

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

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CWP-12340-2018(O&M)

Date of Decision:-09.08.2023

KRISHAN KUMAR

...Petitioner

Versus

UTTAR HARYANA BIJLI VITRAN NIGAM AND ORS ...Respondents

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Pardeep Solath, Advocate
for the petitioner.

Mr. Anil Chawla, Advocate
for the respondents.

SANDEEP MOUDGIL, J. (Oral)

The instant petition has been preferred under Articles 226/227 of the Constitution of India seeking issuance of writ in the nature of mandamus for quashing impugned action of respondent No.3 in particular, whereby the petitioner was removed from the post of A.L.M. after suffering severe electric shock, in which the petitioner lost his right hand while repairing 11000 KV line.

Subsequently after undergoing treatment for some time and getting the disability certificate dated 19.08.2009, petitioner filed representations for taking back him on job, on the same post from the day he met with an accident i.e. on 30.05.2009. No heed was paid to the multiple requests/representations made orally or in writing by the petitioner. Thereafter the petitioner was finally adjusted in job w.e.f. 22.08.2012 through outsourcing under the employment of contractor namely The Sirsa Bansivat Coopertive Society Ltd., Sirsa.

The grievance of the petitioner raised in the instant petition is for not releasing salary for the post of A.L.M. since 30.09.2008 till 22.08.2012 i.e. the day he was taken back in services through outsourcing agency only.

A reference has been made to a list of employees who were working in the office of S.D.O.S/U S/Division, Ganaur in the month of May, 2009, in which the name of the petitioner appears at Serial No.1 mentioned as skilled labourer and employed on 28.05.2008 directly by the Superintendent Engineer. The said list consists of 9 employees who have been paid wages as is evident from the document (Annexure P-2). During the course of hearing, another list has been brought to the notice of this Court for the month of July, 2017 (Annexure P-12) whereby the wages have been released to such employees who are still working directly on daily wage basis on DC rate in the office of S.D.O.S/U S/Division Ganaur, which also consists of 9 names. Interestingly, the 8 employees are the same as have been recorded in document (Annexure P-2) except the name of the petitioner, which stands omitted from that list and seems to be replaced by Devender son of Sh. Randhir mentioned at Serial No.3 in list as LDC.

If it is the case with the respondents that those employees who were working alongside the petitioner on DC rate directly engaged in the office of S.D.O.S/U S/Division Ganaur and are continuing till the date, it is prima facie crystal clear from perusal of Annexure P12 that why the petitioner cannot be considered to continue, who seems to have been replaced against the mandate of law by another daily wager employee on DC rate itself.

In fact, the authorities are expected to be more sympathetic and have a humanitarian approach while considering the case of the petitioner, who suffered major injury that is severe electric shock in which the petitioner lost his right hand

while repairing 11000 KV line.

Reliance has been made by the petitioner in ***Union of India vs. Dileep Kumar Singh(SC) 2015(3) SCT 123***, part of which has been reproduced as under:-

"C. Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, proviso to Section 47 - Non-discrimination in Government employment-Exemption-Classification-Idea of Section 47 is not to discriminate against employees who acquire disability during service-Discrimination cannot be viewed in the abstract and the doctrine of classification is an important adjunct to the doctrine of discrimination-If there is an intelligible differentia having a rational relation to the object sought to be achieved, a provision will not be held to be discriminatory - It is clear that an exemption provision is based on such a classification and exempting any establishment from not dispensing with service or reduction in rank or not granting promotions has a rational relation to the object sought to be achieved, namely, that the "type of work carried on in an establishment may be such that a disabled employee's services may have to be dispensed with and/or promotion denied. [Para 22];

D. Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, proviso to Section 47 - Non-discrimination in Government employment - Disabled employees Exemption notification Contention of behalf of the appellant that the exemption notification dated 10th September, 2002 will not apply for the reason that the accident took place prior to 2002 repelled - Exemption notification will apply to all cases in which an employee's services are dispensed with - Relevant date is the date of dispensing with service and not the date on which the disability is incurred - Section 47 prohibits an establishment from dispensing with the service of an employee who acquires disability during his service - Since service was dispensed with on 1st July, 2011, i.e. long after the date of the exemption notification, the notification will, obviously, apply. [Para 25]"

This Court is duly convinced that it is a fit case for the respondents to consider the claim of the petitioner on equity along with the fact that he seems to have been replaced by another employee Devender on DC rate alone which is against law. Respondents are directed to consider the claim of the petitioner and pass a speaking order within a period of one month in accordance with law. A copy of the same shall be communicated to the petitioner within a period of one week thereafter.

All pending miscellaneous applications, if any, also stand disposed of.

(SANDEEP MOUDGIL)
JUDGE

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