

*Before H.S. Bhalla, J.*

**STATE OF PUNJAB AND ANOTHER,—Appellants/Defendants**

*versus*

**DARSHAN SINGH,—Respondent/Plaintiff**

RSA No. 1777 of 2007

The 31st August, 2007

***Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995—S. 47—Punjab Civil Service Rules, 1953—Rl. 5.18—Respondent declared unfit to perform duty of a bus driver—Premature retirement on medical ground—S. 47 of 1995 Act prohibits dispensing with services of an employee who acquires disability during service—Rule 5.18 of 1953 Rules does not contemplate premature retirement of an employee on ground of medical unfitness—Order retiring respondent prematurely from service on medical ground suffers from a serious legal infirmity—Findings of Ist Appellate Court affirmed, State's second appeal dismissed.***

*Held*, a perusal of Rl. 5.18 of the Punjab Civil Service Rules, 1953 shows that the nature and contents of the rule does not contemplate premature retirement of an employee on the ground of medical unfitness. Therefore, on that ground also, the order passed by the appellant-authority would not stand the scrutiny of law. In such like circumstances, the impugned order dated 10th July, 2001 passed by the General Manager, Punjab Roadways, Depot No. 2, Jalandhar whereby plaintiff-respondent was retired prematurely from service on medical grounds suffers from a serious legal infirmity and is, thus, liable to be quashed.

(Para 15)

*Further held*, that Section 47 of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 create a statutory bar against dispensing with the services of an employee after he acquires disability during service. The view expressed by this Court is fortified by the judgments of the Apex Court and the various High Courts including that of our own High Court, wherein it has been held that in case

an employee acquires disability during service, his service cannot be dispensed with even if there is no post and the employer has to create a supernumerary post or till he attains the age of superannuation, whichever is earlier. The same view has been expressed by the learned lower appellate authority reversing the findings recorded by the trial Court giving sound reasoning in the judgment and decree passed by him, which cannot be held to be erroneous in any manner and in such like circumstances, the findings recorded by the lower appellate authority are hereby affirmed warranting no interference.

(Para 16)

Manohar Lall, Additional Advocate General, Punjab, *for the appellants.*

Puneet Jindal, Advocate, *for the respondent.*

### JUDGMENT

**H.S. BHALLA, J.**

(1) Feeling aggrieved against the judgment and decree dated 27th January, 2007 passed by Additional District Judge (*Ad hoc*), Jalandhar, reversing the findings recorded by the trial court, the appellants-State of Punjab have filed the present appeal praying for acceptance of the appeal and restoration of the judgment and decree sheet dated 4th October, 2006 passed by the learned trial court resulting in dismissal of the suit filed by the plaintiff-respondent.

(2) The facts required to be noticed for the disposal of the appeal are that a suit for declaration was filed by the plaintiff-respondent, to the effect that the order dated 10th July, 2001 passed by the General Manager, Punjab Roadways, Depot No. 2, Jalandhar, whereby plaintiff-respondent was retired prematurely from service on medical grounds, is illegal, arbitrary and against the principles of natural justice as also against the Punjab Civil Service Rules and the mandatory provisions of Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short "the Act") and is thus not binding on the rights of the plaintiff-respondent and that the plaintiff-respondent continues to be in service till his actual date of retirement on superannuation, refixation of his pay and

retrial benefits and is entitled to recover the difference in pay for that period along with interest at the rate of 12% per annum till payment.

(3) The learned trial Court after framing necessary issues and evaluating the entire evidence available on the record of the case, dismissed the suit of the plaintiff. Feeling dissatisfied, the plaintiff-respondent preferred an appeal before the learned lower appellate authority, which was allowed, setting aside the judgment and decree passed by the trial Court and decreeing the suit filed by the plaintiff-respondent. It is against this judgment and decree passed by the lower appellate authority that the State of Punjab and another came up in appeal before this Court.

(4) I have heard learned counsel for the parties and have also gone through the record of the case.

