

(2006) 08 P&H CK 0340

In the Punjab And Haryana At Chandigarh

Case No : CM No. 12579 of 2006 and CWP No. 5942 of 2003

Balwant Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 04-08-2006

Acts Referred:

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

Citation : (2006) 08 P&H CK 0340

Hon'ble Judges : P.S. Patwalia, J

Bench : Single Bench

Advocate : R.N. Lohan and Gorakh Nath, for the Appellant; R.S. Kundu, Addl. A.G., for the Respondent

Judgement

P.S. Patwalia, J.

CM No. 12579 of 2006

1. The present application has been moved for listing of this case on some actual date as according to the petitioner the case is completely covered by a Division Bench judgment of this Court in Civil Writ Petition No. 18916 of 2004, decided on 15.12.2005.

2. Learned Counsel for the parties are agreed that the application may be allowed and the writ petition be taken up for hearing today itself. C.M. is allowed. With the consent of the parties, the writ petition is being disposed of by separate order.

C.W.P. No. 5942 of 2003

3. By way of the present writ petition the petitioner is challenging the order Annexure P-2 dated 15.7.2002 vide which he was retired from Government service. A perusal of the facts would show that the petitioner had joined the service of Haryana Roadways as a Driver. It is his contention that in the year

1999 he met with an accident while on duty and suffered multiple injuries reflecting malunited fracture Left Tibia, Fibula and second metatarsal bone with osteomyelitis, restricted movement left ankle joint and loss of heel pad of right foot. Resultantly, he could not discharge duties as a Driver. Initially on account of the injuries suffered by him, he was referred to the Medical Board at P.G.I.M.S. Rohtak. On account of disability suffered by him, ultimately he was retired from service. Petitioner had filed this writ petition relying on Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter to be referred as, 'the Act') to contend that if an employee suffered disability during service, his services could not be dispensed with but he will have to be shifted to some other post with the same pay scale. The respondents on the other hand are relying on a notification issued by the State Government on 27.6.2005 exempting the post of drivers and conductors in the Haryana Roadways from the operation of Section 47 of the Act.

4. A Division Bench of this Court in *Gian Chand v. State of Haryana and Ors.* Civil Writ Petition No. 18916 of 2004, decided on 15.12.2005 has held that notification dated 27.6.2005 could not have retrospective effect. That writ petition was accordingly allowed and the respondent-State was directed to take back in service the petitioners in that case. Learned Counsel for the petitioner contends that case of the petitioner is completely covered by the said Division Bench judgment. Learned Counsel for the respondents has not been able to distinguish this case from the one decided by the Division Bench. In fact the present case is completely covered by the said judgment. It may, however, be pointed out that a reading of the Division Bench judgment would show that in that case the petitioners had already retired by the time the notification was issued. In this case the petitioner has to be reinstated. Learned Counsel for the petitioner states that he would not press his claim for back wages if he is reinstated expeditiously. However, the learned Counsel submits that the amount of pension which the petitioner has withdrawn may not be recovered from him.

5. Since the controversy in the present case is covered by the aforesaid judgment, the order Annexure P-2 retiring the petitioner from service is set aside. The petitioner is ordered to be reinstated in service on any other post carrying the same pay scale and service benefits in terms of Section 47 of the Act. He shall, however, be not entitled to back wages for the period he did not work i.e. the date when he was retired from service on 15.7.2002 upto the date when he is reinstated but shall be given all other consequential benefits. It is, however, clarified that any pension paid to him shall not be recovered. It is further clarified that in case the petitioner has withdrawn any terminal benefits, the same shall be deposited back by him within three months from the date of his reinstatement. The petitioner would be issued the necessary reinstatement order within a period of two months from the date of receipt of a certified copy of this order.