
Before M.M. Kumar and M.M.S. Bedi, JJ.

PARVESH DEVI,—*Petitioner*

versus

STATE OF HARYANA AND OTHERS,—*Respondents*

C.W.P. NO. 5715 OF 2005

10th October, 2006

Constitution of India, 1950—Art. 226—Haryana School Education Act, 1995—Punjab Civil Services Rules, Vol. II—Rls. 3.16(b) Note I, Entry 2 and 6.16—Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995—Ss. 2(t) and 47—Husband of petitioner rendered more than 20 years service in a Government aided school and after taking over of privately managed schools by State Government he rendered 7 years 10 months in Government school—Petitioner was declared permanently incapacitated for further service by a Medical Board on account of head injury suffered by him—Incapacity not induced by any irregular or intemperate habits—Claim for pension—Rejection of on the ground that he worked less than 10 years of qualifying service in Government school—State simply relieving petitioner's husband and no order of superannuation passed—Provisions of S.45 of 1995 Act provide that no establishment shall dispense with or reduce the rank of an employee who might have acquired disability during his service—Provision clearly stipulates that a person with disability is to superannuate on attaining the age of superannuation applicable to such an employee—Petitioner's husband cannot be deemed to have retired from service till his age of superannuation and entitled to payment of salary from the date he was relieved as he would be deemed to have rendered service till his date of superannuation—Petition allowed, orders relieving petitioner's husband from service and declining grant of pension quashed.

Held, that it is clear from a perusal of Section 47 of the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995 that no establishment shall dispense with or reduce the rank of an employee who might have acquired disability during his service. The afore-mentioned provision is qualified by the provisos that if an employee after acquiring the disability is not

suitable for the post which he was holding then he may be shifted to some other post with the same pay scale and service benefits as he was enjoying before acquiring the disability. It has further been provided that if it is not possible to adjust such an employee because no post is available then he is required to be kept on a supernumerary post until such post is available or he attains the age of superannuation whichever is earlier. This provision clearly stipulates that a person with disability is to superannuate on attaining the ordinary age of superannuation applicable to such an employee.

(Para 8)

Further held, that the petitioner although has been relieved but he cannot be deemed to have retired from service till his age of superannuation which is 30th June, 2007. Accordingly, it is held that the petitioner would be deemed to have rendered service from 1st September, 1994 to 30th June, 2007 after taking over the privately managed schools. Such service would be qualified service as it would be exceeding the period of 10 years. He would retire with effect from 30th June, 2007 when supernumerary post for the husband of the petitioner has to be created as per the requirement of proviso 2nd to Section 47 of the Act. Therefore, it has to be held that the petitioner would be entitled to payment of salary from the date he was relieved till date and he shall be paid salary thereafter till his retirement i.e. 30th June, 2007.

(Para 8)

R.N. Sharma, Advocate, *for the petitioner.*

Jaswant Singh, Addl. AG, Haryana.

JUDGEMENT

M.M. KUMAR, J.

(1) This petition filed under Article 226 of the Constitution prays for quashing order dated 14th February, 2005 (Annexure P.8) declining the request made by the husband of the petitioner for grant of pension on the ground that he had rendered less than 10 years of qualifying service.

(2) Brief facts of the case are that the petitioner had been working on the post of Sanskrit teacher in Samaj Kalyan High School Rohtak (Sonepat). He was appointed on 18th December,

1972 (Annexure P.4) P.4 as Sanskrit teacher as it had been a recognised aided school within the meaning of the Haryana School Education Act, 1995 (for brevity 'the Act'). The petitioner rendered service upto 30th August, 1994 in the afore-mentioned school which had been an aided and recognised institution. However, the school was taken over by the government with effect from 1st September, 1994 (Annexure P.5). After taking over the petitioner could work only up to 30th June, 2002 because he was declared permanently incapacitated for future service. According to the medical report submitted by the Special Medical Board of PGIMS, Rohtak, the husband of the petitioner has been found to be completely and permanently incapacitated for further service in the department as Sanskrit master on account of the head injury suffered by him. The afore-mentioned incapacity was not caused by an irregular or intemperate habits of the petitioner as it had been certified by the Medical Board (Annexure P.1). Accordingly he was relieved from service on 4th June, 2002 as per the record file produced before us. A copy of the relieving order is taken on record as Mark "A" and as such he was considered to have retired from service from 1st July, 2002. When his case was sent for grant of pension, Accountant General—respondent No. 4, did not sanction any pension to him on the ground that he had worked as a government employee for a period of 7 years 10 months. However, the petitioner was granted death cum retirement gratuity amounting to Rs.39040 in pursuance to order dated 10th May, 2003 (Annexure P.2). The petitioner on behalf of her husband sent a legal notice dated 3rd December, 2004 (Annexure P. 7) claiming invalid pension/family pension and gratuity by computing the service rendered by her husband in the Samaj Kalyan High School which was an aided school. The Accountant General—respondent No.4 rejected the claim of the petitioner,—*vide* order dated 14th February, 2004 by setting up the plea that death cum retirement gratuity/service gratuity is admissible to the retirees in accordance with the rule 6.16 of the Punjab Civil Service Rules, Volume II (for brevity 'the Rules'). It has further been asserted that the service rendered in aided school was not computable towards pensionary benefits/qualifying service as per Note 1 of Rule 3.16 of the Rules.

