
(2006) 05 P&H CK 0105
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8747 of 2000

Makhan Singh, Ex. Driver, Punjab Roadways	APPELLANT
Vs	
State of Punjab and Others	RESPONDENT

Date of Decision : 03-05-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 47

Citation : (2006) 111 FLR 987 : (2006) 144 PLR 47

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : R.S. Sharma, for the Appellant; Satish Bhanot, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

M.M. Kumar, J.—This petition filed Under Article 226 of the Constitution prays for quashing order dated 26.6.2000 (P-16) retiring the petitioner on the ground of medical unfitness. The petitioner, who is a driver in the Punjab Roadways Department almost lost his eyesight of one eye in an accident, which occurred on 18.5.1998 when he was on en-route from Nangal to Amritsar, while driving the bus No. PB-12-C-9115.

2. The petitioner was appointed as driver by the respondent State on 17.10.1983. In an accident on 18.5.1998, he suffered injury and his right eyesight was considerably damaged. The report of the accident was recorded in F.I.R. No. 157, dated 18.5.1998 at Police Station Jandiala, District Amritsar. The petitioner has also suffered bodily injuries on his leg. He remained admitted at Civil Hospital, Amritsar. Thereafter, he was admitted to Civil Hospital, Hoshiarpur from 18.5.1998 to 27.10.1998 and medical leave in that regard was sanctioned by the competent authority i.e. the General Manager, Punjab Roadways, Nangal (Respondent No. 3), vide order dated 4.12.1998 (P-I). On account of defective

eye-sight, the petitioner was not able to perform his duty as a driver and as such he was asked to perform the duty as a Yard Master with effect from 28.10.1998. On 12.10.1999, He was referred to Civil Surgeon, Rupnagar, for conducting a medical examination with regard to his eye-sight (P-9). After submission of the report to the General Manager Roadways-respondent No. 3, the petitioner was issued a show cause notice dated 16.11.1999, Under Rule 3(1X9) of the Punjab Civil Service (Premature Retirement) Rules, 1975 (for brevity, "the 1975 Rules") for his premature retirement from service (P-10). The petitioner replied to the show cause notice on 6.1.2000 (P-11) in which he had taken the stand that his children were minor and school going. He requested the authorities that by compulsory retirement he would not be able to look after his family and the education of his children would suffer. He also cited his dedicated service rendered by him to the respondents with an object to earn a favourable order. He also requested for his adjustment against a post other than the driver.

3. On 13.1.2000, the consent of the petitioner was sought for alternative employment on the post of Security Guard (P-12). In the meanwhile, on 13.1.2000 he was referred to the Civil Surgeon, Ropar, for check up of his eye-sight as the petitioner had claimed that the eye-sight of his left side is completely perfect although his eye-sight of right eye had suffered damage. A report from the Civil Surgeon was sought by respondent No. 3. The letter dated 3.2.2000 is also to the same effect and the opinion of the Civil Surgeon has been sought as to whether the petitioner was fit to perform the duties of Yard Master etc in the pay scale of Rs. 3120-5160. The Civil Surgeon has declared him fit for performance of duty of a Security Guard, vide his report dated 10.2.2000 (P-15). However, on 26.6.2000, abruptly the petitioner was prematurely retired on medical ground by respondent No. 3 on the directions issued, by the Divisional Manager, Transport Department, Punjab; Chandigarh. The order of his premature retirement reads as under:

Shri Makhan Singh, driver No. 88 had appeared before the Civil Surgeon, Ropar on 12.10.1999 for medical check up of his eyes. A report had been sent by Civil Surgeon, Ropar vide letter No. C/Medi/99/162 dated 28.10.99 that Shri Makhan Singh D.No. 88 was not fit to discharge the duties of a driver because of defective eye sight. Thus a notice, of three months was issued to the official to which a reply dated 6.1.2000 had been filed by him stating that the eye sight was good and he may be adjusted against some other post. During the "period Civil Surgeon, Ropar vide letter No C/Medi. /99/173 dated 15.12.99 informed that the eye sight of the official is permanently weak and a decision to take duty from, the official of a post other than that of a driver be taken at your level. The official had requested that he be given an alternative job but there is no such job with the Department. Civil Surgeon, Ropar, vide letter No. Medical/C.S./2000/151, dated 10.2.2000 has informed to this office that the official is fit to discharge the duties as Security Guard. The case was referred to the Divisional Manager Transport Department Punjab, Chandigarh for approval but Divisional Manager, Transport Department Punjab Chandigarh has issued directions vide

letter No. 6865/EA-4/dated 2.5.2000 that the official being not fit for the duty of a driver, therefore, action should be taken to retire the official from service on medical grounds.

