
deputation for indefinite period also buttresses the conclusion that the order of repatriation which necessarily results in placing the petitioner in his rank within the parent unit does not infringe any vested right of the petitioner. His posting as Head Constable is a necessary corollary of the termination of his deputation. Thus, we do not find any illegality in the impugned orders.

(17) For the reasons mentioned above, the writ petition is dismissed. The parties are left to bear their own costs.

R.N.R.

Before Hon'ble R. P. Sethi & K. S. Kumaran, JJ.

LAKHMI CHAND,—Petitioner.

versus

STATE OF HARYANA & ANOTHER,—Respondents.

C.W.P. 8180 of 1995

21st September, 1995

Constitution of India, 1950—Arts. 226/227—Benefit to employees who are declared unfit during service—Petitioner declared invalid and retired from service after giving compensation—Seeking mandamus for grant of job for his son on the basis of policy issued by Chief Secretary to give job to one dependant of Government employee who has been rendered unfit—Not entitled to benefit from both schemes.

Held that a perusal of Annexure R/1 would indicate that it was intended to get rid of medically unfit Drivers by appropriately compensating them after compliance of the directions issued by the Hon'ble Supreme Court in Anand Bihari's case. Whereas policy Annexure R/1 specifically dealt with the Drivers the policy Annexure P/3 was issued by the Chief Secretary apparently on behalf of the Government of Haryana for the benefit of all the employees of the Government who were declared unfit or were blind by providing job to one of their dependents.

(Para 6)

Further held that the concessions granted by the aforesaid two policies were applicable to different situations and to different sets of employees. The policies could not be held to be supplementary

or complimentary to each other but were intended to be applied distinctly and alternatively. The policies appear to have been issued for the purposes of rehabilitating invalid persons or providing assistance to unfit persons. It could not be the intention of the State to reward either an invalid person or unfit person. The persons who are found invalid from service have been held entitled to the grant of benefits of Annexure R/1 as they are found to be disabled for active service. The purpose was either to provide them alternative job or compensate them if such job was not available. The purpose of Annexure P/3, however, appears to be to compensate such officials on compassionate grounds who have been declared to be unfit being incapable of performing any duty and in that event to provide a job to one of their dependent under specified circumstances.

(Para 6)

Further held, that even in cases where a person is held entitled to the benefit of both the Schemes, he cannot be permitted to prefer his claim under both the policies. If a person is found to have availed the benefit under one scheme or policy he shall be held disentitled to claim the benefit under the other policy.

(Para 6)

Constitution of India, 1950—Arts. 226/227—‘Nakara’—‘Unfit’—Definition.

Held, that the word ‘Nakara’ is stated to be equivalent to the word ‘unfit’. The dictionary meanings of the word ‘unfit’ are not fitting or suitable, not in a fit condition, not amounting to required standard and disqualified. Whereas the dictionary meanings of the word ‘invalid’ are, deficient in health, sick, weak, disabled and disabled for active service. ‘Invalid person is not necessarily an unfit person whereas an unfit person will include within its ambit invalid person as well. The petitioner in this case has been declared invalid from service and not unfit.

(Para 8)

Abha Rathore, Advocate, for the Petitioner.

Arun Nehra, Addl. AG., for the State of Haryana.

JUDGMENT

R. P. Sethi, J.

(1) To whom and under what circumstances the benefit of policy (Annexure R/1) dated 20th August, 1992 issued by the Transport Commissioner, Haryana and benefits of policy (Annexure P/3) issued by the Chief Secretary, Haryana, pertaining to the benefits to the employees who are declared unfit during the service period can be

conferred or bestowed, is the main question of law to be determined in this petition.

(2) After the judgment of the Supreme Court in *Anand Bihari v. Rajasthan State Road Transport Corporation, Jaipur* (1), the Transport Commissioner, Haryana, decided to prescribe a procedure for removal of Drivers on account of their being medically unfit to continue in service, It was decided to follow the following procedure in modification of the Transport Commissioner's earlier letter dated 11th September, 1987 issued to all the General Managers of the Haryana Roadways :

- "1. If a driver has become unfit due to a disease not related to his employment, he should be retired from service on medical grounds by following the procedure under Rule 5.18 of C.S.R. Volume II if the employee himself submits the medical report or by following the procedure laid down under Rule.
 - (d) Where the employee has put in more than 15 years service but less than 20 years service the amount of compensation shall be equivalent to one month's salary per year of the balance of his service.
 - (e) Where the employee has put in more than 20 years service, the amount of compensation shall be equivalent to two months salary per year of the balance of his service.
- The salary will mean the total monthly emoluments that the workman was drawing on the date of his retirement.
- (iii) If the alternative job is not available immediately but becomes available at a later date within one year of his retirement, the department would offer it to the workman provided he refunds the compensatory amount. He would then be covered by provision in para 2 above.
 - (iv) The option to accept either of the two reliefs, if an alternative job is offered by the department shall be that of the workman.

