior to the accident the appellant was serving on a class-III post and on being disabled due to the accident he could not have been offered a class IV post; the appellant was entitled to salary for the period he remained absent from service due to the accident and that at the time of his reinstatement denial of pay protection to the appellant was also illegal.

It is not disputed that through a notification dated 27.06.2005, issued under Section 47(2) of the Act, the State of Haryana has exempted drivers of the Haryana Roadways from applicability of Section 47 of the Act. It is also a matter of record that the accident which caused the appellant's disability took place on 25.12.2008 i.e. after coming into force of the aforesaid notification. The said notification dated 27.06.2005 is not under challenge. Therefore, the appellant cannot claim any benefit under Section 47 of the Act.

Further, it is borne out from the record and concurrently held by both the Trial Court and the Appellate Court that on the date of the

accident, the appellant was a contractual employee. In spite of the same, on sympathetic consideration of the representations made by the appellant, through which he sought appointment as a Chowkidar, the State appointed him as a Chowkidar. Such offer was accepted by the appellant without any protest whatsoever. It was only after over a year of having joined on the post of Chowkidar and having accepted the pay scales applicable to that post that the appellant filed the present suit. He was clearly estopped from doing so.

In the light of the above discussion, the concurrent findings returned by the Trial Court as also the Appellate Court warrant no interference. No question of law, much less a substantial question of law, is also found to arise in the present appeal.

Dismissed.

August 04, 2021
Jyoti 1

(DEEPAK SIBAL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No