

Before Rajesh Bindal, J.

SANTOSHI SONDHI @ SONIA – Petitioner

versus

STATE OF PUNJAB AND ANOTHER— Respondents

CWP No. 17911 of 2011

February 20, 2015

Constitution of India, 1950 – Art.226 – Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 – Ss.47 & 72 – Punjab Civil Service Rules, Volume-II – Rl. 5.11 - Disability during service – Non discrimination – Petitioner's husband worked as Library Attendant in a Government School – While returning from duty, he was attacked by some persons and suffered injury and remained in coma for long – Later on he was granted premature retirement and family pension under Rule 5.11 of Punjab Civil Services Rules – Petitioner submitted that services of husband could not be dispensed with and all benefits as per Section 47 were to be given – Respondent contended that since premature retirement and disability pension under admissible Service Rules had been granted on request of petitioner, he is estopped from raising any issue regarding the same – Held, that petitioner's husband acquired disability during his service – 1995 Act is a beneficial piece of social legislation and it casts an obligation on employer and correspondingly confers a right on employee – There can be no estoppel against statute – Even if petitioner's husband had been retired and granted disability pension, that would not stand in way of granting him all reliefs as would be available to him under Section 47 of Act, 1995.

Held, that the contention raised by learned Counsel for the State is totally misconceived. Certain rights have been granted to the employees, who acquired disability during their service in terms of provisions of Section 47 of the Act. It is not in dispute that the husband of the petitioner acquired disability during his service. It has consistently been opined that the Act is a beneficial piece of social legislation and it casts an obligation on the employer and correspondingly confers a right on the employee. It is not that an employee who acquires disability during his service is protected, rather he cannot be denied even the promotion, as not only he is suffering, rather dependents on him suffer the most. In the case in hand, the

pleaded case is that Raman Kumar is to support his aged father besides his wife and three children. Even if Raman Kumar has been retired under Rule 5.11 of the Punjab Civil Services Rules while granting him disability pension, in my opinion, that will not stand in the way for grant him relief as is available to him under Section 47 of the Act. It is settled law that there is no estoppels against the statute.

(Para 23)

Further held, that in terms of the provisions of Section 72 of the Act and the Rules made there under, the Act 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. Hence, as the provisions of the Act are more beneficial, the same have to be given effect to in preference to the provisions contained in the service rules in terms of which an employee can be discharged from service while granting him disability pension, in case he acquire disability during service.

(Para 25)

Further held, that for the reason mentioned above, the action of the respondents in granting disability pension to the husband of the petitioner having declared him unfit for service is held to be illegal. The respondents shall grant all the benefits available to the employee concerned in terms of Section 47 of the Act. The arrears be paid to him within a period of four months. On failure, interest at the rate of 9 per cent per annum shall be payable from the date of judgment till actual payment.

(Para 26)

Suram Singh Rana, Advocate, *for the petitioner*.

Pavit Singh Mattewal, Addl. Advocate General, Punjab.

RAJESH BINDAL, J.

(1) The petitioner, who is wife of Raman Kumar, has filed the present writ petition impugning the order dated 14.6.2011 (Annexure P-13) vide which the services of her husband, were dispensed with from the date he was absent from duty. Further prayer has been made to treat the husband of the petitioner on duty with effect from 29.12.2002 till the date of his superannuation and pay him salary.

(2) Learned counsel for the petitioner submitted that husband of the petitioner was working as Library Attendant in Government Senior

Secondary School, Mangrowal, District Hoshiarpur, since 1998. On 2.5.2002, when he was returning home along with his brother, who is physically disabled, after attending his duties in the school, was attacked by six persons armed with deadly weapons. As a result, he suffered grievous injuries. For a long time, he remained admitted in hospital. His condition did not improve. Permission was sought for taking him abroad for treatment. On 3.12.2003, necessary permission was granted. He was taken to Paris. Though after surgery, there was improvement, however, still he was unable to speak and move without help. The applications were made to the department from time to time for medical leave.

(3) Despite all these facts being in the knowledge of the authorities, on 19.4.2006, respondent no. 3 issued show cause notice regarding absence of the husband of the petitioner from duty which was replied to by giving all details about his illness and treatment. The petitioner did not have any other source of income and had to support three minor children. The petitioner even made representation for compassionate appointment. The services of petitioner's husband were terminated vide impugned order dated 14.6.2011 (Annexure P-13) for being absent from duty from 29.12.2002 till the date of the passing of the impugned order.

