

NARENDRA KUMAR CHANDLA

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v.

STATE OF HARYANA AND ORS.

FEBRUARY 4, 1994

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

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Service Law: Employee holding a technical post—Afflicted with certain disease—Amputation of right hand—Reasonably prevented from performing duties in the technical job—Employer offering alternative post with lesser pay-scale—Validity of.

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Constitution of India, 1950: Article 21—Right to life includes right to livelihood.

The appellant was working as Sub-Station Assistant with the Respondent Electricity Board in the pay scale of Rs. 1400- 2300. Due to cancer his right arm was completely amputated. He could work only with his left arm. The Respondents absorbed him as Carrier Attendant, which carried a lesser pay scale. Aggrieved by this, he approached the High Court by filing a Writ Petition. The High Court having dismissed the Writ Petition, appellant preferred the present appeal.

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This Court directed the Respondents to constitute a Board of three doctors and an Executive Engineer to find out whether the appellant could discharge the duties of Sub-Station Attendant or any other equivalent post in the same pay scale. The Board reported that the appellant failed to perform his duties as Sub- Station Attendant or equivalent technical posts. The Board also recommended that the appellant could be considered for clerical or non-technical post subject to his meeting educational, administrative requirements of the Electricity Board.

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Allowing the appeal, this Court

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HELD: 1. The Medical Board sympathetically considered the appellant's capability pursuant to the directions given by this Court. Therefore, the appellant may not be justified in making any allegations against the Board. Suffice to state that in view of the findings given by the Medical Board, assisted by the Engineers, the Court does not think that

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A it can direct the Board to absorb the appellant either as Sub-Station Attendant or in any equivalent post on the technical side. [660-D]

B 2. This Court cannot also give directions to the respondents to appoint the appellant as U.D.C. which carry equal pay. The reasons are that there are two channels of appointment to the post of U.D.C. One is promotion and another is direct recruitment in the ratio prescribed at 75% and 25% respectively. For a direct recruit, graduation or post-graduation or law graduation is the minimum educational qualification required apart from the other requirements. Admittedly, the appellant is not possessed of the qualifications. He is only Matriculate. [660-F-G]

C 3.1. Article 21 protects the right to livelihood as an integral facet of right to life. When an employee is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the posts he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge the duties. [660-H; 661-A]

D 3.2. In the instant case asking the appellant to discharge the duties as a Carrier Attendant is unjust. Since he is a Matriculate, he is eligible for the post of L.D.C. for which apart from matriculation, passing in typing test either in Hindi or English at the speed of 15/30 words per minute is necessary. For a Clerk, typing generally is not must. The respondent board is directed to relax his passing of typing test and to appoint him as a L.D.C. Admittedly on the date when he had the unfortunate operation, he was drawing the salary in the pay scale of Rs. 1400-2300. Necessarily, therefore, his last drawn pay has to be protected which shall be so done. The Respondent-Board shall pay all the arrears of salary to the appellant. [661-B-C]

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F CIVIL APPELLATE JURISDICTION: Civil Appeal No. 874 of 1994.

G From the Judgment and Order dated 10.10.1990 of the Punjab & Haryana High Court in W.P. No. 8290 of 1990.

M.C. Bhandare and Ms. C.K. Sucharita for the Appellant.

H Manoj Swarup, for the Respondents.

The following Order of the Court was delivered:

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Special leave granted.

1. The appellant while working as a Sub-Station Attendant in the pay scale of Rs. 1400-2300, unfortunately had to be operated on February 13, 1984 for Chondrosarcoma and ever since he was treated in Tata Memorial Hospital, Bombay upto March 18, 1985 and thereafter he was discharged and his right arm was completely amputated due to the said Sarcoma. It is a cancer affect but it was arrested. The Doctor in his letter dated May 3, 1985 recommended that he can assume his normal duties. The bone of his right arm is completely missing. He shall work properly with his left arm. Subsequently, the respondents have absorbed him as Carrier Attendant in the pay scale of Rs. 825-1300. Feeling dissatisfied, the appellant approached the High Court and the High Court in the impugned order dismissed the writ petition on October 10, 1990 *in limine*. Thus this appeal by special leave.

