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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

118+254 **CWP-16352-2023 (O&M)**
Date of Decision: 21.03.2024

Sant Kumar **...Petitioner**

Versus

General Manager, Northern Indian Railway and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Sahir Singh Virk, Advocate for the petitioner

Mr. Narender Kumar Vashist, Senior Panel Counsel,
for Union of India-respondents with
Mr. Sanjiv Kumar, Office Superintendent DRM Office Ambala
***

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226/227 of the Constitution of India is seeking direction to respondent to pay him immediate and adequate compensation as he has been rendered permanently disabled in an accident while on duty.

2. The petitioner on 15.02.1989 joined Northern Indian Railways as Pointsman. He, on 10.10.2021, while on duty met with an accident which resulted in amputation of his both legs. The said fact was recorded in Railway Diary Accident Book dated 10.10.2021. The Additional Chief Medical Superintendent, Northern Railway, Ambala Cantt. issued a certificate dated 18.07.2022 (Annexure P-8) recommending petitioner for alternative

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VERDICTUM.IN

employment on medical grounds. As per the petitioner, he is suffering from 90% permanent disability.

3. Mr. Sahir Singh Virk, Advocate *inter alia* contends that petitioner while on official duty as Pointsman met with an accident and in the said accident his both legs have been amputated. The Ministry has issued disability certificate dated 07.10.2022 (Annexure P-5) confirming that petitioner is 90% permanent disabled. The respondent has conceded that petitioner was offered alternative post in February' 2023, thus, upto January' 2023, there was supernumerary period. The respondent has adjusted his salary against compensation payable under Employees Compensation Employees Act, 1923 **(**for short **'1923 Act'**).

4. Learned counsel for the respondents, on instructions from Sanjiv Kumar, Office Superintendent, DRM Office, Ambala, submits that petitioner was offered alternative post in February' 2023, thus, special supernumerary period of the petitioner expired in February' 2023. The petitioner is covered by 1923 Act, thus, he is entitled to compensation under the said Act. The respondent has determined a sum of Rs.9,53,955/- as compensation. The Ministry of Railway vide notification dated 23.04.2019 has amended the Railway Services (Liberalized Leave) Rules, 1949 (for short '**1949 Rules**') contained in Chapter 5 of Indian Railway Establishment Code (IREC) Volume-1. As per amended Rule 552 of the 1949 Rules, the amount of leave salary payable under Work Related Illness and Injury Leave (for short '**WRIIL**') shall be deducted from workmen's compensation. The petitioner is

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VERDICTUM.IN
Neutral Citation No:=2024:PHHC:040076

entitled to compensation under 1923 Act and salary of the petitioner needs to be adjusted against compensation payable under the said Act.

5. It is conceded by both sides that accident took place in October, 2021 while the petitioner was on duty and his both legs were amputated. The petitioner was offered alternative in post February' 2023, thus, upto January' 2023 there was supernumerary period. The petitioner has been paid salary upto supernumerary period, however, the said amount has been adjusted against compensation payable under 1923 Act.

6. I have heard the arguments of learned counsels for both sides and perused the record with their able assistance.

7. The dispute lies in a narrow compass. As per petitioner, he is entitled to compensation under 1923 Act as well as salary till supernumerary period whereas as per the respondents, pay needs to be adjusted against compensation payable under 1923 Act. As per respondents, compensation under 1923 Act comes to ₹9,53,955/- and the said amount has been adjusted against salary.

8. The respondent is relying upon letter dated 23.04.2019 (Annexure R-5) issued by Ministry of Railways which confirm that Rule 552 of 1949 Rules has been amended by notification dated 11.12.2018. The unamended and amended Rule, as reproduced in aforesaid letter, is reproduced as below:-

"552. Special disability leave for injury intentionally inflicted –	***552. Work Related Illness and Injury Leave –*** *The authority competent to grant leave*