(4) Initially, the husband of the petitioner was granted medical leave for six months. Despite this fact, during the course of enquiry, the petitioner got her husband examined from the Medical Board on the direction of respondent nos. 3 and 4, which opined that he was unable to perform his regular duties. While referring to the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (for short, 'the Act') it was submitted that no employee who acquire disability during his service can be reduced in rank or terminated. Despite this fact, services of the petitioner had been terminated.

(5) Learned counsel for the petitioner further submitted that at the time of issuance of notice of motion on 22.9.2011, operation of the impugned order dated 14.6.2011 (Annexure P-13) was stayed and liberty was granted to the authorities to reconsider the matter and prematurely retire the husband of the petitioner from service (prospectively). However, the same was without prejudice to the rights of the petitioner. No doubt, thereafter vide order dated 23.12.2011 (Annexure R-1) attached with the affidavit of Inderjit Singh, District Education Officer (SE), Hoshiarpur dated 24.1.2012, the authorities

have passed the order retiring Raman Kumar, husband of the petitioner prematurely under Rule 5.11 of the Punjab Civil Services Rules, Volume-II, being bodily and mentally infirm to perform his duties but that would be contrary to the spirit of Section 47 of the Act, under which there is a complete bar on removal of any such employee, who acquire disability during the course of employment. In support of his plea, learned counsel for petitioner placed reliance upon judgments of Hon'ble the Supreme Court in *Kunal Singh versus Union of India and another*¹, *Anil Kumar Mahajan versus Union of India through Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi and others*², and judgments of this Court in *Joginder Kaur versus Central Administrative Tribunal*³, and CWP No. 8641 of 2012 *Malkit Singh Sidhu versus State of Punjab and others* decided on 26.8.2014.

(6) On the other hand, learned counsel for the State while not disputing the fact that the petitioner met with accident and acquired disability during service, submitted that the Government was considerate at every stage. Permission was granted for treatment of the husband of the petitioner from abroad. Entire cost was reimbursed to him. However, he submitted that in terms of order passed by this Court on 22.9.2011, the case of the petitioner's husband was reconsidered and he was prematurely retired and granted disability pension under the admissible service Rules. Hence, the same has been granted on the request of the petitioner. He is estopped from raising any issue for the same.

(7) Heard learned counsel for the parties and perused the paper book.

(8) Before the facts of the case are discussed, it would be appropriate to refer to the provisions of Section 47 of the Act relied upon by the petitioner, the statement of objects and reasons as contained in the Bill and Rule 5.11 of the Punjab Civil Services Rules, Volume-II, which has been relied upon by the State. The same are reproduced as under:-

Section 47 of the Act

“47.Non-discrimination in Government employment. (1) No establishment shall dispense with, or reduce in rank, an employee

¹ 2003 (1) SCT 1029

² 2013 (7) SCC 243

³ 2010 (3) SCT 111

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.”

Statement of objects and reasons as contained in the Bill

“(i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;

(ii) to create barrier free environment for persons with disabilities;

(iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-à-vis non-disabled persons;

(iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;

(v) to lay down a strategies for comprehensive development of programmes and services and equalisation of opportunities for persons with disabilities; and

(vi) to make special provision for the integration of persons with disabilities into the social mainstream.”

Rule 5.11 of the Punjab Civil Services Rules, Volume-II

SECTION III – Invalid Pension

A. CONDITIONS OF GRANT

5.11 An invalid pension is awarded, on his retirement from the Public service, to a Government employee, who by bodily or mental infirmity is permanently incapacitated for the public service, or for the particular branch of it to which he belongs.

Note.- The amount of invalid pension shall not be less than the amount of normal family pension admissible under the family Pension Scheme, 1964.”

(9) A bare perusal of Section 47 of the Act, as reproduced above, shows that a duty has been cast upon the employer not to dispense with or reduce in rank an employee, who acquires a disability during his service. In case after acquiring disability he is not suitable for the post on which he was working, he could be shifted to some other post with same pay scale and service benefits. If that is not possible, the employee has to be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Such an employee cannot even be denied promotion merely on the ground of his disability. Appropriate Government has been given power to exempt any establishment from the provisions of this section considering the type of work carried on therein. In fact the language of Section 47 of the Act is plain and it casts an obligation on the employer.

