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CWP-7789-2020 (O&M)

RAWEL SINGH VS STATE OF PUNJAB AND OTHERS

Present:- Mr. Manu K. Bhandari, Advocate for the petitioner.

Ms. Anju Sharma Kaushik, D.A.G., Punjab.

Heard through video conferencing.

Learned counsel for the petitioner contends that although the petitioner is 75% physically challenged but the respondents are arbitrarily not allowing him to continue till the age of 60 in violation of the Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995 (for the 'the Act') as well as instructions dated 19.11.2014 (Annexure P-2). There is inadvertent error in the subject of the instructions which should read regarding increase in age from 58 years to 60 years.

Learned State counsel has filed reply wherein it is stated that the increase in age of retirement from 58 to 60 years for disabled employees is not unconditional but subject to the condition that they should be mentally and physically fit to discharge the duties of the post. She has also filed a copy of the medical report of the Civil Surgeon, Patiala wherein it is mentioned that the petitioner was examined by the Board of Doctors and it was found that the petitioner is disabled to the tune of 75% as he is suffering from severe ataxia as assessed by the department of neurology. It was also stated that he is unable to walk independently and cannot carry out activities of daily living like bathing, dressing, transferring and eating independently. In their opinion, the petitioner cannot carry out his office work as Junior Assistant.

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It is manifest that the respondents are being insensitive and indifferent to the plight of a challenged employee which is anathema to a welfare state and contrary to the objective of the Act.

The object of the Act is to provide congenial work environment keeping in view the disability of the employee. Merely because the employee cannot carry out work as Junior Assistant, it cannot be taken that he would be unfit to discharge any other job.

Section 47(1) of the Act stipulates that no establishment can be dispense with or reduced in rank an employee who acquires a disability during his service. In the event, he is found to be not suitable for the post he was holding, he has to be shifted to some other post with the same pay scale and service benefits. It is further provided 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.

Therefore, I deem it appropriate to issue interim directions to the respondents. The petitioner shall be taken back in service forthwith in the same pay scale and adjusted at suitable post whereat he may work online from home in view of Covid-19 pandemic. An affidavit in compliance shall be filed by respondent No.1 by the next date.

List on 14.09.2020.

(ANUPINDER SINGH GREWAL)
JUDGE

August 21, 2020

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