



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

1) CWP-227-2019
Date of decision: 18.11.2025

Deep ChandPetitioner

Versus

Uttar Haryana Bijli Vitran Nigam Ltd. and others ...Respondents

2) CWP-2490-2016

Deep ChandPetitioner

Versus

Uttar Haryana Bijli Vitran Nigam Ltd. and others ...Respondents

3) CWP-7491-2006 (O&M)

Deep ChandPetitioner

Versus

Uttar Haryana Bijli Vitran Nigam Ltd. and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sumit Gupta, Advocate
for the petitioner(s).

Mr. Hitesh Pandit, Advocate
for the respondent(s).

HARPREET SINGH BRAR, J. (ORAL)

1. This common order shall dispose of the aforementioned civil writ petitions as they arise from a similar factual matrix. However, for the sake of brevity, the facts are taken from CWP-227-2019.

2. The present civil writ petition has been filed under Article 226 of the Constitution of India praying for issuance of a writ in the nature of



certiorari to quash the impugned order dated 29.08.2018 (Annexure P-5) and for a writ in the nature of mandamus directing the respondents to count the petitioner's service from 1974 to 10.09.1997 for the purpose of pensionary benefits, with all consequential benefits.

3. Briefly the facts of the case are that the petitioner joined the services of the erstwhile HSEB (a predecessor of the respondent-Nigam) in 1974 as a work-charge T-mate. His services were regularized as an ALM on 19.04.1982. On 28.04.1997, while discharging his official duties, the petitioner suffered a severe electric shock, leading to the amputation of his right hand. He was declared 70% physically handicapped. Consequently, his services were terminated vide order dated 10.09.1997. Subsequently, on his own request, he was offered a fresh appointment as a Peon under an *ex-gratia* scheme, which he accepted. He continued in service and eventually retired on 28.02.2015. The core grievance of the petitioner is that his service from 1974 to 10.09.1997 has not been counted for calculating his pensionary benefits.

4. The petitioner approached this Court earlier by way of CWP No. 5410 of 2018, which was disposed of with a direction to the respondent-Chairman to decide his representation. In compliance, the respondent-Nigam passed the impugned speaking order dated 29.08.2018, rejecting his claim primarily on the grounds that (i) pensionary benefits are not admissible to a terminated employee, and (ii) the petitioner, having accepted a fresh appointment without protest, is estopped from claiming the benefit of his past service.

5. Learned counsel for the petitioner contends that the termination of the petitioner's services was patently illegal and in direct contravention of



Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter 'the PWD Act'). He argues that an employee who acquires a disability during service cannot be dispensed with or reduced in rank, and must be shifted to another post with the same pay scale and service benefits. The act of the respondents in terminating him and then offering a fresh appointment on a lower post, thereby severing his past service, is void ab initio. He further relies on the judgment of the Hon'ble Supreme Court in ***Kunal Singh Vs. Union of India, (2003) 4 SCC 524*** to underscore the mandatory nature of Section 47. Further Learned counsel for the petitioner contends that upon retirement in February 2015, the petitioner's pensionary benefits were released after a delay of eight months. Furthermore, an amount of Rs. 11,772/- was deducted from his outstanding benefits without any justification or show-cause notice. He relies on the judgment of a Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab, 1998 (1) SCT 343***, to claim interest on the delayed payments.

6. Per contra, learned counsel for the respondent-Nigam reiterates the stand taken in the impugned order and the written statement. He submits that the petitioner, having accepted the fresh appointment as a Peon without demur and without challenging the termination order for over two decades, is barred by delay and laches and is estopped from raising this claim. He further argues that as per the relevant CSR rules, a terminated employee is not entitled to pension, and the petitioner did not exercise his option for counting his work-charge service within the stipulated time.

7. I have heard the learned counsel for the parties and perused the records with their able assistance.



8. At the outset, it is imperative to examine the provisions of Section 47 of the PWD Act, 1995, which reads 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.”

9. The law on this subject is no longer *res integra*. A two Judge bench of the Hon'ble Supreme Court in **Kunal Singh (supra)** while speaking through Justice Shivraj V. Patil, has authoritatively held that Section 47 is mandatory in nature. The Court observed:

*"8. ...It must be remembered that a person does not acquire or suffer disability by choice. **An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature.** The very opening part of Section reads **"no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service"**. The Section further provides 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; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until*



a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from subsection (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service."