(10) Vide affidavit dated 12/13.2.2015, Balbir Singh, Director of Public Instruction (Secondary Education), Punjab, has stated that the department in question has not been granted exemption from the applicability under Section 47 of the Act. Meaning thereby the provisions are fully applicable.

(11) The rights of the employee and the duties cast on the employer under Section 47 of the Act had been subject matter of judicial consideration in many cases. In *Kunal Singh' s* case (supra), Hon'ble the Supreme Court considering the import of Section 47 of the Act opined that a person does not suffer disability by choice. The Act envisages to protect an employee, who acquires disability during service. As after an employee acquires disability, if not protected, he is not the only sufferer, rather all those who are dependent on him, also suffer. The Act being a social beneficial enactment deserves to be given interpretation in that light. Para 9 of the judgment, which is relevant, is extracted below:-

“8. Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of 'disability' and 'person with disability'. It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. 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 subsection (2) of Section 47. Section 47 contains a clear directive that the employee shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of a 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)”

(12) The aforesaid judgment was followed by Hon'ble the Supreme Court in *Bhagwan Dass and another versus Punjab State*

Electricity Board⁴ wherein the opening remarks were that, 'this case highlights the highly insensitive and apathetic attitude harboured by some of us, living a normal healthy life, towards those unfortunate fellowmen who fell victim to some incapacitating disability'. It was a case where, the Punjab State Electricity Board denied the benefits of the Act to its employee, who was working as Assistant Lineman and during service became totally blind on 17.1.1994. On the request of the employee, he was retired from service. The stand of the Board therein was that the provisions of Section 47 of the Act has no application as the employee got voluntary retirement and further he became blind on 17.1.1994, whereas the Act came into force on 7.2.1996. Both the pleas were rejected by Hon'ble the Supreme Court. On account of absence from duty from 18.1.1994 to 21.3.1997, disciplinary action was taken against the employee. In response thereto, the employee stated that as he had lost his vision, he being unable to perform his duty, hence he retired and his wife may be provided suitable job. The Medical Board opined that the employee was unfit for duty. His prayer for retirement was accepted. The charge sheet issued against him was withdrawn. After he was relieved from duty on 21.3.1997, he made a representation stating that he was not in the knowledge of the instructions of the Board and the provisions of the Act, which conferred certain rights on the employee acquiring disability during the course of employment and the corresponding duty on the employer, hence, his case is required to be reconsidered. The prayer was not considered and his retiral benefits were cleared. The employee filed CWP No. 12534 of 2005 *Bhagwan Dass and another versus Punjab State Electricity Board and others*, decided on 11.8.2005, where alternative relief for employment for his son was sought. The writ petition was dismissed by this Court while relying upon judgment of Hon'ble the Supreme Court in *Umesh Kumar Nagpal versus State of Haryana*⁵ without even referring to the provisions of Section 47 of the Act.

(13) The order passed by this Court was challenged before Hon'ble the Supreme Court. The stand taken by the Board before Hon'ble the Supreme Court was that there was no use to let blind employee continue in service and pay him salary in return of no service. Hence, they persuaded him to seek retirement. Hon'ble the Supreme Court found that in the letter dated 17.7.1996 vide which the employee requested for retirement after the charge sheet had been

⁴ (2008) 1 SCC 579

⁵ (1994) 4 SCC 138

issued to him, he at the same time asked for suitable employment for his wife. Hon'ble the Supreme Court opined that it was impossible to read that letter as a voluntary offer for retirement. Considering the plight at that time and also finding that it was the duty of the officers of the Board to apprise the employee of his rights under the Act, the conduct of the officers of the Board was deprecated. The action of the Board retiring the employee was held to be illegal. The employee was held to be deemed in service entitled to all service benefits till his retirement. The relevant paras of the judgment, facts of which are akin to the case in hand, are extracted below:-

“17. From the materials brought before the court by none other than the respondent-Board it is manifest that notwithstanding the clear and definite legislative mandate some officers of the Board took the view that it was not right to continue a blind, useless man on the Board's rolls and to pay him monthly salary in return of no service. They accordingly persuaded each other that the appellant had himself asked for retirement from service and, therefore, he was not entitled to the protection of the Act. The only material on the basis of which the officers of the Board took the stand that the appellant had himself made a request for retirement on medical grounds was his letter dated 17-7-1996. The letter was written when a charge sheet was issued to him and in the letter he was trying to explain his absence from duty. In this letter he requested to be retired but at the same time asked that his wife should be given a suitable job in his place. In our view it is impossible to read that letter as a voluntary offer for retirement.