(5) Learned counsel appearing for the appellants has vehemently argued that the learned lower appellate authority has committed a grave error in setting aside the well reasoned judgment and decree sheet dated 4th October, 2006 passed by the learned trial Court resulting in decretal of the suit. Meaning thereby that, the plaintiff-respondent is to be reinstated in service. Learned counsel has further contended that the plaintiff-respondent was retired prematurely on the medical ground declaring the plaintiff-respondent unfit to perform the duty of a Bus Driver for the post for which he had been appointed because of his physical disability as a consequence of which the authorities concerned after following the principles of natural justice retired the plaintiff-appellant prematurely under Rule 5.19 of the Punjab Civil Services Rules by passing detailed order and thereafter the plaintiff-respondent himself applied for pensionary benefits, which he has received complete in all respect without any objection.

(6) Per contra, learned counsel appearing for the plaintiff-respondent has vehemently contended that Rule 5.19 of the Punjab Civil Services Rules under which the appellant had been retired prematurely from service is not applicable and the same has been misconstrued by the General Manager of the Transport Department. Learned counsel has further submitted that the said rule permits an employee to seek premature retirement from service, but it does not authorise the employer to prematurely retire an employee on medical ground. Learned counsel further argued that after the

passing of the Act, the plaintiff-respondent could not be prematurely retired from service on medical ground as there is a statutory bar and he has to be provided with some alternate suitable job so that his right to live could not be taken away and in this regard Section 47 of the Act clearly deals with this point in issue.

(7) I have heard learned counsel for the parties and have gone through the record of the case minutely.

(8) Before I deal with the matter in issue, I would like to refer to Section 47 of the Act which prohibits dispensing the services of a person who acquires disability during service. For ready reference, Section 47 of the Act reads as under :—

“Non-Discrimination in Govt. Employment

- (i) No establishment shall dispense with or reduce in rank, an employee who acquires 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.

- (ii) 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.”

(9) A bare perusal of the above section shows that certain rights have been given to disabled persons but the proviso to sub-section (2) of Section 47 of the Act gives the right to the Government to exempt certain establishment from the purview of this Section.

(10) Learned counsel appearing for the plaintiff-respondent, in support of his contention, has placed reliance number of authorities such as **Baljit Singh versus Delhi Transport Corporation (1)**; **Kunal Singh versus Union of India and another (2)**, and **Fertilizers Chemicals Transvancore Ltd., versus Gopinatha Pancocker (3)** of Hon'ble Kerala High Court. All these authorities are on the point that the appellant-department could not dispense with the services of the plaintiff-respondent because of the disability.

(11) In Baljit Singh's case (*supra*), it has been held as under :—

“Petitioner suffered disability during service. Due to disablement, respondent slapped orders of premature retirement rendering them unemployed. Section 48 of the Act prohibits an establishment from dispensing with or reducing in rank an employee who acquires disability during his service, such employee should be shifted to other post with the same pay scale and service benefits if such employee could not be found suitable for the post he was holding. Provisions is also made to create supernumerary post until suitable post is available or till the concerned persons attains the age of superannuation.”

(12) In Kunal Singh's case (*supra*), His Lordship of the Hon'ble Supreme Court of India has observed as under :—

“National Trust for Welfare of persons with Autism, Carebral Palsy, Mental Retardation and Multiple Disabilities Act and Section 2(O) and 47, Central Civil Services Pension Rules, 1972. Rules 38. Disable employee—Disabled person is entitled to suitable employment. A disabled person cannot be completely invalidated from service. There is statutory bar. He has to be provided with some alternate suitable job so that his right to live is not taken away.”

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- (1) 2002(2) S.C.T. 319  
(2) 2003(1) S.C.T. 1029  
(3) 2004(3) S.C.T. 343

(13) In **Fertilizers Chemical's case** (*supra*) His Lordship of the Hon'ble High Court of Kerala has held as under :—

“Provisions of Section 47 are mandatory. An employee incurring disability after joining service. His services cannot be dispensed with merely because he has suffered a disability resulting in his incapacity to work. It is not the requirement of Section 47 that the accident resulting in the disability should have arisen out of or in the course of his employment. It is enough if an employee acquires disability during his service.”

(14) In order to deal with the contention of the learned counsel appearing for the appellants, first of all, I would like to refer to Rule 5.18 of the Punjab Civil Services Rules, 1953, retiring the plaintiff-respondent prematurely from service on medical ground, which is reproduced hereunder for facility of reference :—

“5.18. 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 relief 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 Punjab Civil Services Rules, Volume I, Part I, 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 Punjab Civil Services Rules, Volume I, part I.

