

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

CWP-19722-2017(O&M)

Date of Decision: 31.10.2022

Jaswinder Singh

.....Petitioner

versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ranjivan Singh, Advocate
for the petitioner.

Mr. Saurabh Mohunta, D.A.G., Haryana.

Mr. Pankaj Gupta, Advocate
for respondent No.2.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of appropriate writ directing the respondents to engage the petitioner as Data Entry Operator (on contract basis) w.e.f. 09.06.2015 with continuity and further to quash his Service Contract Agreement dated 06.01.2016 (Annexure P-13) to the extent it is detrimental to him. Further prayer has been made for issuance of a writ in the nature of mandamus directing the respondents to grant all the consequential service benefits like continuity of service, seniority, restoration of salary, its arrears, restoration of the benefits of ESIC Scheme and further to reimburse the medical expenditure incurred by the petitioner w.e.f. his original appointment i.e., from 23.07.2008 till his rejoining on 09.06.2015.

2. Succinct facts first, as pleaded in the petition. Petitioner was appointed as Data Entry Operator (DEO) in the Hartron Informatics Limited, a Haryana State Government undertaking (respondent No.2) on 23.07.2008. He was covered under the Employees State Insurance Corporation (ESIC) Scheme. While petitioner was on duty on 06.05.2009, he suffered attack of Brain Hemorrhage and was rushed to Govt. Hospital, Sector 16, Chandigarh from where he was referred to PGI and there he was operated. Father of the petitioner vide letter dated 10.05.2009 (Annexure P-3) informed about the condition of the petitioner to the General Manager, Hartron Informatics Ltd. Petitioner remained admitted in the PGI from 06.05.2009 to 04.06.2009 for treatment and thereafter, he was declared permanently disabled to the extent of 75% by the Govt. Multi-Speciality Hospital, Sector 16, Chandigarh and disability certificate dated 14.01.2011 (Annexure P-7) was issued in this regard. Since the petitioner was covered under the ESIC Scheme, the medical bills worth Rs.41,766/- and Rs.35,193/- were forwarded to Senior Medical Officer, ESIC, Sector 29, Chandigarh by Hartron Informatics Ltd. Thereafter, reimbursement to the tune of Rs.41,744/- and 21,715/- was made to the petitioner. He was declared fit to join his duty w.e.f. 25.04.2011 by the PGI and he submitted his joining report (Annexure P-9) along with the Medical Certificate (Annexure P-8) issued by the PGI on the same day but he was not allowed to join his duties. He submitted representation/reminder-1 dated 16.05.2011 (Annexure P-10) to

Managing Director, Hartron Informatics Ltd., Sector 17-B, Chandigarh, but again he was not allowed to join. For a fairly long time neither the petitioner was permitted to join/continue his duties, nor any reimbursement of Medical expenditure was made. Further, petitioner made a representation/complaint dated 29.08.2013 (Annexure P-11) to the Commissioner for the Persons with Disabilities, Social Justice & Empowerment, Haryana under the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 seeking directions to the HARTRON authorities for permitting him to join his duties with all consequential benefits. Vide order dated 22.01.2015 (Annexure P-12), learned Commissioner disposed of the complaint with the directions to consider/decide the claim of the petitioner by taking a lenient view sympathetically within a period of two months.

3. Respondent No.2 resisted the claim of petitioner substantially on the ground that the petitioner being a contractual employee is not entitled to the benevolent provisions contained under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter, referred to as the 'Act'). Arguments have also been addressed on the similar lines and so is the defence pleaded in the reply. Reference particularly may be had from para Nos. 14, 15, 19 and 20 of the return filed with the response to writ petition by HARTRON, which reads thus:

“xxxxx

14&15. That in reply to paras 14 and 15 of the writ petition, it is submitted that as per the office records, the petitioner/Sh.Jaswinder Singh, Data Entry Operator joined the services on job work basis w.e.f. 23-7-2008 and an agreement was executed with him for the period from 23-7-2008 to 31-12-2008. The second/last agreement was signed with him for the period from 1-1-2009 to 30-6-2009. The petitioner suffered brain hemorrhage on 6-5-2009 and he did not attend the office after this date. The term of his engagement was not extended beyond 30-6-2009. The petitioner/Sh. Jaswinder Singh approached the Court of the Commissioner for Persons with Disabilities, Social Justice & Empowerment, Haryana, who vide orders dated 22-1-2015 directed the respondent/H.I.L. to decide the case of the petitioner by taking lenient view sympathetically within 2 months from the date of the orders. A Committee of four officers of Hartron Informatics Ltd. was constituted by the Managing Director on 12-3-2015 to judge his capability/suitability. As per the joint report of the Committee, the petitioner was not suitable for any computer related activities/job at that stage. However, on humanitarian grounds, the Managing Director afforded an opportunity of personal hearing to the petitioner on 7-5-2015 and his typing capability was tested. Thereafter, the M.D. observed that though his skill is now not of the same level as before the brain injury, still he was able to type a page correctly. Taking a lenient view in the matter, the M.D. vide orders dated 15-5-2015 ordered that the petitioner be engaged as computer operator & deputed in the Finance & Accounts Division. The petitioner joined the services as such w.e.f. 9-6-2015. Subsequently, a Service Contract Agreement dated 6-1-2016 was executed by the petitioner with the respondent/HARTRON for a period of one year from 1-1-2016 to 31-12-2016 against the consolidated contract amount/remuneration/job work fee of Rs.10,000/-.