18. 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 officers concerned of the Board, to our mind, was deprecable.

19. We understand that the officers concerned 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 largesse but their right as equal citizens of the country.

20. In light of the discussions made above, the action of the Board in terminating the service of the disabled employee (appellant No.1) with effect from 21-3-1997 must be held to be bad and illegal. In view of the provisions of Section 47 of the Act, the appellant must be deemed to be in service and he would be entitled to all service benefits including annual increments and promotions etc. till the date of his retirement. The amount of terminal benefits paid to him should be adjusted against the amount of his salary from 22-3-1997 till date. If any balance remains, that should be adjusted in easy monthly installments from his future salary. The appellant shall continue in service till his date of superannuation according to the service records. He should be reinstated and all due payments, after adjustments as directed, should be made to him within six weeks from the date of presentation of a copy of the judgment before the Secretary of the Board.” (Emphasis supplied)

(14) In *Union of India versus Sanjay Kumar Jain*⁶ Hon'ble the Supreme Court opined that no promotion shall be denied to a person merely on the ground of his disability.

(15) In *Union of India versus Devendra Kumar Pant and others*⁷ Hon'ble the Supreme Court considered the right of an employee of promotion, who acquired disability during service. The relevant para thereof is extracted below:-

⁶ (2004) 6 SCC 708

⁷ (2009) 14 SCC 546

“38. Therefore we are of the view that the section 47(2) only provides that a person who is otherwise eligible for promotion shall not be denied promotion merely on the ground that he suffers from disability. The use of the words ‘merely on the ground’ shows that the section does not provide that if the disability comes in the way of performing the higher duties and functions associated with the promotional post, promotion shall not be denied. In other words promotion shall not be denied to a person on the ground of his disability only if the disability does not affect his capacity to discharge the higher functions of a promotional post.”

(16) The issue was further considered by Hon'ble the Supreme Court in *Geetaben Ratilal Patel versus District Primary Education Officer*⁸ where an employee suffered from mental depression during the course of her service, which resulted in 40-60 per cent mental disability. She was dismissed from service. An application filed under Section 62 of the Act before the Commissioner, was allowed. The employee was directed to be reinstated with back wages. The order was challenged before High Court of Gujarat. The High Court set aside the order of the Commissioner. In Intra Court appeal, the order of the Single Bench was upheld. While referring to the objects and reasons for which the Act was enacted, Hon'ble the Supreme Court while accepting the appeal filed by the employee restored the order passed by the Commissioner and directed the authorities to reinstate her back in service with consequential benefits.

(17) The issue also came up for consideration before Hon'ble the Supreme Court in *Anil Kumar Mahajan's case (supra)*. In the aforesaid judgment, the appellant joined Indian Administrative Service on 12.7.1977. He served the department till he was compulsory retired on 15.10.2007. The order was challenged as he had acquired mental illness during the course of service. While referring to provisions of Section 47 of the Act, Hon'ble the Supreme Court opined that considering the fact that the employee acquired mental illness during the course of his service, it was not open for the employer to dispense with or reduce him in rank. The relevant para thereof is extracted below:-

“18. The appellant was appointed in the service of respondents as an IAS officer and joined in the year 1977. He served for 30 years

⁸ 2013 (7) SCC 182

till the order of his compulsory retirement was issued on 15th October, 2007. It is not the case of the respondents that the appellant was insane and in spite of that he was appointed as an IAS Officer in 1977. Therefore, even it is presumed that the appellant became insane, as held by the Inquiry Officer, mentally illness being one of the disabilities under Section 2(i) of the Act, 1995, under Section 47 it was not open to the respondents to dispense with, or reduce in rank of the appellant, who acquired a disability during his service. If the appellant, after acquiring disability was not suitable for the post he was holding, should have been shifted to some other post with the same pay scale and service benefits. Further, if it was not possible to adjust the appellant against any post, the respondents ought to have kept the appellant on a supernumerary post until a suitable post is available or, until the appellant attained the age of superannuation whichever was earlier.

