

**(2009) 07 P&H CK 0100**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** None

Abheyram

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

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**Date of Decision:** July 14, 2009

**Acts Referred:**

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

**Citation:** (2009) 123 FLR 966 : (2009) 156 PLR 100

**Hon'ble Judges:** Ranjit Singh, J

**Bench:** Single Bench

**Final Decision:** Allowed

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**Judgement**

Ranjit Singh, J.

The petitioner, who was earlier working as a driver with Haryana Roadways, Jhajjar, has filed this petition for fixation of his pay in the scale meant for drivers, even though he has been adjusted as a Water Carrier in the pay scale of Rs. 2550-50-3200 due to a disability suffered by him during the course of his employment.

2. The petitioner was appointed as a driver on 10.12.1993 on contract basis. His service were regularized on 10.12.1994. On 17.11.1999, a bus driven by him met with an accident which led to amputation of his left arm. He suffered multiple injuries, but was fortunate enough to survive. After recovering from injuries, the petitioner joined his duty. Since the petitioner has suffered this handicapped, General Manager, Haryana Roadways recommended case of the petitioner for adjusting him on the post of Clerk, which has fallen vacant on 30.11.2000 on the retirement of one Jaipal Singh. This could not be done but the petitioner continued to perform light duties assigned to him. Petitioner was informed by respondent No. 3 that a post of Water Carrier was available and if he was willing to join the same, a consent letter be sent. The petitioner gave his consent and thereafter submitted his

joining report on 22.3.2004. He was accordingly adjusted on the post of Water Carrier which carries a pay scale of Rs. 2500-3200. As a driver, the petitioner was drawing salary in the pay scale of Rs. 4000-6200. His basic salary in the year 2004 was Rs. 4700/-. When the petitioner was paid reduced pay scale after appointment as a Water Carrier, he naturally felt aggrieved. The petitioner accordingly filed the present writ petition saying that this order is arbitrary and discriminatory.

3. The petitioner would plead that he is entitled to the protection of his pay and the benefit in terms of Section 47 of the Persons With Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as "the Act"). As per Section 47 of the Act, no establishment shall dispense with or reduce in rank, an employee who acquires a disability during his service. It is further provided that if an employee, after acquiring disability is not suitable for the post he was holding, he could be shifted to some other post with the same pay state and service benefits. Section 47 further says 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.

4. This writ petition was admitted on July 26, 2004. Subsequently, written statement was filed on behalf of the respondents. The respondents have opposed the prayer made by the petitioner. In the reply it is disclosed that the petitioner was found unfit for the post of driver once he met with an accident. He was adjusted on the duty as a Yard Master, but ultimately was retired from service being medically unfit. Subsequently, the petitioner was appointed on an alternative job of Water Carrier in terms of instructions dated 20.8.1992. As per the respondents, the pay of the petitioner has been rightly fixed in the pay of scale meant for the job of Water Carrier.

5. During the pendency of this writ petition, the petitioner filed a Misc. Application No. 1231 of 2008 praying that the writ petition be disposed of in terms of the decision rendered in Civil Writ Petition No. 14037 of 2005 which would squarely cover the relief claimed by the petitioner in the present writ petition. Notice of this application was issued to the State. State Counsel took time to file reply. Though no reply has been filed, but Mr. Harish Rathee, appearing for the State, would contend, that the case of the petitioner is not covered by the judgment relied upon by the petitioner, as referred to above.

6. I have perused the judgment rendered in Petition No. 14037 of 2005. While deciding this case, Division Bench of this Court has further relied upon another Division Bench judgment of this Court in the case of [Shri Rupender Singh Vs. State of Haryana and Others](#), . The Court in this case, after relying on the provisions of Section 47 of the Act, has held that an employee, who has suffered disability during service, cannot be deprived the benefit which would otherwise accrued to him. It was further observed that the prohibition imposed by Section 47 of the Act against the retirement of an employee, who has acquired disability in service, was

completely ignored by the respondents. It is also observed that firstly the petitioner could not be retired; secondly efforts ought to have been made by adjusting him on a post carrying equal pay scale and thirdly when no post was available then the petitioner was to be permitted to work on supernumerary post.

7. Mr. Rathee, who had represented the State in CWP No. 14037 of 2005, like in the present case, had argued that post of the Driver stood excluded from the purview of the Act through a notification dated 27.6.2005. This argument raised by the State counsel was rejected by observing that notification issued in June, 2005 would not apply to cases where orders of compulsory retirement etc. were passed prior to June 2005 as is the position in the instant case. The same consideration would equally apply to the facts of the present case. A notification which is issued in the year 2005 would not govern, the case of the petitioner, as he suffered the disability in the year 1999 and has been offered an alternative appointment on 16.7.2004. In fact, the retirement of the petitioner cannot be held justified as the above said notification was still born, when the petitioner was retired on account of disability. The provisions of Section 47 of the Act clearly stood in the way of the respondents to pass the order of retirement or to justify this action and stand. The issues involved in the present petition, in my view, are covered by the decision in Civil Writ Petition No. 14037 of 2005 decided on 27.11.2006. Incidentally, SLP filed against this order has been dismissed by the Hon"ble" Supreme Court on 16.2.2009 and, thus, this judgment has acquired finality. Accordingly, the prayer of the petitioner made in the present petition deserves to be allowed being covered by the decision rendered in Civil Writ Petition No. 14037 of 2005.

8. The writ petition is accordingly allowed. Respondents are directed to fix the pay of the petitioner in the scale of Rs. 4000-6200/- from the date of his appointment to the post of Water Carrier.