
(2003) 01 P&H CK 0261
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 10904 of 1999

Amarjit Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 27-01-2003

Acts Referred:

Citation : (2003) 133 PLR 676

Hon'ble Judges : S.S. Nijjar, J; Hemant Gupta, J

Bench : Division Bench

Advocate : G.K. Mann, for the Appellant; Ashok Aggarwal, Addl. A.G., for the Respondent

Judgement

S.S. Nijjar, J.—We have heard the learned counsel for the parties at length and perused the paper book.

2. The petitioner who was working as Conductor with the Punjab Roadways, was ordered to be retired from service on medical ground under Rule 5.11 of the Punjab Civil Service Rules Vol.11 by order dated 8.7.1999. In this writ petition, the petitioner claims appointment on the alternative post of Clerk under Rule 5.12 of the aforesaid Rules. The petitioner was referred to Civil Surgeon, Gurdaspur for medical examination under Civil Services Rules Vol.1, Rule 3.5 as the petitioner was complaining continuous pain due to disc displacement. He was complaining of pain in the left leg and hip and was therefore, unable to perform the duties of conductor. On 1.4.99, the Civil Surgeon gave an opinion that the official is unable to perform the duties of conductor. The petitioner was declared only fit for a sitting job and not where he was required to move about. On a further clarification, the Civil Surgeon gave the final opinion that the petitioner is a patient of back bone problem. Due to this, he is unable to perform the duties of Conductor. On 25.5.1999, the petitioner, on the basis of the medical report, requested that he may be adjusted on a post like Clerk, Ledger Keeper, Cashier etc. On 26.5.1999, the petitioner was served with a notice of retirement in the category of medical unfit. Petitioner submitted reply to the show cause notice

and submitted that he may be appointed on an alternative vacant post like Assistant, Store Keeper, Booking Clerk, Ledger Keeper, Cashier, Adda Fee Collecting Clerk, Clerk etc. The petitioner was asked by letter dated 27.5.1999 to give information as to whether he knows Punjabi typing with the speed of 30 w.p.m. This was the requirement for being appointed on the post of Clerk under Punjab Civil Services (General and Common Condition of Service) Rules, 1994. On the same date, the petitioner sent a reply in writing stating therein a number of posts for which Punjabi typing was not necessary. He also stated that he does not know how to type. Ultimately, the claim of the petitioner has been rejected and the impugned order has been passed retiring the petitioner from service.

3. Written statement has been filed. The claim put forward by the petitioner has been controverted. It has been stated that the petitioner has been correctly retired on the ground of medical fitness under Rule 3.5 A of C.S.R. Vol. I. It is stated that since the petitioner did not know how to type in Punjabi, his request for appointment on post of Clerk was declined. Learned counsel for the petitioner has submitted that the petitioner was entitled to be appointed on the post of Clerk as he has been retired on the ground of medical unfitness. In support of her submissions, the learned counsel has relied on the judgment of the Supreme Court in the case of U.P. State Road Transport Corporation and another v. Mohd. Ismail and others 1991 (2) R.S.J. 149 and a judgment of the Division Bench in this Court in the case of S. Baldev Singh v. State of Punjab and Ors. 1995(2) R.C.J. 500. Learned counsel for the respondents has submitted that the claim of the petitioner has been considered in accordance with the applicable rules. The discretion vested in the respondents has not been exercised arbitrarily. Therefore, in fact the impugned order has been passed after taking into consideration all the necessary facts and circumstances. Therefore, the writ petition deserves to be dismissed.

4. We have considered the submissions made by the learned counsel for the parties.

5. A perusal of the rules clearly shows that a government employee can be retired from service on medical ground under Rule 5.11 of the Civil Services Rule on a medical certificate being given by the competent authority to the effect. Rule 5.11 is as under:-

"Rule 5.11: The invalid pension is awarded on his retirement from public service to Government employee who by bodily or mental infirmity is permanently incapacitated for the public service or for the particular branch of it to which he belongs."

