

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

(245)

CWP-21761-2022

Date of Decision : March 06, 2024

Amit Kumar through his father Ram Kumar**.. Petitioner****Versus****State of Haryana and others****.. Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Vijay Dahiya, Advocate, for the petitioner.

Mr. Pankaj Middha, Addl. Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the grievance of the petitioner is that while working as Multi Purpose Health Worker (Male) since 28.06.2019, unfortunately he met with a road accident on 31.12.2020 and received severe head injuries and is in coma since then. The prayer of the petitioner is that as he has been declared 100% disabled, a copy of medical report dated 11.07.2022 is annexed as Annexure A-3, but no salary is being paid to the son of the petitioner since January, 2021.

2. Learned counsel for the petitioner argues that keeping in view the “Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, which has been further replaced by “ The Rights of Persons with Disability Act, 2016”, any employee, who suffers disability while in service, is entitled for the same benefits as being enjoyed

by him/her before the suffering of disability in question.

3. Learned counsel for the petitioner submits that the respondents be directed to release the full salary of the petitioner starting from January, 2021 onwards along with arrears and interest, which is being withheld in an arbitrary manner.

4. Upon notice of motion, the respondents have conceded the fact with regard to the appointment of the petitioner as Multi Purpose Health Worker (Male) as well as the injuries suffered by the petitioner and he being in coma since 31.12.2020.

5. The only justification given by the respondents for not releasing the salary of the son of the petitioner is that the matter is still pending consideration before the higher authorities to create a supernumerary post so as to release the salary of the petitioner.

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

7. The employer has to be sensitive about the miseries of his employee, who unfortunately met with an accident and is in Coma since last more than three years. In the present case, employee, who is in coma, has been made to approach this Court for the release of the salary which employee is otherwise entitled for under the law. This situation should have been avoided by the State being a welfare state.

8. As per the facts, which have come on record, the petitioner namely Amit Kumar is in coma since 31.12.2020. He was an employee working as Multi Purpose Health Worker (Male) at the time when he suffered the ailment.

9. Keeping in view Section 47 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation), Act,

1995, any employee, who acquires disability during his service, should be shifted to another post with the same pay scale and the same service benefits. In case, it is not possible to shift the employee to any other post, then any supernumerary post should be created so that the employee concerned is able to get salary which the employee was getting prior to becoming disabled, upto the age of superannuation. Section 47 of the said Act, 1995 is as under:-

“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.”

10. Keeping in view the said provisions of law, the respondents should have granted the benefit of salary to Amit Kumar, who is lying in coma for the last more than three years.

11. Nothing has come on record as to what impediment exist for non-release of the salary of disabled employee and the family has been made to approach this Court to seek the relief.

12. Keeping in view the above, as learned counsel for the

respondents has not been able to dispute that Amit Kumar i.e. disabled employee, is entitled to get the salary which he was getting as on 31.12.2020 keeping in view Section 47 of 1995 Act, the present writ petition is allowed and a direction is issued to the respondents that within a period of two weeks from today, all the arrears of salary starting from 01.01.2021 be released along with all the consequential benefits.

13. As the respondents were under an obligation to release the salary to disabled Amit Kumar, when the ailment/disability was suffered on 31.12.2000 the arrears of salary will also carry interest @ 6% per annum keeping in view the judgment of the Coordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355***, according to which, any amount belonging to an employee, has been retained and used by the Department, the employee will be entitled for interest. The relevant paragraph of ***J.S. Cheema's case (supra)*** is as under: -

“The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

14. Keeping in view the above, the present writ petition is allowed with the cost of Rs.25,000/- as without any valid justification, the salary of a disabled employee has been withheld and the said disabled employee has been made to approach this Court to seek his right of full salary. The cost will be paid while complying with the directions given by this Court

hereinbefore. As the respondents have been directed to release all the arrears of salary starting from 01.01.2021 till the date, a further direction is also issued to release the salary to the petitioner Amit Kumar by 7th of every month till he is alive or attains the age of superannuation, whichever is earlier. It is also noticed that in case the directions issued are not complied within the time frame, serious view will be taken including the initiation of contempt proceedings against the respondents for violating the order.

15. As the salary of Amit Kumar will be deposited in the bank account and he is in coma, the bank authorities are directed that the amount which is being received as salary of Amit Kumar, be released to the family members so as to take care of said Amit Kumar during his ailing days.

March 06, 2024*harsha***(HARSIMRAN SINGH SETHI)****JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No