**Note 1.**—The report required by this rule may in the case of head constable 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(C) of Volume I of these rules, the maximum period upto which, he can be allowed under second sub-paragraph of this rule to count for pension, the service after the date of medical certificate shall not exceed six months.”

(15) A perusal of the above Rule shows that the nature and contents of the rule does not contemplate premature retirement of an employee on the ground of medical unfitness. Therefore, on that ground also, the order passed by the appellant-authority would not stand the scrutiny of law. In such like circumstances, the impugned order, dated 10th July, 2001 passed by the General Managers, Punjab Roadways, Depot No. 2, Jalandhar, whereby plaintiff-respondent was retired prematurely from service on medical grounds suffers from a serious legal infirmity and is thus, liable to be quashed. That apart, plaintiff-respondent met with an accident; that he received multiple injuries and became incapacitated to work on the post of Driver and in such like circumstances, he was entitled to receive the compensation as per the provisions of Workmen's compensation Act, but he was prevailed upon by the department not to claim the same as they would not be dispensing with his services and shall retain him in service and allot him light duty and consequently, the plaintiff-respondent accepted the offer made by the department and he was allotted light duty till he was retired pre-maturely on medical ground. It has never been the case of the department that on the request of the plaintiff-respondent himself, he was medico-legally examined, rather it was the Department, who got the plaintiff-respondent medico-legally examined wherein he was found unfit for performing the duty of a driver and thereafter, the plaintiff-respondent made a request to get him re-examined by constituting a Medical Board since he was not satisfied with the certificate issued by the Civil Surgeon, Jalandhar and thereafter, his case was referred to the Medical Board, who,—*vide* their certificate dated 28th April, 2000 informed the plaintiff-respondent that he was incapacitated to perform the duty of a driver on account of weak eye sight. On these premise, Rule 5.18 of the Rules is not applicable in the case of the respondent (herein) under which he was retired prematurely from service, inasmuch as it does not provide pre-mature retirement on medical ground as to disability unless the employee himself makes a request for pre-mature retirement on medical ground. Acceptance of the pensionary benefits by the plaintiff-respondent in the facts and circumstances of the case, as discussed above, does not debar him from protecting his valuable rights by knocking the door of the courts, as also challenging the order of the departmental authorities especially when the order,—*vide* which the services of an employee have been dispensed with. I have no hesitation in holding that the plaintiff-appellant was competent to file the suit before the trial Court.

(16) The only question that survives for consideration is as to whether Section 47 of the Act creates a bar against dispensing with the services of an employee, who acquires disability during service or the same does not supersede the Service Rules of the State of Punjab and the employer can still proceed under the Service Rules for dispensing with the services of an employee on medical grounds. Having gone through the Section 47 of the Act, as reproduced above, I am of the firm opinion that the aforementioned Section creates a statutory bar against dispensing with the services of an employee after he acquires disability during service. The view expressed by this Court is fortified by the judgments of the Apex Court and the various High Courts including that of our own High Court, as referred to above, wherein it has been held that in case an employee acquires disability during service, his service cannot be dispensed with even if there is no post and the employer has to create a supernumerary post or till he attains the age of superannuation, whichever is earlier. The same view has been expressed by the learned lower appellate authority reversing the findings recorded by the trial Court giving sound reasoning in the judgment and decree passed by him by citing number of judicial pronouncements therein, which in my considered view, cannot be held to be erroneous in any manner and in such like circumstances, the findings recorded by the lower appellate authority are hereby affirmed warranting no interference.

(17) In the light of what has been discussed above, appeal filed by the appellants fails and is hereby dismissed. The judgment and decree dated 27th January, 2007 passed by the lower appellate Court is maintained. The plaintiff-appellant be taken back in service forthwith. The order of reinstatement shall be subject to refund of the entire amount received by the plaintiff-respondent through pension, which fact has been brought to the notice of the Court by the learned Additional Advocate General representing the State of Punjab that the plaintiff-respondent has received all the pensionary benefits. After the amount so received by the plaintiff-respondent is refunded to the appellant-department, he be taken back in service and assigned duties which are commensurate with the physical capability of the plaintiff-respondent.

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*R.N.R.*