

(2013) 09 P&H CK 0287

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 9433 of 2010 (O and M)

Devinder Mohan

APPELLANT

Vs

The District and
Sessions Judge

RESPONDENT

Date of Decision: Sept. 6, 2013

Citation: (2014) 173 PLR 454

Hon'ble Judges: Tejinder Singh Dhindsa, J

Bench: Single Bench

Judgement

Tejinder Singh Dhindsa, J.

CM No. 12330 of 2013:

Application allowed as prayed for.

Annexure P-9 is taken on record.

CM disposed of.

CWP No. 9433 of 2010:

1. The petitioner is presently serving on the post of Reader Grade-II on the establishment of the District and Sessions Judge, UT, Chandigarh and has filed the instant writ petition impugning the communication dated 06.05.2010 at Annexure P-7 in terms of which the petitioner had been informed that as per request of the petitioner himself, he has been allowed to work in the Judicial Branch up to 21.05.2010 and that for the future no such request would be entertained. The ground leading to the filing of the instant writ petition is that the petitioner suffers from a permanent disability element to the extent of 54% which was assessed at the initial date of entry into service and thereafter on account of an unfortunate accident such element has been assessed to 60%. The petitioner has averred that on account of such handicap, he would be unable to discharge his duty and

responsibilities on a seat which involves standing work including that of Reader.

2. It has further been pleaded that while holding the post of Reader Grade II he has been deputed in the Judicial Branch vide order dated 24.09.2009. It was towards apprehending a change of seat in the light of the impugned communication dated 06.05.2010 at Annexure P-7 the instant writ petition has been filed.

3. It would be pertinent to notice that on 24.05.2010, interim protection was granted to the petitioner by this Court in terms of issuing directions that till further orders the petitioner shall not be disturbed from the present place of posting. Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, reads in the following terms:--

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 any 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. The mandate of such provision is that no establishment shall dispense with or reduce in rank an employee who acquires a disability during his service. Still further such employee upon acquiring disability if not suitable for the post he is holding can be shifted to some other post with the same pay scale and service benefits. The petitioner seeks the benefit and protection u/s 47 of the 1995 Act. There would be no quarrel with the proposition that in the light of the admitted position of fact as regards the disability element that the petitioner is suffering from, he would be entitled to the protection of the statutory provision under the 1995 Act. Be that as it may, the petitioner cannot under the garb of Section 47 chooses his place/seat of work. Under the interim protection granted by this Court vide order dated 24.05.2010, the petitioner has continued to serve in the Judicial Branch even while holding the substantive post of Reader Grade II.

5. On over all view of the matter, I am of the considered view that this writ petition be disposed of in terms of issuing directions to the District and Sessions Judge, UT, Chandigarh to look into the matter and to assign to the petitioner, the place/seat of work

in the light of the disability of the petitioner as also keeping in view the objective sought to be achieved u/s 47 of the 1995 Act. No further directions are called for. The writ petition, accordingly, stands disposed of.