19. In view of the aforesaid finding, we are of the view that it was not open to the authorities to dispense with the service of the appellant or to compulsory retire him from service. The High Court also failed to notice the relevant fact and without going into the merit allowed the counsel to withdraw the writ petition merely on the basis of the finding of Inquiry Officer. In fact the High Court ought to have referred the matter to a Medical Board to find out whether the appellant was insane and if so found, in that case instead of dismissing the case as withdrawn, the matter should have been decided on merit by appointing an Advocate as amicus curiae.

20. It is informed at the bar that in normal course the appellant would have superannuated from service on 31st July, 2012. In that view of the matter, now there is no question of reinstatement of the appellant though he may be entitled for consequential benefits including arrears of pay. Having regard to the facts and finding given above, we have no other option but to set aside the order of compulsory retirement of the appellant dated 15th October, 2007 passed by the respondents; the order dated 22nd December, 2008 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A.No.2784/2008 and the impugned order dated 20th April, 2010 passed by the High Court of Delhi in W.P. (C)No.2622/2010 and the case is remitted to the respondents with a direction to treat the appellant continued in the service till the date of his superannuation. The appellant shall be paid full salary

minus the subsistence allowance already received for the period from the date of initiation of departmental proceeding on the ground that he was suffering from mental illness till the date of compulsory retirement. The appellant shall also be provided with full salary from the date of compulsory retirement till the date of superannuation in view of the first and second proviso to Section 47 of the Act, 1995. If the appellant has already been superannuated, he will also be entitled to full retiral benefits counting the total period in service. The benefits shall be paid to the appellant within three months, else the respondents will be liable to pay interest at the rate of 6% per annum from the date the amount was due, till the actual payment.”

(18) To similar effect are the judgments of this Court in *Joginder Kaur's, Malkit Singh Sidhu's cases (supra)*, *Sahib Singh versus Uttar Haryana Bijli Vitran Nigal Limited and others*⁹ and *Ritesh Sinha versus State of Haryana and others*¹⁰.

(19) As far as the facts of the case in hand are concerned, the husband of the petitioner, namely, Raman Kumar was working as Library Attendant in Government Senior Secondary School, Mangrowal, District Hoshiarpur, on regular basis since 1998. On 2.5.2002, while returning home along with his brother, who is physically disabled, after attending his duties in the school, they were attacked by six persons armed with deadly weapons. As a result, Raman Kumar suffered head injury and remained in coma. He remained admitted in different hospitals. The State even granted permission for taking him to Paris (France) for treatment on 3.12.2003. Thereafter, though there is some improvement in his health but still he cannot carry on his day to day work independently. Regularly the applications were sent to the department and intimation was given about his health. On 19.4.2006, respondent no. 3 issued a show cause notice to the husband of the petitioner regarding his absence from duty. The same was even replied to vide letter dated 25.5.2006 stating therein that Raman Kumar has three minor children and aged father and is not able to sit and stand without help, his pending salary be paid and his wife may be given appointment on compassionate basis. Thereafter, even the petitioner made request for appointment on compassionate basis. Vide letter dated 14.6.2011 (Annexure P-13), the husband of the petitioner was terminated on the ground of absence from duty, despite

⁹ 2013 (1) PLR 703

¹⁰ 2013 (4) PLR 505

noticing the fact that he was incapable of working on account of his medical position.

(20) The order of termination dated 14.6.2011 was challenged in the present writ petition. At the time of issuance of notice of motion on 22.9.2011, this Court passed the following order:-

“Notice of motion.

Ms. Sudeepti Sharma, learned Deputy Advocate General, Punjab, accepts notice on behalf of the respondents.

As prayed for by her, adjourned to 30.1.2012. Let four copies of the writ petition be supplied to the learned State counsel during the course of day failing which the writ petition shall stand dismissed for non-prosecution.

Counter reply, if any, be filed before the date fixed with an advance copy of the opposite counsel.

Meanwhile, operation of the impugned order dated 14.6.2011 (Annexure P-13) whereby services or (sic of) husband of the petitioner have been terminated despite acknowledging his physical incapacitations, shall remain stayed. Resultantly, the salary of the petitioner's husband shall be released forthwith in favour of the petitioner. Liberty, however, is granted to the authorities to re-consider the matter and prematurely retire the petitioner's husband from service (prospectively). Such an order, however, shall be without prejudice to the petitioner's right to seek appointment on compassionate grounds, in the light of the peculiar facts and circumstances of the case.