Xxxx

19&20. That the contents of paras 19 and 20 of the writ petition are wrong and denied. It is wrong to say that the orders dated 22-1-2015 passed by the Court of the Commissioner for Persons with

Disabilities, Social Justice & Empowerment, Haryana have not been implemented in true spirit. The petitioner was taken as a fresh appointee and there is no question of giving him the benefit of continuity of service and other consequential benefits. The provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 are applicable to the regular Govt. employees and not to the job work/contract employees. Therefore, the petitioner is not entitled to the consequential service benefits as claimed by him in the corresponding para of the Civil Writ Petition.”

4. A perusal of the contents of para No.14 and 15 *ibid* of the reply would reflect that respondent-HARTRON concedes that the petitioner indeed suffered from Brain Hemorrhage on 06.05.2009, pursuant where to he did not attend the office after that day. Accordingly, the contract period, which at the relevant time was to expire, was not extended beyond 30.06.2009. Subsequently, when the petitioner recovered from his ailment, he approached the Commissioner of Persons with Disabilities, Social Justice & Empowerment, Haryana who vide order dated 22.01.2015 (Annexure P-12) allowed the complaint of the petitioner and directed HARTRON to take a lenient view and sympathetically consider the petitioner for appointment within two months from the date of the order. It is perhaps the word used ‘sympathetically’, which seems to be weighing in the mind of the respondent-HARTRON to deny the petitioner the benefit of benevolent provisions of Section 47 of the Act.

5. At this stage, it would be apposite to first have a look at Section 47 of the Act before adverting to the justification of the HARTRON. Section 47 of the Act is reproduced herein below:-

47. Non-discrimination in Government employment.—(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.*

6. A perusal of Section 47 *ibid* of the Act, particularly the head note thereof, clearly shows that the same is applicable to employees, who are in government service. Pertinently, there is no distinction carved out therein as to the same being applicable only *qua* the regular employees and not the contractual employees. In fact, the nature of the statute, which has been framed with the benevolent objective of providing succor to those unfortunate employees, who by Act of God or otherwise suffer any disability during service, the same has to be rather interpreted liberally and not in the narrow manner, as is being resorted to by the respondents. Merely because learned Commissioner while allowing the complaint of the petitioner used the word ‘sympathetically’, the same would not

have any overriding effect on the benevolent provisions of the statute. I am unable to persuade myself to accept the argument of learned counsel for the HARTRON that the proviso contained in the Section since provides that in case the post is not available then the employee has to be still retained on the said post by making the same as supernumerary till he attains the age of superannuation, reflects that the said provision is applicable only *qua* regular employees. In fact, the proviso on the other hand, provides rather further protection to those who are on regular employment by making it mandatory on the employer being a government establishment that in case of a regular employee even if post is not available then supernumerary post has to be created. The said benefit no doubt is not available to the petitioner being a contractual employee but I see no reason as to why the proviso is to be read against the rights of the petitioner which are contained in Section 47(1) of the Act, which in no uncertain terms mentioned that no establishment shall dispense with or reduce in rank an employee, who acquires a disability during service.

7. Instant is a clear case, where the petitioner suffered his disability during service, as is the conceded position from the return filed by the HARTRON and also on the other hand, it is the conceded position that pursuant to the order (Annexure P-12) passed by the Commissioner, he was taken back in service though his rank was not reduced but effectively he was given a fresh appointment by substantially reducing his salary to Rs.10,000/- per month as against

his counterparts. In the premise, the fresh contract signed by HARTRON inducting the petitioner, shows the taking advantage of the dominance of the employer vis-à-vis the employee.

8. It is also clear that the respondent Corporation continued to reimburse the medical expenses incurred by the petitioner for about 2 years after he suffered the hemorrhagic stroke and then as a bolt from the blue suddenly stopped bearing the expenses. Obviously by doing so, the respondent corporation violated the letter as also the spirit and the objectives of the Rights of Persons with Disabilities Act, 2016. It is directed that for the period petitioner remained out of service and could not report for work, the same shall be treated as leave of extraordinary kind without any salary on the principle of 'No Work No Pay' but the medical expenses of the petitioner would be reimbursable as per the terms of contract, which were subsisting as on the date he suffered the stroke.

9. In view of the above, instant petition is disposed of with a direction to the HARTRON to re-fix the salary of the petitioner on parity with his counterparts with effect from the date the petition was filed. However, for the period he has worked on reduced salary prior to filing of the petition, he shall not be entitled to any monetary benefits. Needful be done within a period of two months.

(ARUN MONGA)
JUDGE

October 31, 2022

Shivani Kaushik

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No