

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101+216

CM-10938-CWP-2022 in/&
CWP-25388-2017
Date of Decision :21.10.2022

Raja Ram

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sanjiv Gupta, Advocate for the petitioner.

Mr. Rajesh Gaur, Addl. A.G, Haryana.

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Harsimran Singh Sethi, J. (Oral)

CM-6824-CWP-2020

Application is allowed as prayed for.

CM-6826-CWP-2020

Application is allowed as prayed for.

Annexure P/6 is taken on record.

CM-10938-CWP-2022

As prayed for, application is allowed.

Annexure P-7 is taken on record.

CWP-25388-2017

In the present writ petition, the grievance of the petitioner is that the petitioner while working as Class-IV employee with the respondent-department suffered an accident due to which he became 100% disabled but the benefits, for which, the petitioner is entitled for, under the Persons With

Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short, 1995 Act') have not been extended to him by the respondents.

As per the averments made in the petition, the petitioner was appointed as Class-IV employee on daily wage basis with the respondents in the year 1997 and, thereafter, his services were regularized in July, 2013 and he was posted in the Office of District Education Officer, Sirsa. On 13.07.2013, the petitioner met with an accident as he fell down and suffered injuries on his back and was diagnosed with 100% functional disability and became bed ridden.

After suffering the said accident, the petitioner was not in a position to perform any duty and hence, he requested the respondents for the grant of benefits admissible to him under the 1995 Act. The petitioner has also submitted a medical certificate dated 02.02.2018 issued by the PGI, Rohtak certifying that the petitioner has 100% disability and is not fit for performing any duty, with the respondents. The petitioner is claiming benefit under Section 47 of the 1995 Act to the extent that in case any employee suffers a disability while in service, he be treated on duty so as to grant the said person the benefits, which he was drawing prior to the suffering of the said disability and as the said benefits were not extended to him by the respondents, the petitioner has filed the present writ petition claiming the same.

After notice of motion, the respondents have filed reply controverting the claim of the petitioner but during the pendency of the present writ petition, the petitioner has been granted the benefit of salary

along with arrears, which the petitioner was drawing prior to the said accident but w.e.f. 02.02.2018 i.e the date, the petitioner was certified with 100% disability and the medical certificate to this effect was submitted by him.

Learned State counsel further submits that the petitioner never made any representation claiming the benefit hence, the petitioner was denied the benefit from the date he suffered the accident in the year 2013 and the same has been given from the date of disability certificate.

Learned counsel for the petitioner submits that once the accident was suffered by the petitioner in the year 2013 which resulted in his disability and the petitioner remained in the same condition with 100% disability since then, he is entitled for the benefit from the date, he suffered the accident and not from the date of disability certificate dated 02.02.2018.

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

It is a conceded position that the petitioner is Class-IV employee working with the respondent-department. It is also not disputed that while in service, on 13.07.2013 the petitioner suffered an accident due to which, he became 100% disabled. The only objection being taken by the respondents is that as the medical certificate was submitted by the petitioner in the year 2018 and after the submission of the same, he has been granted the benefit admissible to him under the 1995 Act hence, the petitioner cannot be granted the benefits prior to the said date. It is also not a disputed fact that the petitioner suffered a disability, which is 100% in the year 2013.

It is also not a disputed fact that as per the Section 47 of the 1995 Act, no

establishment can dispense with or reduce in rank an employee, who acquires a disability during his service even if, the said employee after acquiring the disability is not suitable for the post he was holding or he/she cannot be adjusted on some other post with the same pay scale and service benefits. Disabled employee is to be kept on a supernumerary post until a suitable post is available or he/she attains the age of superannuation, whichever is earlier. Section 47 of the 1995 Act is reproduced as under:-

“Section 47 in The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995

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.”

In the present case, it is a conceded position that after suffering an accident, the petitioner became 100% disabled and was not in a position to perform any duties. That being so, the petitioner became entitled for the benefit under Section 47 of the 1995 Act immediately on acquiring the said disability. The respondents being welfare State were under an obligation to

grant the petitioner benefit of Section 47 of the 1995 Act, which benefit, the respondents themselves allowed to the petitioner from the date of the disability certificate dated 02.02.2018. It is not the case of the respondents that petitioner was not 100% disabled in the year 2013 when he suffered the said accident. Merely, that the certificate was made available by the petitioner in the year 2018 will not prevent the petitioner from claiming the benefit from the date he becomes entitled for the said benefit under the 1995 Act.

Further, the petitioner suffered injury in the backbone and became 100% disabled and could not even stand on his legs. It has not been disputed that the petitioner after suffering the said disability on 13.07.2013 remained in the same condition till he was granted the medical certificate of being 100% disabled. That being so, the petitioner is entitled for the grant of benefit under Section 47 of the 1995 Act from the date of suffering the disability and not from the date he was certified as disabled by the competent authority.

Further, in somewhat similar circumstances, a Coordinate Bench of this Court while passing order in **CWP-10158-2017** tilted as **Gopi Ram though his wife Smt. Meena Devi vs. State of Haryana and others** on 14.01.2020 has granted the benefit to a disabled employee from the date he suffered a disability and though, the Coordinate Bench allowed the arrears along with interest but, Division Bench of this Court while passing order in LPA No.807-2020 on 05.08.2022 has modified the judgment to the extent that the arrears will be restricted to 38 months prior to the demand notice.

In the present case, it is clear that after suffering the disability, petitioner claimed the benefit immediately and the same remained under consideration with the respondents and was extended to him by the respondents themselves holding that the petitioner is entitled for the benefit of Section 47 of the 1995 Act but from the date of 100% disability certificate i.e. 02.02.2018.

With regard to the argument of the learned State counsel that the petitioner never submitted a medical certificate claiming the benefit under the 1995 Act after suffering the disability on 13.07.2013 hence, he was rightly granted the benefit from the date he submitted the medical certificate, once it is not disputed that the petitioner is 100% disabled since the date of the accident and confined to bed since 2013, seeking representation along with medical certificate from such a person is too much to ask for especially, when under the law he became entitled for the grant of the benefit *ipso facto* under the 1995 Act upon suffering such kind of injury and consequent disability. Hence, it becomes duty of the respondent-State to come forward and grant the petitioner benefit admissible to him under the 1995 Act, being 100% disabled.

The petitioner has already been granted the benefit of full salary by the respondents keeping in view the medical certificate dated 02.02.2018 issued by the PGI, Rohtak from the date, the petitioner was certified to be a 100% disabled i.e. 02.02.2018 onwards and not from the date the petitioner suffered the accident, which was the cause of the disability i.e. in the year 2013. Nothing has come on record to show that the disability being suffered by the petitioner at the time of accident was not

such so as to contend that the petitioner was able to discharge his duties. Once the petitioner became 100% disabled immediately upon suffering an accident on 13.07.2013, he becomes entitled for the benefit under Section 47 of the 1995 Act so as to claim the salary, which he was drawing at the time he suffered the said accident till he attains the age of superannuation.

Keeping in view the above, the present writ petition is allowed. Respondents are directed to grant the petitioner benefit of full salary from the date petitioner suffered the accident i.e. 13.07.2013 onwards till 01.02.2018 and release the arrears of the salary within a period of two months from the date receipt of copy of this order. Amount already paid to the petitioner be adjusted while calculating the arrears admissible to the petitioner.

CM-6040-CWP-2020

Application stands disposed off.

October 21, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No