(emphasis added)

Reliance in this regard may also be placed on a Two Judge Bench of the Hon'ble Apex Court in ***Bhagwan Dass v. Punjab State Electricity Board (2008) 1 SCC 242*** and of this court in ***Bachan Kaur Vs. Uttar Haryana Bijli Vitran Nigam Ltd. & Ors. CWP-4461 of 2020***.

10. The fulcrum of this case rests upon the unequivocal statutory mandate of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The provision erects a formidable barrier against the dispensation of or reduction in rank of an employee who acquires a disability during service, casting a non-derogable obligation upon the employer to protect such an employee. The statutory scheme is clear and admits no ambiguity: if an employee becomes unsuitable for their current post due to a disability, the employer must shift them to an alternative post with the same pay scale and service benefits. The act of terminating the services of an employee who has incurred a disability in the course of duty and then treating their subsequent employment as a fresh appointment, thereby severing the past service for pensionary benefits, is not



only a gross misapplication of service rules but a complete subversion of the protective envelope of Section 47. The statutory protection cannot be diluted by principles of estoppel or acquiescence, for a right conferred by a social-beneficial legislation to safeguard the livelihood of a disabled employee cannot be forfeited by the compelling circumstances of his distress. Moreover Public entities shoulder the greater responsibility towards welfare, social development and support of particularly those who have been rendered vulnerable, such as individuals who acquire disabilities in the line of duty. This responsibility is imbued with a sense of social justice and is a constitutional mandate flowing from Article 243 W of the Constitution of India.

11. The action of the respondents is indefensible. The petitioner acquired a 70% locomotor disability during the course of his service due to an electrocution accident. The statutory obligation under Section 47 of the PWD Act was triggered instantly. The respondents were mandated to protect the petitioner by shifting him to another post with the same pay scale and service benefits. Instead, they chose the path of terminating his services, thereby illegally severing his continuous service.

12. The respondents' defense that the petitioner accepted a fresh appointment and is thus estopped, is fallacious. An act that is void and in violation of a statutory mandate cannot be validated by the principle of estoppel. The petitioner, facing destitution after a catastrophic accident, accepted the post of Peon out of necessity, not waiver of his legal rights. The judgment in ***Bachan Kaur (supra)*** explicitly rejects such a hyper-technical and insensitive approach.

13. The respondents' reliance on CSR rules pertaining to terminated



employees is misplaced, as the initial termination itself was a nullity in law. Furthermore, the issue of delay and laches is of no avail in the present case, as the cause of action for claiming pension is a continuing one, and the petitioner has been making consistent representations.

14. The respondents, in their reply, have not provided any justification for the eight-month delay in releasing the pensionary benefits or the specific reason validating the deduction of Rs. 11,772/-.

15. The law on the issue of delayed payment of retiral benefits is well-settled. The Full Bench in *A.S. Randhawa (supra)* categorically held that retiral benefits must be settled and paid within two months of retirement, and any delay beyond this period entitles the retiree to interest. Further Regarding the unauthorized deduction of Rs. 11,772/-, the law is equally clear. The Hon'ble Supreme Court in *State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334*, has laid down a cardinal principle that recovery from the emoluments of an employee is impermissible, especially from retired employees. A recovery effected without any notice or opportunity of hearing is not only arbitrary but also violates the principles of natural justice. In the absence of any evidence of misrepresentation or fraud on the part of the petitioner, the deduction is wholly unjustified and illegal.

16. In view of the above discussions,

a) The impugned order dated 29.08.2018 (Annexure P-5 in CWP-227-2019) is quashed and set aside.

b) The service of the petitioner should be deemed as continuous without any break and all service benefits including seniority, promotion and other monetary benefits should be released.

c) The respondents are directed to refund the sum of Rs. 11,772/- that was deducted from the petitioner's pensionary



benefits, along with interest at the rate of 6% per annum from the date of its deduction till the date of its actual payment.

d) The respondents are further directed to pay interest at the rate of 6% per annum on the entire delayed pensionary benefits, calculated from the date two months after his retirement (i.e., 30.04.2015) till the date of their actual release.

17. The needful shall be done by the respondents within a period of eight weeks from the date of receipt of a certified copy of this order.

18. In view of the above all three above-mentioned petitions are disposed of accordingly. No order as to costs.

19. Pending miscellaneous application(s), if any, shall stand disposed of.

20. A photo copy of this order be placed on the file of connected cases.

(HARPREET SINGH BRAR)
JUDGE

18.11.2025

Neha

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