

(2016) 10 P&H CK 0044
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 13023 of 1999 (O&M)

Om Parkash

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 26-10-2016

Acts Referred:

Citation : (2016) 4 LawHerald 3707

Hon'ble Judges : Rajiv Narain Raina, J.

Bench : Single Bench

Advocate : Ms. Shruti Jain Goyal, AAG, Haryana, for the Respondent; Mr. R.K. Malik, Senior Advocate, with Mr. Bhupinder Malik, Advocate, for the Petitioner

Final Decision : Partly Allowed

Judgement

Rajiv Narain Raina, J.(Oral) - The prayer may have come to bear fruit in the year 1999 when the petition was filed based on the law laid down by the Supreme Court in Anand Bihari & others v. Rajasthan State Road Transport, AIR 1991 SC 1003; 1990 SCR Suppl. (3) 622, but with the passage of time, it is not possible to give real relief to the petitioner at this belated stage. Even the alternative prayer that his son be offered appointment in lieu of his vacancy is not tenable since the age bar would come in against the ward foreclosing consideration for ex-gratia appointment to service. The question which remains to be answered is and to put it in the negative is; whether the petitioner is dis-entitled to all and every relief?

2. On a thoughtful consideration of this issue, I am inclined to think it cannot be said that the petitioner is wholly denuded whatsoever of his rights after he was totally incapacitated to drive a bus for the Haryana Roadways by a quirk of fate. The bus driven by the petitioner on the fateful day met with an accident which left him injured and disabled forever.

3. The petitioner joined service as a Driver in the Haryana Roadways on 28.01.1983. After the accident happened on 17.07.1994, he was suspended from

service for causing loss to the State by his negligent driving. However, in the preliminary enquiry, he was found innocent and the suspension period from 17.07.1994 to 10.04.1995 was been treated by order in writing as period spent on duty. Thereafter, the petitioner was again suspended vide order dated 16.06.1997 for committing another misconduct when found absent from duty. Later on, even that period was regularised by the department. The Special Medical Board constituted to examine fitness of a Government employee vide its report dated 08.09.1997 declared the petitioner unfit to drive heavy vehicles. Ultimately, the services of the petitioner were dispensed with immediate effect vide order dated 24.02.1998 (Annex P-4). The appeal against the said order was rejected vide order dated 04.06.1998 (Annex P-6). Hence, the petition was filed.

4. It may be recorded that the petitioner was paid compensation on 21.05.1998 for the injury sustained in the accident by the Haryana Roadways in terms of the prevailing instructions of the Haryana Government for the injuries suffered by him arising out of and in the course of employment.

5. Mr. R.K. Malik, learned senior counsel in order to claim relief for his client relies upon a Division Bench judgment of this Court in *Gurbachan Singh v. State of Haryana & others*, 2006 (3) SCT 347.

6. Having heard the learned counsel for the parties, I find that in view of *Anand Bihari* case, the petitioner had an existing right to readjustment on some other suitable post to continue in employment. The Government failed to follow the law in *Anand Bihari* case, nor searched out an appropriate available post where he could be redeployed for performing lighter duties to sustain himself and his family by honourably earning his livelihood. His disability should have been a relevant factor to be taken into consideration when inflicted by an accident occurring during employment.

7. There is hardly any sustainable defence in the written statement that a post was not available in any cadre of service howsoever menial on which the petitioner could be adjusted.

8. In the preliminary objections taken by the Haryana Roadways in their reply, it is averred that the writ petition is not maintainable as there is no policy laid down by the Government for permanently incapacitated persons/employees to be adjusted on light duties. It was further made motion in the preliminary objections itself that no such posts were available in Haryana Roadways, Sonapat Depot from where the petitioner could earn his salary. However, while raising such a preliminary objection, the General Manager, Haryana Roadways, Sonapat completely forgot to apply the law in *Anand Bihari* case which was known to be law of universal application at the time, which also involved a Driver becoming a nakara while serving in Rajasthan State Transport. It is trite that the State is obliged to act as a model employer and to support the petitioner in his bad weather. Several justifications have been put forward in the written statement in Para.4 to deny relief, one of which is that the petitioner could not be adjusted in

the Depot Workshop since the petitioner did not hold a trade Diploma from an Industrial Training Institute and neither was he entitled to be appointed as a 4th Class employee because he did not possess the requisite educational qualifications prescribed for posts in that group of employment. It is admitted in the written statement that the petitioner was declared Nakara i.e. completely unfit for any service by the Special Medical Board and, therefore, the State says it was not possible to keep the petitioner in service up to 2007 in anticipation of reaching the age of retirement since they had lost use.

9. The instances mentioned in the petition to claim relief through the portal of discrimination in Article 14 of the Constitution, are the names of about 16 employees who were not turned out of their jobs but adjusted elsewhere and those have been sought to be explained by the State in its written statement to refute the claim of the petitioner. These are all cases where medically fit employees have been assigned lighter duties. If this is possible, the converse is even easier to reconcile that lighter duties can be assigned even by way of relaxation and concessions accorded in special situations for special people. If the instructions and rules did not cover a case of the present kind that does not mean that the authorities will fold their hands and ruin the petitioner and not look inward for relief when the law is sufficiently indicated in Anand Bihari case, which ruling has withstood the test of time and has been followed by this Court in innumerable decisions directing alternative employment when the principal employment is incapable of due performance.

10. This is not a case of direct recruitment where one is speaking of regular vacancy and post. Here is an adjustment to continue employment till retirement in any form or calling. Even "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995" caters to such an extraordinary situation and confers workable rights on disabled persons to claim benefits under the said Act for substituted jobs in the workplace.

11. In these circumstances, I would not say that the petitioner has no case at all for moulding the relief, and to the contrary he appears to have a substantial stake and legitimate claim to be deemed to continue in service till 2007 and be granted notionally the arrears of salary till the last date of retirement, altering the last pay certificate on the basis of which pension is drawn. This appears to be a plausible way to balance out the equities with equal weight in both the hands. In case such relief is granted, the petitioner can be denied the pecuniary benefits from the date of the impugned order till the actual date he would deem to reach the age of superannuation.

12. Nevertheless, the petitioner would be entitled to notional increments to bring his pay at par with persons who continued in service for purposes of enhancement of pension and pensionary benefits. I find sufficient reason to interfere to serve the ends of justice.

13. For the foregoing reasons, the instant petition is partly allowed. The

impugned order dated 24.02.1998 (Annex P-4) retiring the petitioner from service is set aside. The appellate order dated 04.06.1998 (Annex P-6) must suffer the same fate and is quashed. The prayer for alternative employment of the son of the petitioner is presently rendered in-fructuous as it is unattainable. In the alternative and in lieu thereof by way of compensatory amends, the possible and plausible direct and alternative prayers have been reconciled and duly considered by this Court as occurs to the mind which is towards enhancement of pension by modulating the relief in terms of money.

14. As a result, the pension of the petitioner deserves to be increased by re-fixation and accordingly the amounts which become due under this order are directed to be re-determined and enhanced pension paid to the petitioner from the deemed date of retirement i.e. from 2007 with consequential arrears to be disbursed within a period of three months from the date of receipt of certified copy of this order with actual payments restricted to three years prior to the passing of this order creating and declaring rights. It is however made clear that no principal amount and interest thereon is being awarded to the petitioner on the amounts arising to maintain an equitable and just balance between the valuable interests of the petitioner, as an injured ex employee of Haryana Roadways and the interests of the State of Haryana in point and counter point.