
(2015) 03 BOM CK 0018

In the Bombay High Court

Case No : Writ Petition No. 1742 of 2014

Amrut Yeshwant Mate

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 04-03-2015

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2(i), 2(i)(v), 2(o), 47

Citation : (2015) 6 ALLMR 832 : (2015) 4 BomCR 577

Hon'ble Judges : A.P. Bhangale, J.;B.P. Dharmadhikari, J.

Bench : Division Bench

Advocate : Bharat Kulkarni, for the Appellant; K.S. Joshi, AGP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.—Rule. Rule made returnable forthwith. Heard by consent of the learned Counsel appearing for the parties.

2. The matter is being considered by this Court since long. Looking to the nature of the controversy involved efforts were to decide it finally at the stage of admission. We placed the matter for further consideration on 13-02-2015 after hearing parties on 30-01-2015. After hearing the respective Counsel, we formulated the question on that day. The matter was then considered on 13-02-2015 and to find out the scope of Section 47 of the Persons with disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 [for short, the Act, 1995], it came to be adjourned to today.

3. Advocate Shri Bharat Kulkarni, appearing for the petitioner does not dispute that the petitioner has suffered paralysis and is not in a position to understand / comprehend anything. He is bed ridden and unable to move. However, he relies upon Section 47 of the Act, 1995, to urge that even a person like the petitioner must be continued in employment till he reaches the age of superannuation or till a post suitable for his absorption becomes available. He submits that the nature

of disability has got no bearing on the work for which he was or is to be employed. He has relied upon the decision of this Court in the case of Union of India, Ministry of Defence, New Delhi, Senior Higher Administrative Staff Officer, HQ Maintenance Command (U) and The Commanding Officer, HQ Maintenance Command (U), Indian Air Force, Vayu Sena Nagar, Nagpur Vs. Pramod Sadashiv Thakre, , judgment of Hon''ble Apex Court in the case of Kunal Singh Vs. Union of India (UOI) and Another, and in the case of Anil Kumar Mahajan Vs. Union of India (UOI) and Others, . He also sought leave to point out the view taken by the Maharashtra Administrative Tribunal, Nagpur [MAT] in Original Application No. 825 of 2011. He submits that though the present petitioner is not in a proper mental state, Section 47 of the Act, 1995 must be given full effect to. He also adds that though the petitioner may have sought voluntary retirement and his employer may have granted it, that act of the petitioner or his employer cannot defeat the legislative mandate under Section 47 of the Act, 1995.

4. Advocate Shri R.S. Khobragade, appearing for the respondent no.2 employer and Smt. K.S. Joshi, the learned Assistant Government Pleader, oppose the petition. They submit that the disability contemplated in Section 47 of the Act, 1995 should be construed in the background of its definition as contained in that Act. They further urge that all the judgments pressed into service by the petitioner before this Court show that the employee concerned was fit to perform duty of some other nature. Here, as the petitioner has suffered paralysis, he is not physically and mentally in a position to work and, hence, Section 47 of the Act, 1995 is not applicable.

5. Advocate Shri Bharat Kulkarni, in reply submits that in the case decided by the MAT vide Original Application No. 825 of 2011, the employee had suffered 85% disability.

6. The facts are not in dispute. The certificate produced by the petitioner before this Court shows the paralysis and the disability to the extent of 84%. It is not in dispute, that he is not in a position to comprehend anything i.e. his faculty to reason is fully affected. It is, in this background, that we have to consider the provisions of Section 47 of the Act, 1995.

7. Section 2(i) defines the "disability" to mean -(i) blindness, (ii) low vision, (iii) leprosy-cured, (iv) hearing impairment, (v) locomotor disability, (vi) mental retardation and (vii) mental illness. Thus, the definition does not show that the person who loses mental functions or reason or who has become insane and therefore is not in a position to understand anything, can be covered under the said definition. Section 2(i) and Section 47 of the Act, 1995 call for harmonious consideration.

8. Perusal of Section 47 of the Act, 1995 shows that a Government servant who has acquired disability while in service cannot be thrown out of the employment. Section 47 of the Act, 1995 further shows that if an employee after acquiring disability is not suitable for the post he was holding earlier, he should be shifted

to some other post with the same pay scale and service benefits. The later proviso shows that if such post is not available the employee must be kept on a supernumerary post until " a suitable post" becomes available or he attains the age of superannuation, whichever is earlier. Thus, the emphasis is on the capacity of said employee who has acquired the said disability to hold and to work on the some post. Section 47 of the Act, 1995, therefore, does not cover the case of the employee who has lost his faculty to reason and therefore unable or disabled to give valid consent and to enter into a contract.

9. The judgment of the Hon'ble Apex Court in the case of Anil Kumar Mahajan Vs. Union of India (UOI) and Others, , shows that the appellant there is an IAS officer who had served for 30 years till the order of his compulsory retirement was issued on the ground of insanity. The facts show that he was asked by his employer to appear before the duly constituted Medical Board on eight occasions, but he refused to appear before that Board. He challenged that order. The Tribunal before which the challenge was raised found his non-appearance before the newly constituted Medical Board, a ground to presume that he had become insane. Thus, there was no evidence in the matter to show that the officer had become insane and therefore was not in a position to occupy any post. The judgment of the Hon'ble Apex Court in the case of Kunal Singh Vs. Union of India (UOI) and Another, , the disability looked into was found covered by Section 2(i)(v) read with Section 2(o) of the Act, 1995. He was recruited as Constable in Special Service Bureau. Thus, the said employee was in a position to work on a suitable post considering his locomotory disability i.e. amputation of left leg.

10. The Division Bench of this Court in the case of Union of India, Ministry of Defence, New Delhi, Senior Higher Administrative Staff Officer, HQ Maintenance Command (U) and The Commanding Officer, HQ Maintenance Command (U), Indian Air Force, Vayu Sena Nagar, Nagpur Vs. Pramod Sadashiv Thakre, , considers the contention of the employer that the benefit of Section 47 of the Act, 1995 cannot be extended to a temporary employee. The Division Bench has found that Section 47 of the Act, 1995 protects the services of any employee and makes no distinction between the nature of service it protects. The employee in this case suffered from colour blindness.

11. The Division Bench of MAT in Original Application No. 825 of 2011 on 23-07-2012 has considered the case of the employee who got physically handicapped and suffered permanent disability to the extent of 85%. The learned Counsel for the petitioner appearing before us has represented that employee before the MAT. He has fairly stated that the said employee did not suffer from any mental disability or problem. Thus his faculty to reason was intact.

12. In this situation, when the petitioner before this Court has developed paralysis and is not only physically disabled but also mentally unfit, we find that the benefit of Section 47 of the Act, 1995, cannot be extended to him.

13. The petitioner already applied for voluntarily retirement and it has been given to him by his employer.

14. In this situation, the Writ Petition as filed is misconceived. It is dismissed.

15. Rule stands discharged. No costs.