(3) On 19th April, 2006, we have heard the arguments in part and the hearing of the case was adjourned to produce the record which became necessary for the purposes of ascertaining whether any order of retirement in respect of the husband of the petitioner has been passed or not. When the case again came up for hearing on 21st April, 2006 the record was eventually produced and there is no order showing that the petitioner has been formally retired. The order dated 4th June, 2002 (Mark "A") simply relieve the petitioner from service by referring to the special report of the Medical Board dated 10th May, 2002 (Annexure P.1).

(4) Mr. R.N. Sharma, learned counsel for the petitioner has argued that Rule 3.16(b) Note I, Entry 2 read with Rule 6.16 of the Rules is not applicable to the petitioner as the afore-mentioned rule pre—supposes that an employee has retired from service. According to the learned counsel, the petitioner has not retired from service but has simply been relieved on the basis of the Medical report dated 10th May, 2002 (Annexure P.1) . He has then referred to Rule 5.11 of the Rules which deals with the grant of invalid pension and argued that the respondents cannot deny such a pension to the petitioner. In support of his submission, learned counsel has placed reliance on two judgements of this Court in the cases of **Avtar Singh versus State of Punjab (1)** and **Raghubir Chand versus State of Haryana (2)** and argued that if a particular matter is specifically dealt with under a separate rule then it would preclude the applicability of general rule. He has maintained that the framers of the Rule have not made the provision of Rule 5.11 subject to the provision of any other rule. He has then placed reliance on two Division Bench judgements of this Court in the cases of **Ranjit Singh versus State of Haryana (3)** and **Mohinder Singh versus State of Haryana(4)** and argued that the petitioner is entitled to be paid some extra allowance alongwith the retirement benefits. He has made another submission that gratuity for the whole period deserved to be granted to the husband of the petitioner on the principles laid down by the Hon'ble Supreme Court in the case of **Chander Sain versus State of Haryana (5)** and

(1) 1989 (3) S.L.R. 623

(2) 1997 (2) R.S.J. 198

(3) 1994 (3) P.L.R. 687

(4) 2000 (1) S.C.T. 149

(5) 1994 (2) R.S.J. 690

argued that in para 4 it has been made explicit that the staff of the privately managed schools taken over by the government would be entitled to pension and provident fund which has been granted by the Hon'ble Supreme Court even to the staff of the taken over government colleges.

(5) Mr. Jaswant Singh, learned State counsel, has argued that pension or family pension is not admissible to the petitioner and the only relief available to him would be to the amount of death cum retirement gratuity as per the provisions made in Rule 6.16 of the Rules. He has then argued that the employees of the aided school would not be entitled to any other incentives which would be available to the teachers/employees of government colleges. For the aforementioned purpose, he has placed reliance on a judgement of the Hon'ble Supreme Court in the case of **State of Haryana versus Champa Devi (6)**. He has emphasised that the petitioner has been given death cum retirement gratuity in lieu of the pension as has been provided by Rule 6.16 of the Rules which contemplates that employees who have less than 10 years of service are not to be deprived of the benefits of the services rendered by them and are granted the service gratuity. Accordingly, the service gratuity of the petitioner amounting to Rs. 39040 has been calculated for the total service of 7 years and 10 months.

