201 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-4461-2020
Date of decision: 11.08.2025

Bachan Kaur ....Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Ltd. and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. J.S. Maanipur, Advocate
and Ms. Harpreet Kaur, Advocate
for the petitioner.

Mr. Gaurav Jindal, Advocate
for the respondents.

HARPREET SINGH BRAR, J. (ORAL)

1. The present civil writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 31.12.2018 (Annexure P-8) passed by respondent No.3, whereby, the Invalid Pension and Family Pension availed by her was withdrawn with effect from January, 2019.

FACTUAL BACKGROUND

2. Briefly, the facts are that the husband of the petitioner joined service of respondent No.1 as a work-charge employee in November, 1969. He was regularised on 18.05.1979 and joined as an ALM on 19.05.1979. Unfortunately, he had a non fatal electric accident that resulted in amputation of his right upper limb and index finger of the left hand. The degree of his disability was assessed to be 90%. On account of this permanent disability, his employment was terminated with effect from 04.01.1983, without granting him any pension. Thereafter, the husband of the petitioner passed away on 30.01.1988. The petitioner moved a representation claiming Invalid Pension of

her late husband till 30.01.1998 and thereafter, the family pension, which was granted vide office order No.275 dated 02.09.2014 by respondent No.3. However, the same was withdrawn by the successor who occupied the post of respondent No.3, vide impugned order dated 31.12.2018 (Annexure P-8).

CONTENTIONS

3. Learned counsel for the petitioner contends that respondent No.3 erred in superseding the order passed by his predecessor. This Court in ***Amandeep Padda Vs. State of Punjab 2014 (4) SCT 638*** has categorically held that once a competent authority has granted a certain relief to an applicant, the same cannot be withdrawn by the officer who succeeds him. As such, respondent No.3 illegally reviewed the order passed by his predecessor. Further, the husband of the petitioner was regularised on 18.05.1979 and was discharging duties as an ALM at Bilaspur when he met with non-fatal electrical accident on 06.10.1980 and sustained serious electric burns. The husband of the petitioner was admitted in PGIMER, Chandigarh and in order to save his life, his right upper limb and index finger of left hand were amputated. As per the medical certificate issued by the Medical Board, Civil Hospital, Ambala, he was declared 90% disabled due to the said amputation.

4. He further submits that the husband of the petitioner resumed his duties on 23.12.1980 but his employment was terminated on 04.01.1983 on account of his permanent disability, without granting him any kind of pension. The petitioner moved a representation and was granted Invalid Pension of her late husband with effect from 05.01.1983 till his death i.e. 30.01.1988 and thereafter, the family pension vide order dated 02.09.2014 (Annexure P-1) by respondent No.3, the predecessor of the current Officer, after obtaining necessary advice from various authorities of the respondent-Corporation. The

same was done in consonance with Rule 5.12 Civil Services Rules Vol. II (in short 'CSR'). The petitioner was regularly receiving family pension and had also received the arrears of pension of her deceased husband. However, respondent No.3 issued a letter on 16.02.2016 (Anenxure P-2), and sought legal opinion from the Legal Remembrancer, Haryana Power Utilities and raised queries regarding recovery of pension from the petitioner and withdrawl of the same in the future, as discernible from Annexure P-2. The Legal Remembrancer vide letter dated 08.03.2016 (Annexure P-3) advised against recovery and also opined that the Invalid Pension and Family Pension may be withdrawn, after serving a show cause notice upon the petitioner in this regard. In spite of a specific requirement, respondent No.3 ordered immediate withdrawal of Family Pension without giving any show cause notice vide order dated 30.05.2016 (Annexure P-4). Thereafter, on 21.04.2017(Annexure P-5), the legal branch of the respondent-Corporation advised respondent No.3 to restore Family Pension to the petitioner till the final decision of the notice served upon the petitioner. In pursuance thereof, respondent No.3 issued a show cause notice to petitioner on 23.12.2016(Annexure P-6) however issuance of the same subsequent to the effective action, is in violation of principles of natural justice. In fact, without taking into consideration the contentions raised by the petitioner in her reply (Annexure P-7), respondent No.3 withdrew her family pension vide impugned order dated 31.12.2018 (Annexure P-8) with effect from January, 2019.