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VERDICTUM.IN

Omitted and replaced with "552. Work Related illness and Injury Leave"	*may grant Work Related Work Related Illness and Injury Leave (herein after referred to as WRIIL) to a Railway servant (whether permanent or temporary), who suffers illness or injury that is attributable to or aggravated in the performance of her or his official duties or in consequence of her or his official position subject to the provisions contained in rule 521 of these rules, on the following conditions, namely:* *(1) Full pay and allowances shall be granted to all employees during the entire period of hospitalization on account of WRIIL.* *(2) Beyond hospitalization, WRIIL shall be governed as follows:* *(a) A Railway servant (other than of RPF/RPSF) full pay and allowances for the six months immediately following hospitalization and Half Pay for twelve months beyond the said period of six months. The Half Pay period may be commuted to full pay with corresponding number of days of Leave on Half Average Pay debited from the employees leave account.* *(b) For officers RPF/RPSF full pay and allowances for six months immediately following the hospitalization and full pay only for the next twenty four months.* *(c) For personnel below the rank of officer of the RPF/RPSF full pay and allowances, with no limit regarding period.* *(3) In the case of persons to whom the Workmen's Compensation Act, 1923 applies, the amount of leave salary payable under WRIIL shall be reduced by the amount of compensation paid under the Act.* *(4) No Leave on Average Pay or Leave on Half Average Pay shall be credited during the period that employee is on WRIIL."*

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VERDICTUM.IN

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9. As per above-cited amended Rule 552(3) of 1949 Rules, in case a person is entitled to compensation under 1923 Act, the amount of leave salary payable under WRIIL shall be reduced by the amount of compensation. The Railway Board, in terms of its earlier letter dated 29.04.1999, vide letter dated 11.12.2000 (as per Annexure R-2, the said date is 26.12.2000) has clarified that a medically de-categorized railway servant shall be entitled to pay scale and service benefits till the availability of alternative post. If an employee does not accept alternative post, he would not be entitled to regular pay scale and service benefits. The said letter is reproduced as below:-

> *"Sub:- Absorption of Medically de-categorised/disabled staff in alternative employment.*
>
> *In terms of para 1303 of IREM Vol-1, 1989 as amended vide ACS No.77 issued under Board's letter of even number dated 29.4.1999, if a medically decategoriesed railway servant cannot be immediately adjusted against or absorbed in any suitable alternative post he may be kept on a special supernumerary post in the grade in which the concerned employee was working on regular basis before being declared medically unfit, pending location of suitable alternative employment for him with the same pay scale and service benefits. The special supernumerary post so created will stand abolished as soon as the alternative employment is located.*
>
> *2. It has come to the notice of this Ministry that medically decategorised employees posted to alternative posts are declining to join the same and continue to draw salary against special supernumerary posts, resulting in a large number of medically decategorised employees continuing to hold special supernumerary posts without any work, there by adversely affecting the Railways functioning. The Ministry of Railways Wish to clarify that in the extent provision in the Manual no*

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VERDICTUM.IN
Neutral Citation No:=2024:PHHC:040076

option is available to a medically decategorised employee to decline the alternative employment to which he is posted. Accordingly, in the order appointing a medically decategorised employee to an alternative post it should be provided that if he does not take up the alternative employment immediately, the payment of salary to him against special supernumerary post would be discontinued forthwith."

10. The petitioner, during the course of service, has met with an accident wherein he has lost his both legs. He is governed by Section 20 of the Rights of Persons with Disabilities Act, 2016 (for short '**2016 Act**'). Section 20 provides that no Government establishment shall discriminate against any person with disability in any matter relating to employment. Sub-Section (4) of Section 20 of 2016 Act provides that if an employee after acquiring disability is not suitable for the post he was holding, he shall be shifted to some other post. If it is not possible to adjust the employee against any post, he may be kept on supernumerary post until a suitable post is available. During the said period, he shall be entitled to same pay scale and service benefits. Section 20 of 2016 Act is reproduced as below:-

"20. Non-discrimination in employment.

(1) No Government establishment shall discriminate against any person with disability in any matter relating to employment:

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, exempt any establishment from the provisions of this section.

(2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

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VERDICTUM.IN

(3) No promotion shall be denied to a person merely on the ground of disability.

(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:

Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall 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.

(5) The appropriate Government may frame policies for posting and transfer of employees with disabilities."