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- (v) Where the employees were retired in the past and their retirement orders were set aside by the Court with a direction that they may be given light duty, these cases should also be covered under the new policy. In such cases, they should be provided an alternative employment for which they are found capable of performing inspite of their disability which may not necessarily be in the same scale of pay as they were holding earlier. Such employees should be retired from their earlier posts with whatever retirement benefits were admissible to them and the salary drawn by them on re-employment would be in addition to the retirement benefits earned by them from their previous service provided the pension plus their salary on re-employment does not exceed last pay drawn.
- (vi) In the case where the courts have given judgment at various with the policy laid down by the Supreme Court and Lower Court had passed specific orders to take the employee back in service giving 5.11 and 5.12 of C.S.R. Vol. II, in case the employer has got the employee medically examined and he has been declared unfit.
2. In either of the situations whether the employee has himself submitted the medical report or the employer has got him medically examined, if the incapacity is related to the occupational hazards, their first efforts should be made to find an alternative employment may not necessarily be of the same scale of pay as the one he was holding earlier but it should be ensured that the employee is capable of performing that job. In case he is given an alternative employment he would be deemed to have retired from his earlier employment with whatever retirement benefits are admissible to him and the salary drawn by him on the re-employed job would be in addition to the retirement benefits provided the pension plus the salary on re-employed job would be in addition to the retirement benefits provided the pension plus the salary on re-employment does not exceeds the last pay drawn.
- 3(i) In case there is no job available and the General Manager certified to that effect, the employee should be paid along with the retirement benefits, an additional compensatory amount as follows :—

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- (a) Where the employee has put in 5 years or less than 5 years service the amount of compensation shall be equivalent to 7 days salary per year of the balance of his service.
- (b) Where the employee has put in more than 5 years but less than 10 years service, the amount of compensation shall be equivalent to 15 days salary per year of the balance of his service.
- (c) Where the employee has put in more than 10 years but less than 15 years service the amount of compensation shall be equivalent to 21 days salary per year of the balance of his service."

(3) The Chief Secretary, Haryana,—*vide* his letter dated 23rd November, 1992 (Annexure P/3) addressed to all Heads of Department, Haryana ; Commissioners of Ambala, Hissar, Gurgaon and Rohtak Division ; All Deputy Commissioners and Officials of Haryana, Registrar, Punjab and Haryana High Court, Chandigarh conveyed the scheme for conferring benefits to the families of employees declared unfit during service period by granting job to the dependents of the blind and unfit employees. Annexure P/3 specifically provided :—

"I have been directed to invite your attention to, Haryana Government Memo No. 16/1/81-GS TT dated 22nd February, 1991 and to state that Government has re-examined the above matter and decided that Government job be given to only one dependent of a regular employee who is blind or declared unfit during his service period, after the date of issue of this letter.

2. It is clarified that the persons declared medically unfit will have to obtain a certificate of unfitness from a special board constituted by the Health Department. You are, therefore, requested that these directions be strictly complied with and future recommendations be sent with full information in accordance with these instructions."

(4) In order to appreciate the rival contentions it would be necessary to have a look at the facts of this case. The petitioner who was working as a Driver in Haryana Roadways, Faribadad

Depot after being declared invalid,—*vide* Annexure P/1 was retired from service under the instructions contained memo Annexure R/1 and paid a sum of Rs. 21.618 as compensation. Not content with the grant of compensation, the petitioner,—*vide* Annexure P/4 prayed for granting a job to the post of Clerk to his son Inder Singh who was stated to have passed 11th class from the Board of Central Education, Haryana. Upon failure of the respondent-authorities to pass any order, the petitioner filed a C.W.P. No. 15242 of 1994 which was decided by a Division Bench of this Court on 26th October, 1994 by directing the respondents to dispose of his representation within two months by passing a speaking order. As, despite court directions, no action was taken, the petitioner filed C.O.C.P. 107 of 1995 wherein the Court was informed that the representation of the petitioner stood rejected.—*vide* Annexure P/5. It is contended that the rejection was illegal and contrary to the policy of the Government (Annexure P/3) and the petitioner was entitled to the relief claimed by him in his representation.

(5) In the reply filed on behalf of the respondents it has been specifically stated that the petitioner was not entitled to the grant of any relief in terms of policy (Annexure P/3) as he had already been granted relief under policy Annexure R/1 by payment of compensation to which he was held entitled.