Keeping in view the directions issued by the Divisional Manager, Transport Department, Punjab, Chandigarh leaved asked, for by Shri Makhan Singh, Driver No. 88 from 14.6.2000 to 8.7.2000 is hereby rejected and he is ordered to be retired from service w.e.f. 26.6.2000 afternoon on medical grounds.

4. It is, thus, evident from narration of the aforementioned facts that although the petitioner was found fit to perform the duties of a Security Guard, yet, he has been prematurely retired on the ground that he was not able to perform the duties of a driver and the medical report in that regard has been cited as a reason for boarding him out of service. It is appropriate to mention that the date of birth of the petitioner is 6.4.1995 and in the ordinary course he would retire on 30.4.2013.

5. In the written statement filed by the respondents, the stand taken is that the Civil Surgeon in his report dated 28.10.1999 (R-1) had opined that he was not fit to perform the duty of driver due to deficit eye-sight. With regard to me adjustment on the post Security Guard, it has been asserted that he did not fulfill the requisite qualification as has been provided by the Appendix "B" referred to in Rule 8 of the Punjab Roadways (Ministerial) State Service Class-III Rules 1977, applicable to the post Security Guard (R-2) The respondents have also defended the order of premature retirement dated 26.6.2000 (P-16) by citing the 1975 Rules. It has been asserted that inequitable notice was given and only after the notice as contemplated by the 1975 Rules, the petitioner was retired on medical grounds. It has further been stated that there is no post vacant for light duty where the petitioner could be adjusted.

6. The petitioner has also filed replication reiterating the stand taken in the writ petition and controverted the averments that no post was available.

7. As a consequence, the respondents were asked to file a specific affidavit with regard to the availability of posts in the establishment of Nangal Depot or in the adjoining depot. On 29.3.2006, the following order was passed:--

Arguments have been heard in part.

It has transpired that the right eye-sight of the petitioner is quite all-right and he can easily deal with the duties of a Yard Master, Security Guard or any other post like Peon etc. An affidavit of Shri Vijay Kumar, General Manager, Punjab Roadways, Nangal, dated 3.1.2003 has been placed on record showing that there is no vacant post on which the petitioner holding the qualification of driver could be appointed in the establishment of Nangal Depot. However, the petitioner may be posted in the adjoining depot and efforts should be made to find out any post available within the Nangal Depot and adjoining depot.

Learned State counsel requests for some time to find out that factual position

with regard to availability of posts. The present General Manager, Punjab Roadways, Nangal Depot is directed to be present in person along with the record of all the posts at Nangal Depot so as to find out whether any post is available as also with the details that after the order or pre-mature retirement of the petitioner how many vacancies have been filled up. However, if the General Manager files an affidavit furnishing the detailed information then he need not to appear with the record on the next date of hearing.

List again on 5.4.2006 for further consideration.

8. In pursuance to the aforementioned order, an affidavit was filed by Shri Labh Singh, General Manager, on 18.4.2006 disclosing that post of Security Guard was vacant in the Nangal Depot but the petitioner did not fulfill the prescribed educational qualification of being a Matriculate and the post is reserved for Ex-serviceman. An additional affidavit has again been filed today in the Court disclosing that in the Management Division, four posts are lying vacant i.e. one each of Diesel Pump Attendant, Store Keeper, Assistant Accountant and Security Guard.

9. Mr. R.S. Sharma, learned Counsel for the petitioner has argued that apart from availability of posts, the respondents cannot resort to the premature retirement Rules of 1975 for retiring the petitioner. Learned Counsel has placed reliance on Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for brevity, "the Act"), which prohibits dispensing with or reduction in rank of an employee who acquires disability during service. According to the learned Counsel such an employee after acquiring disability, if not found suitable for the post he was holding then he could be shifted to some other post with the same pay scale and all the service benefits. Learned Counsel has maintained that even if there is no possibility of adjustment of an employee against any post, such an employee has to be kept on supernumerary post until a suitable post is available or till the date of his superannuation, whichever is earlier and that even promotion cannot be denied to such an employee. For the aforementioned submission, the learned Counsel has placed reliance on a judgment of the Hon''ble Supreme Court in the case of Kunal Singh Vs. Union of India (UOI) and Another, , judgment of Hon''ble Andhra Pradesh High Court, reported as N. Siva Kumar v. A.P.S.R.T.C. 2001(3) S.C.T. 578 (A.P.) and that of Hon''ble Delhi High Court, reported as Baljeet Singh v. Delhi Transport Corporation 2000(2) S.C.T. 318 (Delhi). Referring to various paras of the judgment rendered in the case of Kunal Singh (supra), learned Counsel has argued that the services of Kunal Singh were terminated on account of disability suffered during service, the Hon''ble Supreme Court had quashed that order directing the respondents therein to grant him all the benefits flowing from Section 47 of the Act.

