

(2009) 07 P&H CK 0022

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 6781 of 2008

Sardar Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision: July 10, 2009

Acts Referred:

- Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 - Section 47, 47(1), 47(2), 47(3), 47(4)
- Punjab Civil Services Rules - Rule 5.18, 8.18

Citation: (2010) 2 ILR (P&H) 460

Hon'ble Judges: M.M. Kumar, J; Jaswant Singh, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

M.M. Kumar, J.

The instant petition filed by a Driver of the Haryana Roadways is directed against order dated 25th September, 2006

(Annexure P-4) passed by General Manager, Haryana Roadways, Gurgaon, compulsorily retiring the petitioner on the ground of medical disability.

The petitioner has claimed that in pursuance of his rights granted by Section 47 of the Persons with Disability (Equal Opportunities, Protection and

Full Participation) Act, 1995 (for brevity ""Disability Act""), he is entitled to be employed on some alternate post by giving him light duty till the date

of his superannuation. As a sequel to the aforesaid claim made by him, the petitioner has also challenged notification dated 4th June, 2005

(Annexure P--2) issued by the State of Haryana in exercise of power under Sub Section 2 of Section 47 of the Disability Act exempting the post

of drivers and conductors in the Haryana Roadways from the provisions of Section 47 of the Disability Act.

2. Facts necessary for disposal of the instant petition are that the petitioner was inducted in service on 1st March, 1987 as a Driver with the

Haryana Roadways. At the time of his appointment, he was found medically fit for driving heavy vehicle. However, later on the petitioner filed an

application for his medical examination and the Civil Surgeon, Gurgaon,- vide his letter dated 14th September, 2006 intimated to the General

Manager, Haryana Roadways that the petitioner has been declared as unfit for driving heavy vehicle. On the basis of the aforesaid intimation, the

petitioner was compulsorily retired,--vide letter dated 25th September, 2006 (Annexure P-4) with effect from 15th September, 2006 by invoking

the provisions of Rule 5.18 of Punjab Civil Services Rule (Vol. II) for brevity ""CSR Vol.II""). The petitioner has claimed that instead of retiring him

compulsorily, he was entitled to be continued in service on a post with light duty as per the rights conferred on him by Section 47(1) of the

Disability Act. In that regard, a reliance has been placed on a judgment of Hon"ble the Supreme Court rendered in the case of Kunal Singh Vs.

Union of India (UOI) and Another, Accordingly, it has been claimed that the petitioner has acquired the disability of becoming unfit for driving

heavy vehicle during the course of his employment and the provisions of Disability Act would fully applicable to him. The petitioner has also

challenged instructions dated 20th August, 1992 (Annexure P-1) issued by Transport Commissioner, Haryana, stipulating that disabled driver can

be compulsorily retired as per notification dated 4th June, 2005 (Annexure P-2), which has exempted the posts of drivers and conductors in the

Haryana Roadways from the provisions of Section 47 of the Disability Act.

3. In the written statement filed on behalf of respondent No. 1 to 4, the stand taken is that the petitioner has been patient of Hypertension and

Chronic Renal Failure and he is unable to perform his duty as driver. It was at his own request that he was got medically examined by the Chief

Medical Officer in Government Hospital and was declared unfit. Accordingly, he was boarded out from service in the larger public interest by

invoking Rule 5.18 of Punjab CSR Vol. II. The respondents have also placed reliance on a judgment of Hon"ble the Supreme Court rendered in

the case of Anand Bihari and others Vs. Rajasthan State Road Transport Corporation, Jaipur and another, . The respondents have also pleaded

that in exercise of powers conferred by provisions of Sub Section 2 of Section 47 of the Disability Act, the posts of drivers and conductors

working in Haryana Roadways was excluded from the purview of provisions of Disability Act.

4. Having heard learned counsel for the parties at a considerable length, we are of the view that the petitioner had rendered more than 19 years of

service and only on the ground of medical unfitness, the respondents were fully within their right to board him out of service in pursuance of

provisions of Rule 5.18 Punjab CSR Vol. II. The aforesaid Rule can be read with advantage which is as under :

A Government employee who has submitted a medical certificate of incapacity for further service shall, if he is on duty, be invalided from service,

from the date of relieve of his duties which should be arranged without delay on receipt of the medical certificate or, if he is granted leave under

rule 8.18 of these rules, Volume 1, Part 1, on the expiry of such leave. If he is on leave at the time of submission of the medical certificate, he shall

be invalided from service on the expiry of that leave or extension of leave, if any, granted to him under rule 8.18 of these rules, Volume 1, Part 1.

Note.-1 The report required by this rule may in the case of head constables and constables of Police be submitted to the Inspector General of

Police instead of to the Government.

Note -2 When a Government employee is retained in service, after he has submitted a medical certificate of invalidment, and is therefore, granted

leave under rule 8.18 of Volume 1, Part 1 of these rules, the maximum period up to which, he can be allowed under second sub-paragraph this

rule to count for pension, the service after the date of medical certificate shall not exceed six months.