5. Moreover, the appeal filed by the petitioner before respondent No.2 against impugned order dated 31.12.2018 (Annexure P-8) is still pending consideration. Respondent No.3 has misinterpreted Rule 2.5 of CSR as the petitioner was not dismissed for reasons of misconduct, insolvency or

inefficiency, but for the reason of his permanent disability. Rule 5.12 of the CSR clearly states that if an employee has been partially incapacitated and cannot be employed, he would still be entitled to pension. There is no ambiguity with regard to the interpretation of the aforementioned CSR Rules. The petitioner, undisputedly, suffered a 90% disability and as such, he was entitled to a full pension since neither his employment could be continued nor was he capable of earning a living on his own.

6. *Per contra*, learned counsel for the respondent-Corporation submits that the appeal of the petitioner has been decided and therefore, the order passed by the learned Appellate Court should have been challenged by the petitioner. Further, the benefits under Rule 5.12 of CSR can only be availed if the the employee had been incapacitated due to an injury sustained while performing his official duties. However, there is no material available on record that suggests that the husband of the petitioner suffered the said burn injuries while on duty. In the absence of any authentic or liable proof to ascertain whether the disability suffered by the husband of the petitioner is attributable to his duty, the respondent-Department cannot be held liable to pay the pension. Be that as it may, learned counsel for the respondent-Corporation could not controvert the fact that the present writ petition was filed prior to decision of the appeal filed by the petitioner and that respondent No.3 has reviewed the order passed by his predecessor.

OBSERVATIONS AND ANALYSIS

7. Having heard learned counsel for the parties and after perusing the record with their able assistance, it appears that a study of Rules 2.5 and 5.12 of CSR is warranted. The same are reproduced below:

> *"**Rule 2.5** No pension may be granted to a Government employee dismissed or removed for **misconduct, insolvency or inefficiency**;*

> *but to Government employee so dismissed or removed* ***compassionate allowances may be granted when they are deserving of special consideration****; provided that the allowance granted to any Government employee shall not exceed two third of the pension which would have been admissible to him if he had retired on medical certificate.'*
>
> ***Rule 5.12*** *In the case of partial incapacity (vide alternative certificate in Rule 5.26), a Government employee should, if possible, be employed even on lower pay so that the expense of pensioning him may be avoided.* ***If there be no means of employing him even on lower pay, then he may be admitted to pension, but it should be considered whether, in view of his capacity for partially earning a living,*** *it is necessary to grant to him the full pension, admissible under rule."*

8. Admittedly, the husband of the petitioner suffered a permanent disability to the extent of 90%. It is the case of the respondent-Corporation that they can only be fastened with the liability to pay pension with respect to service rendered by the deceased husband of the petitioner, if the injuries were sustained by him while performing his official duty. The order dated 12.07.2022 (Annexure R-1) refers to the discussions that took place in the department office on 28.06.2022 and records that a medical certificate was issued by PGIMER, Chandigarh, vide memo No.EV (3) PGI-80 dated 08.12.1980, wherein it has been categorically stated that the husband of the petitioner was admitted since he had suffered 'Electric burn.' The claim of the petitioner was not considered as *"no any other detail viz. the cause/place of electric burn has been given in the report."*

9. On that note, it is the respondent-Department that ought to have the service record of the deceased so as to ascertain if he was working on 06.10.1980, when the accident occurred. However, a perusal of the office order dated 12.07.2022 (Annexure R-1) further indicates that the official records are unavailable and untraceable as they were ruined during the flood that occurred in Shahbad in the year 1997. It is curious as to how the respondent-Department

can place the burden on the petitioner to prove that her husband sustained injuries while on duty. The absurdity of it is not just rooted in the fact that the document sought from the petitioner is about forty years old but also, notably, that the respondent-Department, admittedly, is not in possession of the attendance record, in spite of being the primary and the only official custodian of all departmental records. The petitioner and her husband cannot be expected to produce the duty record of the husband of the petitioner, especially post his death, while there is a reasonable expectation for the respondent-Department to possess the same as all service records are in its exclusive custody. In view of the peculiar facts of the case, the callousness displayed by the respondent-Department is inherently unjustifiable and does not deserve any condonation.

