

SUPREME COURT OF INDIA

Sohan Lal

Vs.

State of Haryana & Ors.

C.A.No.4169 of 2013

(Ranjan Gogoi and P. Sathasivam JJ.)

01.05.2013

JUDGMENT

Ranjan Gogoi, J.

1. Leave granted.

2. An award dated 27.02.2004 passed by the learned Labour Court, Ambala, upholding the termination of service of the appellant was challenged before the High Court of Punjab & Haryana. The High Court having dismissed the aforesaid challenge the present appeal has been filed.

3. The brief facts that would be relevant for the adjudication of the present case may be noticed as hereinbelow:

“The appellant, Sohan Lal, was employed as a regular driver in the Haryana Roadways having been appointed in the said post on 01.04.1993. According to the appellant, while in service, he sustained certain injuries as a result of a road accident. A medical examination of the appellant was conducted by the Civil Surgeon, Yamuna Nagar to determine the fitness of the appellant to continue to be employed as a driver. He was found to be unfit to discharge his duties. Thereafter, a notice dated 03.03.1997 was issued to the appellant by the General Manager of the Haryana Roadways proposing to retire him from service on medical grounds. “

4. The appellant submitted his reply on consideration of which, by order dated 27.03.1997, the appellant was retired from service with effect from 31.03.1997 on ground of medical unfitness.

5. The appellant raised an industrial dispute on the issue of his termination/retirement made by the order dated 27.03.1997. Though initially a reference was refused, the matter was eventually referred to the Labour Court for adjudication under Section 10 (1) of the Industrial Disputes Act, 1947.

6. Both the parties filed their respective written statements before the learned Labour Court on the basis of which issues with regard to the validity of the retirement/termination of the workman and his entitlement to consequential benefits, if any, were framed for trial.

7. Before the learned Labour Court both parties led their respective evidence on consideration of which the learned Court came to the conclusion that the claim of the

workman was not tenable and answered the reference accordingly. In doing so, the learned Labour Court specifically took note of the fact that in the order dated 27.03.1997, it is mentioned that before dispensing with the services of the workman, attempts were made to find an alternative job to accommodate him which attempts, however, did not yield any positive result. The fact that the appellant was paid all retiral benefits as well as additional compensation calculated at the rate equivalent to 21 days salary for each year of the balance period of service left (7 years), in accordance with the decision of this Court in *Anand Bihari & Ors. Vs. Rajasthan State Road Transport Corporation, Jaipur & Anr.* [AIR 1991 Supreme Court 1003] was also taken note of. With regard to the above, it would be necessary to notice that following the aforesaid judgment of this Court, an Office Memorandum dated 20.08.1992 was issued by the Transport Commissioner, Government of Haryana, formulating a 'scheme' to deal with cases of medical incapacity of a serving incumbent to discharge his duties. Under the said scheme, in case such incapacity is attributable to reasons connected with the employment, alternative employment is required to be provided, failing which, additional compensation, at the rate prescribed by the said notification for the balance period of service left, is payable to the concerned employee.

7. Aggrieved by the award dated 27.02.2004 passed by the learned Labour Court, the appellant filed a writ petition before the High Court. The same having been dismissed by the High Court by order dated 22.08.2005, the present appeal has been filed. The order of the High Court dismissing the writ petition is based on an order of the same date passed in another writ petition involving identical facts.

8. We have heard learned counsel for the parties.

9. In *Anand Bihari (supra)*, this Court was confronted with the issue of termination of the services of a large number of drivers in the Rajasthan State Road Transport Corporation on account of a singular medical disability, namely, defective/poor eyesight, a disability attributable to the stringent nature of the duties performed. On consideration of the totality of the facts of the case before it in *Anand Bihari (supra)*, this Court directed the Rajasthan State Road Transport Corporation to frame a 'scheme' to deal with such cases. Specifically, it was directed that before dispensing with the services of an employee on medical grounds attributable to the service rendered, an attempt must be made to find alternative employment to accommodate the workman/employee, failing which, additional compensation is to be paid for the period of service left at the rates indicated in the order of the Court.

10. Following the judgment of this Court in *Anand Bihari (supra)*, as already noticed, a 'scheme' engrafting the essential parameters prescribed by this Court had been brought into force in the State of Haryana by Memorandum dated 20.08.1992. The said scheme, as applicable to the State of Haryana, creates an obligation on the employer (Haryana Roadways) to find suitable alternative employment for an employee proposed to be discharged on the ground of medical disability if such disability is attributable to the service rendered. The norms contained in the aforesaid Memorandum dated 20.08.1992 also obligates the employer to make alternative employment available upto one year from the date of cessation of service. If such alternative employment cannot be provided, compensation at the rate prescribed in the said Memorandum dated is required to be paid to the concerned employee. In the present case, the order dated 27.03.1997 by which the service of the appellant has been dispensed with recites that no alternative employment was available under the General Manager of Haryana Roadways commensurate with the qualifications and skills of the appellant. The appellant could not also be appointed in the workshop as he did not have any technical qualification. In the said order it has also been recited that additional compensation, as prescribed by the Memorandum dated 20.08.1992, has been calculated and is being paid to the appellant. There is no dispute that such compensation has since been

paid.

11. The applicability of the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights And Full Participation) Act, 1995 to the case of the appellant, as strenuously urged on his behalf, cannot arise in as much as the appellant does not come within the meaning of the expression "person with disability" as defined under Section 2(t) of the Act. In the medical certificate dated 14.11.1996 issued by the Civil Surgeon, Yamuna Nagar the appellant has been found to be suffering from disability of the right elbow to the extent of 10% only as against the percentage of not less than 40% spelt out by Section 2(t) of the Act.

12. The facts of the present case clearly go to show that the appellant was found to be medically unfit to continue to work as a driver. His case for alternative employment in terms of the Memorandum dated 20.08.1992 was duly considered. No such alternative employment was available. Consequently, additional compensation payable to the appellant in terms of the Memorandum dated 20.08.1992 was calculated and paid. The materials on record would also go to show that the superannuation of the appellant, if he had continued in service, was due on 30.09.2004. Taking into account the totality of the facts of the present case, we are of the view that the award of the learned Labour Court dated 27.02.2004 affirmed by the High Court by its order dated 22.08.2005 will not require any interference by us. Accordingly, we dismiss the appeal and affirm the aforesaid award dated 27.02.2004 of the learned Labour Court and order dated 22.08.2005 passed by the High Court.

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