

(2003) 07 P&H CK 0132
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8308 of 2001

Hem Chand

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-07-2003

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2003) 135 PLR 65

Hon'ble Judges : S.S. Nijjar, J;S.S. Grewal, J

Bench : Division Bench

Advocate : R.N. Lohan, for the Appellant; Gurpreet Singh, Add. Central Govt. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Nijjar, J.—The petitioner was appointed on the post of Staff Car Driver on 31.7.1999 by respondent No. 2. On 9.4.2001, the services of the petitioners were terminated by order, Annexure P-5. It is submitted by the learned counsel for the petitioner that the respondents could not have terminated the services of the petitioner on account of permanent disability. During service, the petitioner met with an accident. On account of the accident, right leg of the petitioner was amputated from thigh downwards. Therefore, the Medical Board, Jind assessed his disability to the tune of 80% in the certificate dated 21.3.2001. The petitioner was entitled to the salary equivalent to the driver working in Punjabi University, Patiala in the scale of Rs. 4020-120- 6200.

2. Learned counsel for the petitioner submitted that the action of the respondents in terminating the services of the petitioner is illegal, arbitrary, discriminator) and contrary to the provisions contained in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as "the Act"). According to the learned counsel, the petitioner would be entitled to be shifted to some other post with the same pay scale and service benefit, u/s 47 of the Act. If no such post was available, the

petitioner had to be kept on supernumerary post until a suitable post becomes available or he attains the age of superannuation. The order of termination has been passed without giving any opportunity of hearing to the petitioner. Therefore, the respondents have acted in breach of rules of natural justice.

3. The case put forward by the petitioner has been controverted by the respondents. Respondent No. 1 has filed a short reply and respondents No. 2 to 4 have filed a detailed written statement. The respondents have taken preliminary objection to the effect that the Army Institute of Laws is being run by the Army Welfare Education Society which is not an instrumentality of the State under Article 12 of the Constitution of India, Therefore, the writ petition is not maintainable. In support of the submission, the respondents have relied on a judgment of the Division Bench of the High Court of Jammu & Kashmir rendered in W.P. (Service) No. 1415 of 1996 (Mrs. Asha Khosa v. Chairman Army Public School and Ors.) decided on 17.2.1997. The judgment delivered by the High Court of Jammu and Kashmir is attached as Annexure R.I. to the reply. In the aforesaid judgment, it has been held that the Army Welfare Education Society is not an instrumentality of the State under Article 12 of the Constitution of India. Against the aforesaid judgment, the petitioner therein had filed Special Leave to Appeal (Civil) No. 6482 of 1997 which was dismissed on 31.3.1997 with the following order-"Upon hearing the counsel court made the following order: The SLP is dismissed."

4. The question of law raised in the present writ proceedings was also considered by a Division Bench of this Court in C.W.P. No. 14993 of 2000 (Gurvinder Kaur v. Union of India and Ors.). It has been held by the Division Bench that the petitioner therein would be entitled to file a suit for damages but the writ is not maintainable under Article 226 of the Constitution of India. This finding has been given after considering the ratio of law laid down by the High Court of Jammu and Kashmir in the case of Asha Khosa (supra).

5. Mr. Gurpreet Singh. Advocate, has vehemently argued that the matter is squarely covered by the aforesaid judgment and cannot be reagitated. Respondent No. 2 is not amenable to the writ jurisdiction under Articles 226 and 227 of the Constitution of India.

6. Mr. Lohan has submitted that a writ petition would be maintainable against the respondents to compel the respondents to perform the statutory duty imposed on them by Section 47 of the Act.

7. We have anxiously considered the submissions made by the learned counsel for the parties. We are unable to agree with the submissions of the learned counsel for the petitioner. The High Court of Jammu and Kashmir in Asha Khosa's case (supra) considered the legal question which was formulated as follows:-

"Whether or not the Army Welfare Education society is an instrumentality of the State in terms of Article 12 of the Constitution of India.?"

In that case, the petitioner had been appointed as Principal, Army Public School, Udhampur. In her appointment order it was mentioned that her services would be governed by rule known as Army Welfare Education Society Rules". Her services were terminated as the same were no longer required. The petitioner had challenged the aforesaid order of termination. The respondents had taken a preliminary objection to the effect that the School did not fall within the term "State" or "other authority" as defined under Article 12 of the Constitution of India. After elaborate discussion, the Division Bench of Jammu and Kashmir High Court has come to the conclusion that the Army Welfare Education Society is not an instrumentality of the State under Article 12 of the Constitution of India. Thereafter, the petitioner filed SLP in the Supreme Court, which, as noticed earlier, was dismissed on 31.3.1997. Relying on the aforesaid judgment of the High Court of Jammu and Kashmir, this Court has also come to the same conclusion in Gurwinder Kaur's case (supra). In that case, the petitioner had been appointed as "Dorm Attendant" in an Army School. Her services were terminated. She had challenged the order of termination. A Division Bench of this Court relying on the judgment of the High Court of Jammu and Kashmir in the case of Asha Kosha (supra) came to conclusion that the writ petition would not be maintainable against the School.

8. We find force in the submissions made by Mr. Gurpreet Singh, learned counsel for the respondents. This Court is bound by the earlier decision rendered by the Division Bench in Gunvinder Kaur's case (supra).

9. We have not been persuaded by the counsel for the petitioner to take a view different from the view taken by the two Division Benches in the cases of Asha Kosha and Gunvinder Kaur (supra).

Section 47 of the Act reads as under:-

"Non-discrimination in Government employments.- (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 supernumerary post until a suitable post is available or he attains the age of superannuation, which ever is earlier."

10. A perusal of the aforesaid Section would clearly show that it applies to government establishments. The aforesaid Section starts with the words "Non-discrimination in Government employments". We have already held above that the Respondent is not an instrumentality of the "State" as defined under Article 12 of the Constitution of India. It is a purely private body. No statutory duty has been imposed on the respondent-Society which is registered under the Societies

Registration Act, 1860. The "establishment"" has been defined in Section 2(k) of the Act which is as under:-

"2. xxx xxx xxx xxx

(k) "establishment" means a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in Section 617 of the Companies Act 1956 (1 of 1956) and includes Departments of a Government;"

11. A perusal of the aforesaid Section would clearly show that the respondent-Society would not fall within the ambit of the same. The respondent is a society registered under the Societies Registration Act, 1860. The Government exercises absolutely no control in the management of the Society. It is not a company which would fall within Section 617 of the Companies Act, 1956. In view of Section 47 of the Act, the protection under this Section would not be available to the petitioner. The respondents have not acted in breach of any statutory rule.

12. In view of the above, the writ petition fails and is hereby dismissed. No costs.

Sd/- S.S. Grewal, J.