10. Further still, it appears that the husband of the petitioner was dismissed from service for the reason of 'inefficiency,' in terms of Rule 2.5 of the CSR. *In arguendo,* if the argument of inefficiency is accepted, Rule 2.5 of the CSR also states that compassionate allowances may be granted in such case. Moreover, Rule 5.12 of the CSR specifically states that if employment of the incapacitated employee cannot be continued, he must be granted the benefit of pension.

11. Additionally, Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter 'Act of 1995') also forbids discrimination against an employee who acquires a disability during the continuation of his service while Section 72 clarifies that the provisions of this Act shall be in addition to any pre-existing statutes or rules. The said provisions are reproduced below:

> *"**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.

72. Act to be in addition to and not in derogation of any other law-

The provisions of this Act, or the rules made thereunder shall be in addition to, and not in derogation of any other law for the time being in force or any rules, order or any instructions issued there under, enacted or issued for the benefit of persons with disabilities."

12. Even a bare perusal of the abovementioned provisions would make it abundantly clear that the law explicitly prohibits the approach adopted by the respondent-Department. It is regrettable that the respondent-Department has chosen to equate disability sustained by the husband of the petitioner in an accident, with inefficiency as this perspective is not only expressly illegal but also terribly apathetic. Further, the provisions of the Act of 1955 possess the full force of law and are not merely recommendatory or directory. A reference in this regard can be placed on the judgment rendered by a two Judge bench of the Hon'ble Supreme Court in ***Kunal Singh vs. Union of India (2003) 4 SCC 524,*** wherein, speaking through Justice Shivraj V. Patil, the following was observed:

*"8. ...It must be remembered that a person does not acquire or suffer disability by choice. **An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him***

> ***would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature.*** *The very opening part of Section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The Section further provides 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; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act.* ***Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service****." (emphasis added)*

Moreover, a two Judge bench of the Hon'ble Supreme Court in ***Bhagwan Dass vs. Punjab State Electricity Board (2008) 1 SCC 242,*** speaking through Justice Aftab Alam, reiterated this stance by making the following observations:

> *"12. Appellant No. 1 was a Class IV employee, a Lineman. He completely lost his vision. He was not aware of any protection that the law afforded him and apparently believed that the blindness would cause him to lose his job, the source of livelihood of his family. The enormous mental pressure under which he would have been at that time is not difficult to imagine. In those circumstances it was the duty of the superior officers to explain to him the correct legal position and to tell him about his legal rights. Instead of doing that they threw him out of service by picking up a sentence from his letter, completely out of context. The action of the concerned officers of the Board, to our mind, was deprecatable.*
>
> *13. We understand that the concerned officers were acting in what they believed to be the best interests of the Board. Still under the old mind-set it would appear to them just not right that the Board should spend good money on someone who was no longer of any use. But they were quite wrong, seen from any angle.* ***From the narrow point of view the officers were duty bound to follow the law and it was not open to them to allow their bias to defeat the lawful rights of the disabled employee. From the larger point of view the officers failed to realise that the disabled too are equal citizens of the country and have as much share in its***

> ***resources as any other citizen. The denial of their rights would not only be unjust and unfair to them and their families but would create larger and graver problems for the society at large. What the law permits to them is no charity or largess but their right as equal citizens of the country.****"*(emphasis added)

Moreover, a two-Judge bench of the Hon'ble Supreme Court in ***The State of Kerala vs. Leesamma Joseph 2021 AIR SC 3076*****, h**as clarified that there shall be no distinction between those who entered service with a disability and those who acquired it subsequently, during their service period. Speaking through Justice S.K. Kaul, the following was observed:

> *"27. Now coming to the question of the* ***respondent not being initially appointed in the quota for PwD*** *in the feeder cadre, we note that there is no dispute about the benchmark disability of the respondent.* ***It would be discriminatory and violative of the mandate of the Constitution of India if the respondent is not considered for promotion in the PwD quota on this pretext. Once the respondent has been appointed, she is to be identically placed as others in the PwD cadre.*** *The anomaly which would arise from the submission of the appellant-State is apparent - a person who came in through normal recruitment process but suffers disability after joining service would on a pari materia position be also not entitled to be considered to a vacancy in a promotional post reserved for a PwD. This is the consequence if the entry point is treated as determinative of the entitlement to avail of the benefits. Source of recruitment ought not to make any difference but what is material is that the employee is a PwD at the time for consideration for promotion.* ***The 1995 Act does not make a distinction between a person who may have entered service on account of disability and a person who may have acquired disability after having entered the service.*** *Similarly, the same position would be with the person who may have entered service on a claim of a compassionate appointment. The mode of entry in service cannot be a ground to make out a case of discriminatory promotion."* (emphasis added)