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2. On September 24, 1993, we directed the State Electricity Board, hereafter the 'Board', to constitute three members' Board of Doctors to examine the appellant whether he can discharge the duties of Sub-Station Attendant or any other equivalent post carrying the pay scale of Rs. 1400-2300. We had also directed to associate any Engineer of the rank of Executive Engineer working in the officer of the respondents to assist the Medical Board in giving proper advice to the Board to come to its conclusion on the point noted above. The three members Board was accordingly constituted and the Chief Medical Officer in his letter dated October 19, 1993 has submitted the report of the three members' Board. They have stated that two Engineers assisted them. They had taken the appellant to 66 KV Sub-Station at Panchkula to assess his capability in the operation of some installations. The report states: "He was unable to align the trolley let alone take it in position. He also failed to raise it and had a great difficulty in lowering it. He was then taken to switch yard and was asked to operate the Isolator which he could not perform efficiently. The Medical Board feels that such handling of equipment can be risky not only to the installations but even to the person himself and as such the appellant cannot perform the duties of Sub-Station Attendant".

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3. The Medical Board also attempted to find whether he can be posted as Sub-Station A.F.M., Foreman Grade III, Chargemen, Rigger,

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A Crane Driver, Welder, etc. It recommended that the duties to those posts are similar to the Sub-Station Attendant. Under these circumstances, the Medical Board felt that the appellant who failed to perform his duties as Sub-Station Attendant cannot also discharge the duties of alternative posts as mentioned above. They have also stated that the appellant has been able to write English and Hindi with his left hand and if the Board feels, he can be considered for clerical or non-technical post subject to his meeting educational administrative requirements of the Board.

4. In the objections filed by the appellant he mentioned that he was performing the duties in 33 KV and that there is no prior practice given to him for handling 66KV and his Advocate was not permitted to attend at the time when he was examined thereby sought to make some allegations against the Medical Board. We pay no heed, nor countenance such unwarranted allegations against an impartial Board which has no axe to grind against the appellant. The Medical Board sympathetically considered the appellant's capability pursuant to the directions given by this Court. Therefore, he may not be justified in making such allegations against the Board. Suffice to state that in view of the findings given by the Medical Board assisted by the Engineers, we do not think that we can direct the Board to give suitable post to absorb the appellant either as Sub-Station Attendant or any equivalent post on the technical side.

5. However, we have considered the material placed before us by the respondents relating to qualifications, etc., for working on the clerical or non-technical side as suggested by the Medical Board. Though, Shri M.C. Bhandare, learned counsel for the appellant has attempted to argue for directing the respondents to appoint the appellant as U.D.C. which carry equal pay scale, we think that we cannot give such directions. The reasons are that there are two channels of appointment to the post of U.D.C. One is promotion and another is direct recruitment in the ratio prescribed at 75% and 25%. For a direct recruit, graduation or post-graduation or law graduation is the minimum educational equalification required apart from other requirements mentioned therein. Admittedly, the appellant is not possessed of the qualifications. He is only matriculate. As a result we cannot give any direction to appoint him as U.D.C.

6. Article 21 protects the right to livelihood as an intergral facet of right to life. when an employee is afflicted with unfortunate disease due to

which, when he is unable to perform the duties of the posts he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge the duties. Asking the appellant to discharge the duties as a Carrier Attendant is unjust. Since he is a matriculate, he is eligible for the post of L.D.C. For L.D.C., apart from matriculation, passing in typing test either in Hindi or English at the speed of 15/30 words per minute is necessary. For a Clerk, typing generally is not a must. In view of the facts and circumstances of this case, we direct respondent Board to relax his passing of typing test and to appoint him as a L.D.C. Admittedly on the date when he had unfortunate operation, he was drawing the salary in the pay scale of Rs. 1400-2300. Necessarily, therefore, his last drawn pay has to be protected. Since he has been rehabilitated in the post of L.D.C. we direct the respondent to appoint him to the post of L.D.C. protecting his scale of pay of Rs. 1400-2300 and direct to pay all the arrears of salary.

The appeal is accordingly allowed. No costs.

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Appeal allowed.