
(2008) 01 P&H CK 0062
In the Punjab And Haryana At Chandigarh

Jai Bhagwan

APPELLANT

Vs

Uttar Haryana Bijli Vitran Nigam Ltd. and Another

RESPONDENT

Date of Decision : 21-01-2008

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 47

Citation : (2008) 117 FLR 624 : (2008) 2 LLJ 753

Hon'ble Judges : Mohinder Pal, J; Hemant Gupta, J

Bench : Division Bench

Judgement

Hemant Gupta, J.—The challenge in the present writ petition is to the order passed by the respondents on May 1, 2003 whereby the petitioner has been retired from service of the Board on compassionate : ground in view of the fact that he was declared medically unfit i.e. on account of loss of vision.

2. It is the case of the petitioner that in the year 1999 while performing his duty, the eye sight of the petitioner was damaged on account of sudden flash of the sparking in the electricity light. On account of the said sparking, he lost his vision and was declared medically unfit by the board of Post Graduate Institute of Medical Science, Rohtak on March 21, 2000 and order of retirement had been passed on May 1, 2003 though w.e.f. March 21, 2000.

3. The petitioner has relied upon provision of Section 47 of the Persons with Disabilities (Equal Opportunity, Protection of Right and 3 Full Participation) Act, 1995 to contend that he cannot be removed from service on account of the disability suffered during the course of employment. Learned Counsel for the petitioner relies upon Kunal Singh Vs. Union of India (UOI) and Another, . In the said judgment, it was held to the following effect at p. 738 of LLJ:

9. ...Section 47, which falls in Chapter VIII, deals with an employee, who is already in; service and acquires a disability during his* service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same,

enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected u/s 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 Sub-section (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.

4. In the judgment of this Court State of Punjab and Anr. v. Darshan Singh 2008 (1) SCT 234, it has been held that Section 47 of the Act creates a statutory bar against dispensing with the services of an employee if he acquires disability during service. The relevant extract from the judgment in Darshan Singh's case reads as under:

The only question that survives for consideration is as to whether Section 47 of the Act creates a bar against dispensing with the services of an employee, who acquires disability during service or the same does not supersede the Service Rules of the State of Punjab and the employer can still proceed under the Service Rules for dispensing with the services of an employee on medical grounds. Having gone through the Section 47 of the Act, as reproduced above, I am of the firm opinion that the aforementioned Section creates a statutory bar against dispensing with the services of an employee after he acquires disability during service. The view expressed by this Court is fortified by the judgments of the Apex Court and the various High Courts including that of our own High Court, as referred to above, wherein it has been held that in case an employee acquires disability during service, his service cannot be dispensed with even if there is no post and the employer has to create a supernumerary post or till he attains, the age of superannuation, whichever is earlier. The same view has been expressed

by the learned lower appellate authority reversing the findings recorded by the trial Court giving sound reasoning in the judgment and decree passed by him by citing number of judicial pronouncements therein, which in my considered view, cannot be held to be erroneous in any manner and in such like circumstances, the findings recorded by the lower appellate authority are hereby affirmed warranting no interference.

5. The fact that the petitioner suffered. injury during the course of his service is not in dispute. It was on account of the injuries suffered by the petitioner during the course of employment, he lost his vision. Thus in terms of Section 47 of the Act, the services of the petitioner could not have been dispensed with.

Therefore, action of the respondents is wholly unjust and untenable in law. Consequently, Annexure PI is set aside and the petitioner is ordered to be re-instated with all consequential benefits. Such consequential benefits shall be paid to the petitioner within a period of three months from today.