(6) A perusal of Annexure R/1 would indicate that it was intended to get rid of medically unfit Drivers by appropriately compensating them after compliance of the directions issued by the Hon'ble Supreme Court in *Anand Bihari's case (supra)*. Whereas policy Annexure R/1 specifically dealt with the Drivers the policy Annexure P/3 was issued by the Chief Secretary apparently on behalf of the Government of Haryana for the benefit of all the employees of the Government who were declared unfit or were blind by providing job to one of their dependents. The scope of this policy and its applicability were admittedly to a wider section of the employees and was applicable under the circumstances narrated therein. The object of both the schemes was that if a Driver or Government employee was rendered invalid, unfit or blind on account of his continuous service with his employer he may be compensated in the manner and to the extent specified in the policies referred to herein above. The applicability of the policy was to be resorted to under specified circumstances as spelt out in the aforesaid two policies. The concessions granted by the aforesaid two policies were applicable to different situations and to different sets of employees. The policies could not be held to be supplementary or complimentary

to each other but were intended to be applied distinctly and alternatively. The policies appear to have been issued for the purposes of rehabilitating invalid persons or providing assistance to unfit persons. It could not be the intention of the State to reward either an invalid person or unfit person. The persons who are found invalid from service have been held entitled to the grant of benefits of Annexure R/1 as they are found to be disabled for active service. The purpose was either to provide them alternative job or compensate them if such job was not available. The purpose of Annexure P/3, however, appears to be to compensate such officials on compassionate grounds who have been declared to be unfit being incapable of performing any duty and in that event to provide a job to one of their dependant under specified circumstances. The provision of a job cannot be held to be in addition to the benefits conferred by one of the Schemes. Conferment of benefits under both the Schemes would be against the public policy and negate the object conceived by the State. The provision of providing job to the dependants of persons who are retired on the ground of their being unfit or invalid would definitely be at the cost of some deserving citizens who in the absence of the provision of alternative job would be entitled to employment. Neither any law nor any rule conceives the civil service to be hereditary. Either of the policy cannot be permitted to be stretched to the extent that in all cases where the employee is declared invalid or unfit, he was entitled to the benefit of both the Schemes. As already observed the policy Annexure R/1 refers to a different class of persons distinct from those who are covered by the policy Annexure P/3. Even in cases where a person is held entitled to the benefit of both the Schemes, he cannot be permitted to prefer his claim under both the policies. If a person is found to have availed the benefit under one scheme or policy he shall be held dis-entitled to claim the benefit under the other policy.

(7) The learned counsel for the respondents has relied upon a judgment of the Supreme Court in *State of Haryana v. Hawa Singh* (2). The facts of that case were that Hawa Singh and others who were Drivers in the Haryana Roadways were declared medically unfit for driving heavy vehicles and retired from service. They filed writ petitions in this Court for a direction that on being declared medically unfit for the post and having retired from service, one of their sons should be given employment. The

High Court allowed the writ petition and directed to give employment to one of their sons. On behalf of the State it was pointed out that the Transport Commissioner of Haryana had issued a Scheme dated 20th August, 1992 in respect of the procedure to be followed in case of removal of Driver on account of their being medically unfit to drive heavy vehicles. The Supreme Court after reference to the aforesaid two policies held, "In this background, the High Court was not justified in directing that one of the dependents of the respondents be given a suitable job commensurate with the educational qualifications possessed by him" The Supreme Court allowed the appeals filed by the State and directed that the Drivers be given alternative job strictly following the judgment of the Supreme Court in *Anand Bihari's case* (supra) but only in exceptional circumstances where it was not possible to adjust them in any alternative job, then they shall be paid compensation as said in the judgment of the Court. While deciding the case, the Supreme Court incidentally mentioned that such persons who had become blind or Nakara while in service were entitled to the grant of relief under the new Scheme. The learned counsel for the petitioner submits that as the petitioner has already been found unfit, he is entitled to the benefit of the policy dated 23rd November, 1992.

(8) A perusal of Annexure P/1 would show that on account of accentuated hyper tension, the petitioner was declared invalid which entitled him to the grant of the benefit under the policy Annexure R/1. The word 'Nakara' is stated to be equivalent to the word 'unfit'. The dictionary meanings of the word 'unfit' are "not fitting or suitable, not in a fit condition, not amounting to required standard, and disqualified. Whereas the dictionary meanings of the word 'invalid' are, deficient in health, sick, weak, disabled and disabled for active service." Invalid person is not necessarily an unfit person whereas an unfit person will include within its ambit invalid person as well. The petitioner in this case has been declared invalid from service and not unfit.

(9) Learned counsel for the petitioner has referred to and relied upon a judgment of this Court in C.W.P. No. 18650 of 1994 '*Dharam Pal v. State*' delivered on 13th July, 1995. In view of the interpretations, we have put on the policies Annexures R/1 and R/3, the reliance of the learned counsel for the petitioner is mis-placed because in that case it was conceded that the petitioner therein was covered under policy Annexure P/3 which, however, is not the position in the instant case.

(10) The respondent Transport Commissioner was, therefore, justified in rejecting the representation of the petitioner,—*vide* Annexure P/5 holding that the instructions of the State Government dated 23rd November, 1992 were not applicable in his case. The petitioner has rightly been held to have neither become blind or declared Nakara (unfit).

(11) There is no merit in this writ petition which is accordingly dismissed but with no order as to costs.

J.S.T.