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STATE OF HARYANA AND ORS.

v.

HAWA SINGH ETC. ETC.

FEBRUARY 23, 1995

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[A.M. AHMADI, CJ, N.P. SINGH AND S.C. SEN, JJ.]

Service Law : Haryana Roadways—Drivers declared madically unfit for driving heavy vehicles—Government's communications dated 20.8.1992 and 23.11.1992 making provisions for alternative jobs and for giving appointment to one of the dependents—Claim for appointment allowed by High Court—On appeal held the High Court's direction not justified—Directions issued for providing alternative job and if it is not possible to pay compensation.

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The respondent were drivers in the Haryana Roadways. Due to defect in their eyesight, the District Medical Officer declared them medically unfit for driving heavy vehicles. Therefore, they were retired from service.

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The respondents filed writ petitions in the High Court for a direction that one of their sons be given employment. The High Court allowed the Writ petitions and directed the State Govt. to give employment to one of their sons.

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In this appeal, it was contended that a communication dated 20.8.1992 was issued by which if a Driver becomes unfit due to disease not related to his employment, he should be retired from service on medical grounds by following the procedure prescribed; that in case the incapacity is related to occupational hazards, then efforts should be made to find an alternative employment, treating it as reemployment, but such driver should be capable of performing that job; and that in another communication issued on 23.11.1992 it was decided to give appointment to one of the dependents of the regular Government official who become blind or Nakara during service and that such officials will have to get a certificate of Unfitness from the Special Medical Board constituted by the Health Department.

Allowing the appeals, this Court

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HELD : 1. There is no dispute that respondents had not produced

any certificate of unfitness from the Special Medical Board saying that they had become blind or Nakara while in service. The medical certificate produced by them from the Civil Surgeon only certifies that they were medically unfit for driving heavy vehicles. But that does not mean that they have become blind or completely unfit for any service, Moreover, they being the employees of the Haryana Roadways, the communication dated 20.8.1992 issued by the Transport Commissioner, Haryana shall be applicable in their case because it deals specifically with the Drivers who become medically unfit to continue as drivers in service of the Haryana Roadways. That communication does not speak of giving any employment to any of the dependents of such Drivers only on the ground that they have become medically unfit for heavy vehicles. It is an admitted position that the respondents who were Drivers of heavy vehicles have not become blind, but due to occupational hazards their eyesight has become weak and because of that they have been retired from the service of the Haryana Roadways. [285-D-F]

2. The appellants are directed to give an alternative job to the respondents strictly following the judgment of this Court in *Anand Bihari v. Rajasthan State Road Transport Corporation*. Only in exceptional circumstances, where it is not possible to adjust them in any alternative job, then they shall be paid compensation as indicated in the said judgment of this Court. [287-C-D]

Anand Bihari and Others v. Rajasthan State Road Transport Corporation, Jaipur and Another, [1971] 1 SCC 731, held applicable.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3079 of 1995 etc. etc.

From the Judgment and Order dated 11.11.93 of the Punjab & Haryana High Court in C.W.P. No. 3664 of 1993.

V.R. Reddy, Additional Solicitor General, Ms. Aysha Khatri, Ms. Indu Malhotra, G.P. Singh Kamal Baid and Ranbir Yadav for the Appellants.

B.S. Malik and J.S. Malik, D.K. Garg and M.S. Dahiya for the Respondent in C.A. No. 3079/95.

The Judgment of the Court was delivered by

A N.P. SINGH, J. Leave granted.

B The appeals have been filed on behalf of the State of Haryana for setting aside the order passed by the High Court directing the appellant-State to appoint the sons of writ petitioner Respondents on suitable jobs commensurate with the educational qualifications possessed by them. The respondents in the two appeals were employed as Drivers in the Haryana Roadways. In the course of time they were declared medically unfit for driving heavy vehicles by the District Medical Officer because of the defect in their eye-sight. On the basis of the medical report, the respondents were retired from the service of the Haryana Roadways.

C They filed writ petitions before the High Court for a direction that, on being declared medically unfit for the post of the Drivers and having been retired from service one of their sons should be given employment. The High Court has allowed the writ petitions and has directed to give employment to one of their sons. On behalf of the State, it was pointed out that the Transport Commissioner of the State of Haryana had issued a communication dated 20.8.1992 in respect of the procedure to be followed in case of removal of Drivers on account of their being medically unfit to drive heavy vehicles. In the said communication the aforesaid question has been considered in depth by the State Government in the light of the judgment of this Court in the case of *Anand Bihari and Others v. Rajasthan State Road Transport Corporation, Jaipur and Another*, [1991] 1 SCC 731. A decision has been taken that if a Driver becomes unfit due to disease not related to his employment, he should be retired from service on medical grounds by following the procedure prescribed therein. On the other hand, if the incapacity is related to the occupational hazards, then first an effort should be made to find an alternative employment which may not necessarily be in the same scale of pay as the one he was holding earlier. But it should be ensured that such Driver is capable of performing that job. In that event, such employee who is given alternative employment shall be deemed to have retired from his earlier employment with whatever retirement benefits admissible to him and shall draw the salary on basis of re-employment in addition to his retirement benefits, provided that the pension plus the salary on re-employment does not exceed the last pay drawn. In that very communication it has been further provided that in case no job was available and the General Manager certifies to that effect, in that event the employee shall be paid along with the retirement benefits

additional compensation amount, the details whereof have been given in the said communication. A

Yet another communication was issued on 23.11.1992 by the Chief Secretary to the Government of Haryana in respect of incentives to be given to the Government servants who become unfit during service by giving appointment to the dependents of such Government servants who become blind and unfit. The said communication says : B

".....it has been decided to give appointment to one of dependents of the regular Government official who become blind or Nakara during service....." C

It further provides that such unfit officials will have to get a certificate of unfitness from the Special Medical Board constituted by the Health Department.