5. It has come on record that the petitioner himself applied for his medical examination and his request is forwarded by the General Manager,

Haryana Roadways, Gurgaon to the Civil Surgeon. On the report dated 14th September, 2006 of the Civil Surgeon, Gurgaon, the petitioner was

compulsorily retired on medical ground with effect from 15th September, 2006 vide order dated 25th September, 2006. These facts are required

to be examined in the light of the provisions of Rule of Punjab 5.18 CSR Vol.II (as applicable to State of Punjab). According to the Rule, a

Government employee when submits a medical certificate in his capacity to continue in further service has to be invalidated from service without

delay. Accordingly, the State of Haryana must be held to have acted within the parameters of Rule 5.18 of Punjab CSR Vol. II. The order of

compulsorily retirement inevitably shows that it is in the larger public interest because a driver with disability to drive heavy vehicle would be a

potential danger not only to his own life but the life of many others like the passenger, user of the road and even to those who are of the road.

6. The judgment of Hon"ble the Supreme Court in Anand Bihari's case (Supra) appears to be the basis for issuance of instructions dated 20th

August, 1992 (Annexure P-1) by the respondent-State. The impugned order dated 25th September, 2006 (Annexure P-4) is consistent with the

instructions which in unequivocal terms provide if a Driver has become unfit due to disease not related to his employment then he should be retired

from service on medical ground in accordance with the procedure provided by Rule 5.18 CSR Vol. II. In case where the medical unfitness is on

account of disease not traceable to hazard of employment then Rule 5.18 CSR Vol. II is attracted and in cases where the cause of his medical

unfitness is relatable to the occupation hazard or his official duty then effects are required to be made to find alternate employment. A perusal of the

medical report dated 14th September, 2006 shows that, the petitioner has been suffering from Hypertension and Chronic Renal Failure.

Moreover, para 1 of preliminary submissions would show that the petitioner has been a patient of Hypertension and Chronic Renal Failure. It is

uncontroverted stand of the respondents that the disease of the petitioner was not relatable to his employment or to his occupational hazard. As is

pleaded in para 2 of the written statement on merit, therefore, we are of the considered view that the impugned order dated 25th September, 2006

(Annexure P-4) does not suffer from any legal infirmity warranting interference of this Court.

7. It is true that sub-section 3 of Section 47 of the Disability Act engraft a prohibition on the right of an employer to dispense with or reduce in

rank any employee, who acquires disability during his service and that such an employee is required to be shifted to some other post with the same

pay-scale and service benefit. The provision further stipulate that if an employee could not be adjusted against any post then such a person is to be

kept on supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. However, in pursuance of

proviso to sub-section 2 of Section 47 of the Disability Act, the respondents State of Haryana issued a notification dated 14th June, 2005

(Annexure P-2) excluding the application of the Disability Act to the posts of Drivers and Conductors of the Haryana Roadways therefore, the

reliance of the petitioner on the provisions of sub-sections 3 and 4 of Section 47 of the Disability Act is wholly misplaced, sub-section 2 of Section

47 of the Disability Act expressly clothe an appropriate Government with power to exempt any establishment from the provisions of Disability Act.

The relevant portion of the aforesaid provisions reads thus :

SECTION 47

NON-DISCRIMINATION IN GOVT. EMPLOYMENT

(1) -----

(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 condition, if any as may be specified in such notification, exempt any establishment from the provisions of this section.

8. A perusal of the aforesaid provisions shows that the State Government keeping in view the type of work carried on in any establishment exempt

it from the provisions of this Section and accordingly notification dated 4th June, 2005 (Annexure P-2) has been issued in exercise of the aforesaid

power. Hon"ble the Supreme Court in Kunal Singh's case (Supra) has proceeded by noticing that the provisions of Section 47 were not excluded

by issuance of any notification, however, the notification must pass the test laid down by Hon"ble the Supreme Court in the case of Union of India

(UOI) Vs. Sanjay Kumar Jain, . In paragraph 9 and 10 of the judgement, Hon"ble the Supreme Court has held that the provisions of Section

47(2) does not give unbridled power to an appropriate Government to exempt any establishment from the provisions of Section 47 of the

Disability Act. It has further been laid down that it can done (a) by issuance of a notification and (b) by prescribing the requisite conditions in the

notification. According to Hon"ble the Superme Court, a notification can be issued when appropriate Government having regard to the type of

work carried on in any estabishment thinks it appropriate to exempt such establishment from the provisions of Section 47 of the Disability Act. The

first condition stands fulfilled there, a notification has issued by the Government. The second condition also stands complied with because from the

Haryana Roadways only the posts of Drivers and Conductors have been exempted after taking into consideration the type of work carried out in

the Haryana Roadways. Therefore, we are of the view that there is no legal infirmity in the notification dated 4th June, 2005 (Annexure P-2) and it

answers the necessary criteria laid down by their Lordships of Hon"ble the Supreme Court in Sanjay Kumar Jain's case (Supra). Moreover the

service of the petitioner has been terminated. He had rendered more than 19 years of service and has been given pension in accordance with the

rule. Thus, there is no merit in the petition and the same is liable to be dismissed.

9. As a sequel to the above discussions this petition fails and the same is dismissed.