Let a copy of this order be given dasti to Ms. Sudeepti Sharma, learned Deputy Advocate General, Punjab, for information and necessary compliance.”

(21) Subsequent thereto, the respondents vide letter dated 23.12.2011 withdrew the order dated 14.6.2011 terminating the services of Raman Kumar, husband of the petitioner, however, granted him invalid family pension under Rule 5.11 of the Punjab Civil Services Rules, Volume-II with effect from 9.4.2009, the date from which he was declared unfit for service.

(22) The case set up by the petitioner is that in view of the provisions of Section 47 of the Act, the services of Raman Kumar could not be dispensed with. Whereas the case set up by the State is that order of termination was withdrawn and petitioner has already

been granted disability pension, hence, he is estopped from claiming any other relief.

(23) The contention raised by learned Counsel for the State is totally misconceived. Certain rights have been granted to the employees, who acquired disability during their service in terms of provisions of Section 47 of the Act. It is not in dispute that the husband of the petitioner acquired disability during his service. It has consistently been opined that the Act is a beneficial piece of social legislation and it casts an obligation on the employer and correspondingly confers a right on the employee. It is not that an employee who acquires disability during his service is protected, rather he cannot be denied even the promotion, as not only he is suffering, rather dependents on him suffer the most. In the case in hand, the pleaded case is that Raman Kumar is to support his aged father besides his wife and three children. Even if Raman Kumar has been retired under Rule 5.11 of the Punjab Civil Services Rules while granting him disability pension, in my opinion, that will not stand in the way for grant him relief as is available to him under Section 47 of the Act. It is settled law that there is no estoppel against the statute.

(24) The issue as to whether service rules will be applicable or the provisions of the Act enacted by the Parliament, was considered by Division Bench of this Court in *Ruksana versus State of Haryana and others*¹¹ with regard to entitlement of an employee to the benefit of maternity leave with reference to Maternity Benefit Act, 1961 and Note 4 to Rule 8.127 of the Punjab Civil Services Rules, 1953. In the aforesaid judgment, this Court opined that the provisions of the service rules restricting benefits of maternity leave to a female government employee providing that the maternity leave shall not be admissible to a female employee having more than two children was to be not applicable in the light of provisions of Section 5 of the Maternity Benefit Act.

(25) In terms of the provisions of Section 72 of the Act and the Rules made thereunder, the Act 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 thereunder, enacted or issued for the benefit of persons with disabilities. Hence, as the provisions of the Act are more beneficial, the same have to be given effect to in preference to the provisions contained in the service rules in terms of which an

¹¹ 2011 (3) RSJ 225

employee can be discharged from service while granting him disability pension, in case he acquire disability during service.

(26) For the reasons mentioned above, the action of the respondents in granting disability pension to the husband of the petitioner having declared him unfit for service is held to be illegal. The respondents shall grant all the benefits available to the employee concerned in terms of Section 47 of the Act. The arrears be paid to him within a period of four months. On failure, interest @ 9% per annum shall be payable from the date of judgment till actual payment.

(27) Before parting with the judgment and considering the fact that number of cases come before this Court from which it is evident that the employee who acquires disability during service are not aware of their rights, it shall be the duty of the head of the department concerned or the immediate boss of such employee to apprise him rights under the Act which casts a duty on the employer.

(28) The writ petition stands disposed of.

P.S. Bajwa

Before Rameshwar Singh Malik, J.

**EXECUTIVE ENGINEER OPERATION, SUB URBAN
DIVISION, UTTAR PRADESH HARYANA BIJLI VITRAN
NIGAM LTD., SONPAT – *Petitioner***

versus

**LABOUR COMMISSIONER, HARYANA AND
OTHERS – *Respondents***

CWP No. 453 of 2014

February 13, 2015

Constitution of India, 1950 – Art.226 – Industrial Disputes Act, 1947 – Ss. 29 & 33-C(1) – Reinstatement of service – Payment of back wages – Workmen were employed on daily wages at DC rates – Their services were terminated – Workmen were reinstated in service by Labour Court and their services were also regularized – However, arrears of pay were denied to them – When Labour Commissioner issued recovery notice on management, it filed writ petition – Held, that Management were taking courts as well as justice delivery system