There is no dispute that respondents had not produced any certificate of unfitness from the Special Medical Board saying that they had become blind or Nakara while in service. The medical certificate produced by them from the Civil Surgeon only certifies that they were medically unfit for heavy vehicles. But that does not mean that they have become blind or completely unfit for any service. Moreover, they being the employees of the Haryana Roadways, the communication dated 20.8.1992 issued by the Transport Commissioner, Haryana shall be applicable in their case because it deals specifically with the Drivers who become medically unfit to continue as drivers in service of the Haryana Roadways. That communication does not speak of giving and employment to any of the dependents of such Drivers only on the ground that they have become medically unfit for heavy vehicles. It is an admitted position that the respondents who were Drivers of heavy vehicles have not become blind, but due to occupational hazards their eyesight has become weak and because of that they have been retired from the service of the Haryana Roadways. D E F

According to us their case is fully covered by the view expressed by this Court in *Anand Bihari v. Rajasthan State Road Transport Corporation* (supra), where this Court held that long services of Bus Drivers of a State Road Transport Corporation, on ground of their defective or subnormal eyesight developed during course of employment, should not be terminated because that will be unjustified, unequitable and discriminatory. This Court G H

- A also directed to frame scheme for providing alternative jobs along with retirement benefits. It is true that this Court said that in case of non-availability of alternative jobs, additional compensation proportionate to the length of service rendered by them should be given. In this background, the High Court was not justified in directing that one of the dependents of the respondents be given a suitable job commensurate with the educational qualifications possessed by him.
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Accordingly, the appeals are allowed and the orders of the High Court are set aside. We direct the appellants to give an alternative job to the respondents strictly following the judgment of this Court in *Anand Bihari v. Rajasthan State Road Transport Corporation* (supra). Only in exceptional circumstances, where it is not possible to adjust them in any alternative job, then they shall be paid compensation as indicated in the said judgment of this Court. In the facts and circumstances of the case, there shall be no order as to costs.

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- D *SLP (C) No. 6162/1995*

Leave granted.

- E These appeals have been filed on behalf of the appellants who had been employed as Drivers in Haryana Roadways. While in service, their eyesight became defective and subnormal. On that ground, the appellants were retired from the service of the Haryana Roadways. The Writ Petitions filed on their behalf were dismissed by the High Court.

- F The question whether a State Road Transport Corporation can retire the Bus Drivers on the ground of their defective or subnormal eyesight developed during the course of the employment has been examined by this Court in the case of *Anand Bihari and Others v. Rajasthan State Road Transport Corporation, Jaipur and Another*, [1991] 1 SCC 731. This Court held that such terminations of service were unjustified, unequitable and discriminatory, though not amounting to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act. It was impressed by this Court that service conditions of the Bus Drivers must provide adequate safeguards because such Bus Drivers have developed defective eyesight or subnormal eyesight because of the occupational hazards. A scheme was directed to be framed for providing alternative jobs along with retirement benefits and for payment of additional compensation proportionate to the length of service rendered by them, in case of non-availability of alternative
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jobs. It was brought to our notice that in view of the judgment in *Anand Bihari v. Rajasthan State Road Transport Corporation*, (supra), the Transport Commissioner, State of Haryana has issued a communication dated 20.8.1992.

It appears that some of the appellants suffered serious injuries during the course of their employment which incapacitated them performing their duties. Initially, they were transferred to lighter duties, but while they were working on those posts, they were retired from service on the ground that they were medically unfit. From the written submission filed on behalf of the respondents before the High Court, it appears that the terminal benefits have been paid to them. If the Judgment of this Court in *Anand Bihari v. Rajasthan State Road Transport Corporation* (supra) is read in its proper context and spirit, then it has to be held that this Court impressed on the State Road Transport Corporation to first provide for alternative jobs to such Drivers who have become medically unfit for heavy vehicles. A direction for payment of additional compensation was given only when it is not possible at all in the existing circumstances to provide alternative jobs to such Drivers. It need not be pointed out that the authorities of the Corporation should not take recourse only to the payment of the additional compensation without first examining whether such Drivers could be put on alternative jobs.

Taking all facts and circumstances into consideration, we direct the respondents to apply their mind properly to the question whether the appellants who have suffered injuries and have become medically unfit can be put to some alternative jobs by way of rehabilitation. The question of payment for additional compensation will arise only when it is not possible to provide alternative jobs to them or some of them.

Accordingly, we allow the appeals to that limited extent. The question of providing alternative jobs to them shall be examined by the respondents preferably within four months from the date of production of the order. It need not be pointed out that question of providing alternative jobs shall be applicable only till the date of the superannuation of the respondents. In case, alternative jobs are provided to the appellants or any one of them, then if the additional compensation has been paid to them or any one of them, have to be refunded to the Haryana Roadways. In the facts and circumstances of the case, there shall be no order as to costs.

G.N.

Appeals allowed.