

(2013) 01 P&H CK 0202

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1898 of 2012 (O and M)

Sahib Singh

APPELLANT

Vs

Uttar Haryana Bijli Vitran Nigam Limited and Others

RESPONDENT

Date of Decision : 09-01-2013

Acts Referred:

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

Citation : (2013) 169 PLR 703 : (2013) 3 SCT 140

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Ashwani Talwar, for the Appellant; Jasbir Mor, for the Respondent

Judgement

Rajesh Bindal, J.—The petitioner has approached this court impugning the action of the respondents in not granting him the benefits, to which he is entitled to in terms of the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, "the Act"). Learned counsel for the petitioner submitted that the petitioner joined service of the erstwhile Haryana State Electricity Board on work charged basis on 27.7.1970. On 21.8.1981, he was appointed as ALM (T) on temporary basis, however, vide order dated 22.5.1982, he was appointed ALM on regular basis. On account of an unfortunate accident on 7.8.1999, left forearm of the petitioner had to be amputated four inches below elbow; which resulted in disability to the extent of 70%. The Medical Board declared the petitioner unfit for rendering service as ALM. Keeping in view the provisions of the Act, the petitioner was provided with alternative job of Meter Reader, however, it was arbitrarily mentioned in the order dated 1.8.2000 that the petitioner will lose his seniority in the cadre of ALMs and will be placed at the tail-end of the seniority of Meter Readers. The petitioner having no choice accepted the terms, which run contrary to the mandate of Section 47 of the Act, which inter-alia provides that no promotion shall be denied to a person merely on the ground of disability. As the petitioner was placed at the tail-end of the seniority of Meter Readers, in fact,

the entire service rendered by him prior thereto was taken away. It is nothing else but a kind of punishment without any fault. He further submitted that persons, who were juniors to the petitioner in the seniority list of ALMs, have been granted Assured Career Progression Scheme and other benefits, but the petitioner has been denied the same. While referring to the judgments in Kunal Singh Vs. Union of India (UOI) and Another, ; Bhagwan Dass and Another Vs. Punjab State Electricity Board, and Dhanmanti Devi v. State of Haryana and others, 2008 (6) S.L.R. 250, it was submitted that action of the respondents, being illegal and arbitrary, deserves to be set aside and the petitioner be granted the benefits due to him.

2. On the other hand, learned counsel for the respondents submitted that once the petitioner was unable to perform the duty of ALM, he was assigned the duty as a Meter Reader and was placed in the seniority of Meter Readers from the date he assumed his charge as such. He did not dispute the fact that persons junior to the petitioner as ALM have been granted certain benefits, to which they were entitled to, on account of their length of service, as they had been performing those duties.

3. Heard learned counsel for the parties and perused the paper book.

4. Before this court proceeds to consider the case of the petitioner on merits, it would be appropriate to deal with the legal issue involved therein. Section 47 of the Act, which is relevant, is extracted below:

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.

5. The issue was considered by Hon'ble the Supreme Court in Kunal Singh's case (supra). It pertains to a Constable, who was working in Special Service Bureau. While on duty, he suffered an injury in his leg, which had to be amputated on account of gangrene, which developed from the injury. He was

invalidated from service on the basis of a report of the Medical Board, which declared him permanently incapacitated for further service. Setting aside order of his discharge from service, Hon"ble the Supreme Court directed for grant of benefits to the appellant therein as available in view of Section 47 of the Act. The issue pertaining to Service Rules, which entitled an employer to discharge or retire such a person, was also considered in the light of Section 47 of the Act. The relevant paragraphs of the judgment are extracted below:

9. Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. 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 a 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 the 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 a 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 constructs 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.

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12. Merely because under Rule 38 of the CCS (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.

6. In similar line are the judgments in Bhagwan Dass's case (supra) and Dhanmanti Devi's case (supra).

7. Now coming to the facts of the present case. Undisputedly, the petitioner was working as ALM on regular basis with the respondents when he met with an accident on 7.8.1999. On account of amputation of his left forearm four inches below the elbow, he was declared 70% disabled. As the petitioner was no more able to perform his duty as ALM, he was given light job of Meter Reader vide memo dated 1.8.2000. In the aforesaid memo, a condition was put in that the petitioner will lose his seniority in the cadre of ALMs and will be placed at the tail-end of seniority of Meter Readers. This condition certainly goes against the spirit of Section 47 of the Act, which provides that no establishment shall dispense with or reduce in rank an employee who acquires disability during service. However, in case an employee if he acquires disability is not suitable for the post he was holding, he could be shifted to some post with same pay scale and service benefits. In the case in hand, the action of the respondents in taking away the benefits of the past service of the petitioner till such time he was adjusted on the post of Meter Reader is totally contrary to the spirit of Section 47 of the Act. It is nothing else but a punishment without any fault of the petitioner. He may have been assigned the duty of a Meter Reader as he was capable of performing the same or he may have been assigned any other duty as well carrying some pay scales or service benefits, but by no means he could be deprived of his past service or the benefits accruing to him subsequent to his adjustment on the new post taking into consideration his past service. In the present case, the petitioner has been denied that benefit. As the persons junior to the petitioner in the cadre of ALMs, have been granted certain benefits to which they became entitled to considering their length of service as ALM, however, the petitioner was denied those benefits as he was considered as freshly appointed Meter Reader on 1.8.2000. Such an action has to be declared illegal and arbitrary. Ordered accordingly. The condition that the petitioner will be placed at the tail-end of the seniority of Meter Readers is quashed. The respondents are directed to calculate all the benefits to which the petitioner may be entitled to considering him in the seniority of ALMs where he was placed before the accident took place and grant him the same. However, it is directed that payment of arrears, if any, shall be restricted to 38 months from the date of filing of the writ petition. The writ petition stands disposed of.