6. On a government employee being directed to be retired as medically unfit, the case of the employee is to be considered for appointment of an alternative post under Rule 5.12. This rule is as under-

"Rule 5.12: In the case of partial incapacity (vide alternative certificate in Rule 5.26) a Govt. employee should, if possible be employed even on lower pay so

that the expense of pensioning him may be avoided. If there be no means of employing him even on lower pay, then, he may be admitted to pension, but it should be considered, whether in view of this capacity for partially earning a living, it is necessary to grant him the full pension admissible under the rules."

7. A perusal of this rule clearly shows that in case of partial incapacity, a government employee should, if possible, be employed on lower pay. It appears that the aim of the rule is giving alternative employment is to avoid the expenses involved in granting pension at a stage earlier to normal age of retirement. It is only in cases where it is found that it is not possible to employ him even on a lower post that he may be admitted to pension. This rule, in our opinion, does not give any indefeasible right to the government employee to be appointed on a lower post on being declared medically unfit. It vests the discretion in the employer to give employment on a lower post to avoid payment of pension at a premature stage. A perusal of order, Annexure P-12 shows that the competent authority has taken into consideration all the relevant facts and circumstances. The competent authority has found that the petitioner is not qualified for being appointed on the post of Helper as the qualification for the same is Matric and ITI. No post of Store Boy was available. For the other post, the petitioner did not fulfil the qualification of Punjabi Typing. Still the case of the petitioner was forwarded to the Director of State Transport, respondent no.2. The Head Office by its letter dated 5.7.1999 had intimated as follows:-

"With regard to letter No. 959/ECC dated 28.5.1999 on the above said subject, the Government has designated the post of Ledger Keeper, Assistant Accountant, Store Keeper. For the appointment of this post of Clerk, knowledge of Punjabi type is must and government has also banned on the appointments of the clerks. So this employee cannot be considered for these posts. So as per rule action be taken against this employee.

Sd/- Director State Transport." .

8. From the above, it becomes apparent that the respondents have considered the case of the petitioner with care. The decision cannot be said to be either arbitrary, whimsical or unreasonable.

9. We are of the opinion that the judgment of the Supreme Court in the case of U.P. State Road Transport Corporation (supra) would not be applicable in the facts and circumstances of the present case. Therein, the respondents had challenged the retrenchment by means of writ petitions before the Allahabad High Court. The High Court allowed the writ petitions directing the Corporation to offer alternative jobs to the petitioners therein. Therein, the Supreme Court was considering the Regulations 17(2) and 17(3) of the U.P. State Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981 (hereinafter referred to as "the Regulations"). Regulations 17(2) and 17(3) read as follows:-

"7.

17(2) A person appointed to the post of driver, will be required to undergo medical test, particularly vision test, every year or at such intervals as may be prescribed by the General Manager from time to time.

17(3) The service of a person who fails to pass the fitness test, referred to in the sub-regulation (2), may be dispensed with:

Provided that the persons, whose services are so dispensed with may, in the discretion of the Corporation, be offered alternative job."

10. Considering these regulations, it was held by the Supreme Court that under Regulation 17(3), a driver who is found medically unfit, cannot be permitted to continue as a driver. The Corporation, therefore, had been empowered to remove him from service as driver. At the same time, second branch of regulation 17(3) shows concern for the person who has been removed from service for want of medical fitness. It confers discretion on the Corporation to offer him an alternative job. The Supreme Court thereafter held that the discretion conferred by Regulation 17(3) confers no vested right on the retrenched workmen to get an alternative job in the Corporation. It was observed as follows:-

"11. The view taken by the High Court appears to be fallacious. The discretion conferred by Regulation 17(3) confers no vested right on the retrenched workman to get an alternative job in the Corporation. Like all other statutory discretion in the administrative law, Regulation 17(3) creates no legal right in favour of a person in respect of whom the discretion is required to be exercised other than a right to have his case honestly considered for an alternative job by the Corporation.