(6) We have thoughtfully considered the submissions made by the learned counsel for the parties. It is admitted fact that husband of the petitioner is lying in Coma being 100 percent incapacitated which condition has not been caused by any of his irregular or intemperate habits. The record shows that date of birth of petitioner is 15th June, 1949 and he was to attain the age of superannuation on 14th June, 2007. It is also admitted fact that the petitioner joined Samaj Kalyan High School as Sanskrit teacher on 18th December, 1972 where he served up to 30th August, 1994. The total period of service rendered therein comes to 21 years and 8 months. However, the school was taken over by the respondent State on 1st September, 1994. There is no dispute that no order of superannuation has been

passed so far and the petitioner has been given only service gratuity in accordance with Rule 6.16 of the Rules. The question arises whether the rigors of Rule 6.16 which provides minimum 10 years of service for becoming entitled to pension would be applicable in the case of the husband of the petitioner. In that regard reference may be made to the provisions of Sections 2(t) and 47 of the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995 and the same reads as under :

“2. Definition.—In this Act, unless the context otherwise requires,—

(a) to (s) xx xx xx xx

(t) ‘person with disability’ means a person suffering from not less than forty percent of any disability as certified by a medical authority’

xx xx xx xx”

“47. 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 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.

(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.”

(7) A perusal of the afore-mentioned provision makes it explicit that an employee who acquires disability during his service is sought to be protected because if no protection is provided by law not only such an employee suffers himself but all those would equally suffer who have been dependent upon him as has been held by the Hon'ble Supreme Court in the case of **Kunal Singh versus UOI** (7). It becomes further evident that person with disability is the one who had suffered from not less than 40 percent disability as certified by the medical authorities. It is thus evident that the petitioner is a person with disability within the meaning of Section 2(t) of the Act.

(8) It is further clear from a perusal of Section 47 that no establishment shall dispense with or reduce the rank of an employee who might have acquired disability during his service. The afore-mentioned provision is qualified by the provisos that if an employee after acquiring the disability is not suitable for the post which he was holding then he may be shifted to some other post with the same pay scale and service benefits as he was enjoying before acquiring the disability. It has further been provided that if it is not possible to adjust such an employee because no post is available then he is required to be kept on a supernumerary post until such post is available or he attains the age of superannuation whichever is earlier. This provision clearly stipulates that a person with disability is to superannuate on attaining to ordinary age of superannuation applicable to such an employee. Accordingly, the petitioner although has been relieved but he cannot be deemed to have retired from service till his age of superannuation which is 30th June, 2007. Accordingly, it is held that the petitioner would be deemed to have rendered service from 1st September, 1994 to 30th June, 2007 after taking over the privately managed schools. Such service would be qualified service as it would be exceeding the period of 10 years. He would retire with effect from 30th June, 2007 when supernumerary post for the husband of the petitioner has to be created as per requirement of proviso 2nd to Section 47 of the Act. Therefore, it has to be held that the petitioner would be entitled to payment of salary from the date he was relieved till date and he shall be paid salary thereafter till his retirement i.e. 30th June, 2007.

(9) The argument of the learned counsel for the petitioner that husband of the petitioner is entitled to invalid pension or gratuity for the whole period of service would not arise for our consideration because the husband of the petitioner has not yet been retired from service. There is no order retiring the petitioner from service who has simply been relieved on 4th June, 2002 (Mark "A") by completely ignoring the provisions of Section 47 of the 1995 Act. We also reject the argument advanced by the learned State counsel for awarding the service gratuity to the husband of the petitioner in accordance with Rule 6.16 of the rules which proceeds on the assumption that the petitioner has retired. The argument suffers from the same fallacy because there is no order of retirement on record passed in respect of the petitioner.

(10) In view of the above, the writ petition is allowed. Order dated 4th June, 2002 (Mark "A") relieving the petitioner from service and order dated 15th February, 2005 (Annexure P.8) declining the request of the husband of the petitioner for grant of pension are quashed. Respondents are directed to pay salary to the petitioner as per the rates by deeming fiction as if he is in service and has been working against a supernumerary post. The arrears of pay as was being drawn by the husband of the petitioner be calculated from 1st July, 2002 up to date and the payment be made to the wife of the petitioner in accordance with the rules within a period of one month from the date certified copy of the order is produced before the respondents. The salary every month shall be paid to the petitioner till the date of superannuation. The respondents shall be liable to pay interest @ 8 percent on the arrears of salary from the date the salary was due i.e. 1st July, 2002 till the date of its payment. The amount of Rs.39040 already paid to the petitioner as service gratuity shall be set off from the arrears of salary. On attaining the age of superannuation, the respondents shall pass an order of retirement alongwith an order calculating the pension of the husband of the petitioner in accordance with law. The wife of the petitioner shall also be entitled to family pension in accordance with the rules.