[Emphasis Supplied]

11. From the perusal of Section 20 of 2016 Act and instructions issued by Board, it is evident that instructions of Board are analogous to 2016 Act. The respondent by instructions has implemented 2016 Act which mandates that till the availability of alternative post, an employee suffering from disability would remain at supernumerary post and he would continue to get pay with service benefits.

12. The respondent, despite accepting that petitioner is entitled to salary till the date of offer of alternative post, has adjusted salary against compensation payable under 1923 Act. It is apt to notice here that 1923 Act as well as 2016 Act is piece of beneficial legislation. The intent and purport of both the enactments is to protect the livelihood, dignity of an employee as well as his family members and protect them from being driven to destitution. The respondent, relying upon its rules which seem to be contrary to 1923 Act

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VERDICTUM.IN

and 2016 Act, has adjusted salary against compensation payable under 1923 Act.

13. It is settled proposition of law that Rules can supplement statutory provisions but cannot supplant the statutory provisions. The Rules cannot be contrary to mandate of the Act. Rules are piece of delegated legislation. As Rule 552(3) of 1949 Rules is contrary to mandate of 2016 Act and 1923 Act, thus, said Rule needs to be ignored. The said Rule is not under challenge, however, being contrary to statutory provisions as well as intent of beneficial scheme cannot detain this Court.

14. The Supreme Court in ***Shree Bhagwati Steel Rolling Mills v. Commissioner of Central Excise and another, (2016) 3 SCC 643***, has observed that Rules or Regulations which are *ultra vires* though not challenged may be ignored. The relevant extracts of the judgment read as:

> *"28. Shri Aggarwal in order to buttress his submission that he ought to be allowed to raise a pure question of law going to the very jurisdiction to levy interest, cited before us the judgment in Bharathidasan University v. All-India Council for Technical Education [Bharathidasan University v. All-India Council for Technical Education, (2001) 8 SCC 676 : 1 SCEC 924] and in particular para 14 thereof which reads as follow: (SCC pp. 688-89)*
>
> > *"14. The fact that the Regulations may have the force of law or when made have to be laid down before the legislature concerned does not confer any more sanctity or immunity as though they are statutory provisions themselves. Consequently, when the power to make Regulations is confined to certain limits and made to flow in a well-defined canal within stipulated banks, those actually made or shown and found to be not made*

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VERDICTUM.IN

within its confines but outside them, the courts are bound to ignore them when the question of their enforcement arises and the mere fact that there was no specific relief sought for to strike down or declare them ultra vires, particularly when the party in sufferance is a respondent to the lis or proceedings cannot confer any further sanctity or authority and validity which it is shown and found to obviously and patently lack. It would, therefore, be a myth to state that the Regulations made under Section 23 of the Act have 'constitutional' and legal status, even unmindful of the fact that any one or more of them are found to be not consistent with specific provisions of the Act itself. Thus, the Regulations in question, which AICTE could not have made so as to bind universities/UGC within the confines of the powers conferred upon it, cannot be enforced against or bind a university in the matter of any necessity to seek prior approval to commence a new department or course and programme in technical education in any university or any of its departments and constituent institutions."

29. It would be seen that Shri Aggarwal is on firm ground because this Court has specifically stated that rules or regulations which are in the nature of subordinate legislation which are ultra vires are bound to be ignored by the courts when the question of their enforcement arises and the mere fact that there is no specific relief sought for to strike down or declare them ultra vires would not stand in the court's way of not enforcing them. We also feel that since this is a question of the very jurisdiction to levy interest and is otherwise covered by a Constitution Bench decision of this Court, it would be a travesty of justice if we would not allow Shri Aggarwal to make this submission."

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VERDICTUM.IN

15. In the wake of above discussion and findings, the respondents are hereby directed to release compensation payable under 1923 Act, without adjusting against salary payable upto supernumerary period. The needful shall be done within 6 weeks from today. It is hereby clarified that the petitioner was entitled to salary till supernumerary period and thereafter on account of his non-joining, he is not entitled to salary.

16. Disposed of in above terms.

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

(JAGMOHAN BANSAL)
JUDGE

21.03.2024
Mohit Kumar

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*

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