13. As such, the hypertechnical and insensitive approach taken by the respondent-Department is contrary to not only the applicable Rules but also the principles of equity. Equity often comes into play when mechanical adherence to the statutory law leads to an unfair and unconscionable outcome. At times, when statutory law is silent on certain aspects or even ambiguous regarding a

situation, the gap ought to be filled by relying on principles of equity, as it allows the justice dispensation mechanism to ensure that legal rights are not abused to meet unjust ends.

14. Lastly, the Officer who previously occupied the post of respondent No.3 had granted Invalid Pension w.r.t. the husband of the petitioner as well as family pension, to the petitioner. In lieu of the same, the arrears of the former have been released to the petitioner and she had also been receiving the family pension regularly. For reasons unbeknownst to this Court, the Officer currently occupying the post of respondent No.3 has chosen to review and revise the same. In fact, at the first instance, respondent No.3 issued an order dated 08.03.2016(Annexure P-3) for immediate withdrawal of pensionary benefits without even issuing a show cause notice to the petitioner, even though the concerned Legal Remembrancer had specifically advised it. It was only after the department insisted on it that respondent No.3 served a show cause notice, however, the same appears to be done as a completion of a mere formality.

15. It is settled law that once a competent authority has passed an order, the successor thereof cannot review the same as the law of estoppel would come into play. Further, the Privy Council in ***R.T. Rangachari vs. Secretary of State AIR 1937 PC 27***, has categorically laid down that when a duly competent government officials has honestly arrived at one conclusion, their successor in office, after the decision has been acted upon and is in effective operation, cannot purport to reconsider the matter in order to arrive at totally different decision. Further, the successor-in-office can only review a duly passed order conferring certain service benefits if the same was passed without jurisdiction or in violation of Rules or, if the said order is vitiated by fraud etc. Such exercise must not be indulged in a casual, whimsical manner,

merely motivated by prejudice. Thus, an arbitrary review of a predecessor's order is impermissible in law if the same is not void or contrary to the statutory provisions. Reliance in this regard can also be placed on the judgment rendered by a Co-ordinate bench of this Court in ***Amit Kumar Chakraborty vs. Haryana Power Generation Corporation Ltd. and others*** in ***CWP No.2262 of 2018*** *decided on 01.02.2024.* In this context, clearly, respondent No.3 has well exceeded his powers by ordering withdrawal of pensionary benefits accrued to the petitioner vide impugned order order dated 31.12.2018 (Annexure P-8).

16. It is trite law that existence of an alternative remedy does not foreclose writ jurisdiction under Article 226 of the Constitution of India. Therefore, the argument of with respect to availability of an alternative remedy ought to be dismissed in view of the judgments rendered by the Hon'ble Supreme Court in ***Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai (1998) 8 SCC 1*** and ***Harbanslal Sahnia and another vs. Indian Oil Corporation Ltd. and others (2003) 2 SCC 107,*** wherein it has reiterated that the exercise of writ jurisdiction is a matter of discretion. Therefore, if the facts of the matter warrant it, the High Courts may invoke the same in spite of availability of a parallel remedy. Since the impugned order was passed by misinterpretation of Rule 5.12 of the CSR, thereby violating it, this Court finds it appropriate to invoke its writ jurisdiction.

CONCLUSION

17. In view of the discussion above, the present writ petition is allowed and order dated 31.12.2018 (Annexure P-8) is hereby set aside. The respondent-Department is also directed to grant the pensionary benefits accrued to the deceased husband of the petitioner including family pension to the petitioner. The respondent-Department shall also release the arrears

accumulated by the petitioner since passing of the impugned order at an interest of 7.5% p.a. in terms of ***A.J. Randhawa Supg. Engineer (Retd.) vs. State of Punjab 1998 (1) SCT 343***. The period of interest shall be computed from 01.01.2019 to the date of payment. Lastly, the needful shall be done by the respondent-Department within a period of eight weeks from receipt of a certified copy of this order.

18. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

11.08.2025
Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No