
(2014) 08 P&H CK 0089

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 8641 of 2012 (O&M)

Malkit Singh Sidhu

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 26-08-2014

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 47, 47(1)

Citation : (2015) 177 PLR 447

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Advocate : Promila Nain, Advocates for the Appellant; Sudeepti Sharma, D.A.G, Advocates for the Respondent

Judgement

Mahesh Grover, J.—The petitioner, who is 100 per cent disabled having met with an accident on 11.9.2007, has been agitating his case for grant of benefits under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter known as "the Act"). The material on record would indicate that the petitioner suffered injuries in a road accident while on his way to the office and as per the medical certificate issued by the office of the Civil Surgeon, Ludhiana dated 6.5.2009 the petitioner has suffered 90 per cent permanent physical impairment after having been diagnosed with "quadriplegia and higher brain centre injury".

2. The factum of the accident, the injuries suffered by the petitioner, his vegetative condition and his inability to perform his functions have not been denied by the respondents.

3. The petitioner claims the benefits of Section 47(1) of the Act which is extracted herebelow:

"47. 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 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."

4. Undeniably the petitioner was promoted as XEN with effect from January 2008, but the respondents are now not paying him any salary since March 2009.

5. The respondents by way of an affidavit of Mr. Tilak Raj Chauhan, Superintending Engineer, Sirhind Canal Circle, Ludhiana have stated "that all the benefits admissible to the petitioner under the Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 has already been granted to the petitioner."

6. Thereafter the respondents have gone on to give the details of the leave availed by the petitioner and the payments made to him in lieu thereof.

7. In the considered view of this Court the leave and other attending benefits arise from incidence of service and would have nothing to do with the special provisions of the Act extracted above.

8. On a prior date this Court had directed meticulous compliance of the provisions of Section 47 of the Act. This order was passed, on 4.7.2014 mandating that the provisions of the Act be complied with before the next date of hearing by making the payment of arrears of salary to the petitioner and the Chief Engineer, Irrigation Canals, Punjab was directed to file his own affidavit on the adjourned date of hearing, which incidentally is today. The affidavit which was proposed to be filed but rejected and returned by the court is on similar lines with the mandate of the Court remaining uncomplied with a stubborn insistence by the respondents that the provisions of the Act stand complied with. Evidently, the respondents have tried to mislead the court and obstruct the course of justice besides willfully disobeying the order of this Court with no justifiable explanation.

9. The provisions of the Act as extracted above would obligate the State to ensure that the service of an employee visited with disability during his service is neither dispensed with nor his status reduced in rank. Rather efforts are to be

made to accommodate such an employee in other areas if he is unable to meet the rigors of duties which he was performing prior to acquiring a disability. It further contemplates the creation of supernumerary post in the eventuality of a suitable post not being available till the time he attains the age of superannuation.

10. Implicit in the clear language of the statute is an obligation cast upon the respondents. To rehabilitate the employee who has suffered a disability during his service. The laudable objective behind all this is to ensure that an employee does not fall on bad times and his family not reduced to a state of penury. Unfortunately due to the act and conduct of the respondents these are the very consequences which have been visited upon the petitioner. Despite the attempt made by this court to show sufficient light to the respondents to remedy the situation the needful has not been done.

11. The court would like to elaborate on the provisions of Section 47(1) of the Act. Section 47 though it mentions an acquisition of a disability by an employee does not envisage the extent thereof. Evidently bare reading of the provisions would indicate that a person who suffers a disability but is still able to perform some functions even though not the ones to which he was assigned would be accommodated in a different assignment. But what happens to an employee who is reduced to a vegetative state with 90 per cent or 100 per cent disability unable to perform the rigors of the assignment which he was holding or even a lesser assignment. In such a situation would the employer be able to write off the employee altogether. A person with this kind of disability as the one suffered by the petitioner reducing him to a vegetative state on account of severe damage to functionality of the brain, metaphorically may have joined the league of dead but continues to live thereby adding to the constraints of the family who would now be struggling to hold on to him without any financial support. It is these very contingencies which the Act seeks to redress.

12. The employer would have no right to deny benefits under Section 47(1) of the Act to an employee placed in such unfortunate circumstances.

13. The court thus holds that the petitioner would be entitled to the benefits of Section 47(1) of the Act and the respondents are mandated to create a supernumerary post for the petitioner till the date he attains the age of superannuation. The petitioner would be paid his salary along with the arrears which have accumulated and interest @ 7 per cent per annum from the date it became due till the date of realisation within a period of three weeks from the date of receipt of a certified copy of this order. For obstructing the course of justice and filing a false affidavit the court would have ordinarily visited serious consequences upon Mr. Chauhan who has filed the affidavit and also attempted to file another one which has been rejected by the Court since it was on similar lines, but for the apology that he has expressed. The court, however, imposes costs of Rs. 20,000/- upon him which shall be compensatory to the petitioner. The costs shall be deposited by the officer from his personal pay within a period

of three weeks from today for onward disbursal to he petitioner.

Petition allowed.