12. The High Court was equally in error in directing the Corporation to offer alternative job to drivers who are found to be medically unfit before dispensing with their services. The Court cannot dictate the decision of the statutory authority that ought to be made in the exercise of discretion in a given case. The Court cannot direct the statutory authority to exercise the discretion in a particular manner not expressly required by law. The court could only command the statutory authority by a writ of mandamus to perform its duty by exercising the discretion according to law. Whether alternative job is to be offered or not is a matter left to the discretion of the competent authority of the Corporation and the Corporation has to exercise the discretion in individual cases. The Court cannot command the Corporation to exercise discretion in a particular manner and in favour of a particular person. That would be beyond the jurisdiction of the Court."

11. The discretion vested in the Corporation was, however, denied by two circulars which were issued on December 19, 1986 and March 12, 1987. In these circulars, directions were given to the Regional Managers to dispense with the services of the drivers who were found to be medically unfit to drive the vehicles. These drivers were directed to be paid benefits under the U.P. Industrial Disputes Act. It was in these circumstances, that the Supreme Court held that "The

Circulars thus leave no scope for exercising discretion to consider the individual cases of retrenchment drivers for any alternative job". Since the discretion vested in the authorities under the Regulations could not have been taken away by the Circulars, it was directed that the Corporation, notwithstanding the Circulars, is required to consider the case of retrenched drivers for alternative jobs. The judgment of the High Court directing the Corporation to offer alternative jobs to the drivers was reversed by the Supreme Court and a direction was issued so the Corporation to consider the cases of the respondents in accordance with law. In the present case, as we have noticed earlier, the respondents have already considered the case of the petitioner. It has been found that it is not possible to accommodate the petitioner on any of the post for which he may be qualified.

12. The judgment in the case of S. Baldev Singh (supra) would also be of no assistance to the case put forward by the petitioner. Therein the petitioners (in all the writ petitions) were the drivers of the Roadways, who had been declared unfit for performance of their duties as drivers on the ground of medical unfitness. The petitioner or had submitted that illness to which they have been subjected is attributable to then service conditions for which they cannot be penalised and the respondent is under obligation to provide them alternative jobs or adequately compensate them if no such job is available with them. In that case, this Court relied on a judgment of the Supreme Court in the case of Anand Bihari and others Vs. Rajasthan State Road Transport Corporation, Jaipur and another, and allowed the writ petitions by issuing similar directions as in Anand Bihari's case (supra). The Supreme Court was considering the claim of rehabilitation of drivers who had been subjected to disability on account of service condition keeping in view the nature of duties performed by them. In the present case, the petitioner came into service on 12.11.1974. He was medically examined on 1.4.99, as he was complaining of back pain. The Medical Certificate states that he suffers from disc dislocation, causing back pain. This illness is not attributable to the conditions of service of the petitioner. Therefore, the ratio in Baldev Singh's case (supra) would also not be applicable in the facts and circumstances of the present case.

13. Therefore, we find no merit in the claim of the petitioner for being appointed on the post of Clerk. At best he was entitled to be considered for appointment on an alternative post and that exercise has been completed by the respondents. The case of the petitioners has been considered and rejected in accordance with law by the respondents.

14. At the conclusion of the hearing of the case, counsel for the petitioner, on instructions from the petitioner, who is present in Court, has stated that although the petitioner has been retired w.e.f. 8.7.1999, the respondents have not paid a single rupee of the retiral benefits i.e. GPF, Gratuity, Group Insurance, Compensation of Medical Ground retirement and pension. An application has been filed in Court today for taking the affidavit of the petitioner on record. The

application is allowed. The affidavit is taken on record. The Office is directed to number the application for placing on record. We are of the considered opinion that the pendency of the writ petition did not justify the non-release of the retiral benefits to the petitioner. The retiral benefits ought to have been released, subject to the decision of the writ petition.

15. In view of the above, the respondents are directed to release the retiral benefits to the petitioner within a period of two months of the receipt of a certified copy of this order. The petitioner shall be entitled to interest at the rate of 7 per cent per annum from the date of his retirement till payment of the retiral benefits.

16. The writ petition is disposed of accordingly.

Sd/- Hemant Gupta, J.