10. Mr. Satish Bhanot, learned State counsel has placed reliance on the 1975 Rules and argued that the petitioner would be entitled to pension, which can take care of all his necessities. According to the learned State counsel no post suitable

to the petitioner is available and in the absence thereof there was no option except to resort to the 1975 Rules.

11. After hearing learned Counsel of the parties, I am of the view that there is a considerable merit in the contention raised by learned Counsel for the petitioner, because Section 47 of the Act transcends all barriers created by rules framed by the State or by the Central Government. The case of the petitioner, who has suffered visual disability, is covered by the definition given in Section 2(u) of the Act. According to Section 47, as has been rightly contended by the learned Counsel, there is a prohibition on any establishment from dispensing with or reducing any employee "in rank who has acquired dis-" ability during service. Sub-section (i), (t) and (u) of Section 2 and Section 47 of the Act are reproduced hereunder for facility of reference:

2. Definitions.- In this Act, unless the context otherwise requires.-

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XXX XXX XXX XX

(i) "disability" means -

(i) blindness;

(ii) low vision;

(iii) leprosy-cured

(iv) hearing impairment;

(v) locomotor disability;

(vi) mental retardation;

(vii) mental illness;

XXX XXX XXX XXX XXX

XXX XXX XXX XXX

(t) "person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority;

(u) "person with low vision" means a person with impairment of visual functioning even" after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device;

(Emphasis added).

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.

12. The aforementioned provisions came up for consideration before the Hon''ble Supreme Court in Kunal Singh's case (supra). After referring to the international conference held at Beijing and eventually adoption of the Act by the Parliament, the Hon''ble Supreme Court in para 9 has held as under-

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.

13. The aforementioned observations made by the Hon''ble Supreme Court are fully applicable to the case of the petitioner. It is not disputed that the petitioner has suffered disability during the course of his employment when he was taking

the bus No. PB-12- C-9115 from Nangal to Amritsar and the ill-fated bus met with an accident. It was as a consequence of the accident that the petitioner suffered damage to his right eye-sight. On the basis of the aforementioned damage to the eye-sight, the petitioner has been prematurely retired by the impugned order dated 26.6.2000 (P-16). It is also an admitted position as per the additional affidavit filed by the respondents that four posts are available, namely, Diesel Pump Attendant, Store Keeper, Assistant Accountant and Security Guard at Nangal Depot and the stand taken in the original written statement has been found to be incorrect.

14. I am further of the view that the judgment of the Andhra Pradesh High Court in the case of N. Siva Kumar (supra) and that of the Delhi High Court in the case of Baljeet Singh (supra) would fully apply to the facts of the present case. Therefore, on principle as well as on precedent, the writ petition deserves to be allowed and the benefit of Section 47 of the Act must be extended to the petitioner.

15. The argument of the learned State counsel would not survive for consideration as the 1975 Rules must give way to the enactment of the Parliament in the form of the Act. Similar argument was raised before the Hon"ble Supreme Court in Kunal Singh's case (supra) and the same was rejected, as is evident from the reading of para 12, which reads as under:

12. Merely because Under Rule 38 of C.C.S. Pension Rules, 1972, the appellant got invalidity pension is no ground to deny the protection, mandatorily made available to the appellant u/s 47 of the Act. Once it is held that the appellant has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay-scale and service benefits : if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation, whichever is earlier. It appears no such efforts were made by the respondents. They have proceeded to hold that he was permanently incapacitated to continue in service without considering the effect of other provisions of Section 47 of the Act.

16. In view of the above, I do not find any merit in the aforementioned arguments raised by the learned State counsel and reject the same.

17. For the reasons aforementioned, order dated 26.6.2000 (P-16) is quashed. The respondents are directed to extend to the petitioner all the benefits of Section 47 of the Act. If there is a post available befitting physical conditions of the petitioner then the petitioner may be posted on such a post which may include the post of Diesel Pump Attendant, Store Keeper, Assistant Accountant or Security Guard. The respondents may also explore the possibility of deputing him to any other post, in accordance with Section 47 of the Act. The petitioner shall report for duty within one week from today. The petitioner shall also be entitled to costs, which I determine at Rs. 5,000/-.