
(2009) 03 AHC CK 0142
In the Allahabad High Court

Anoop Kumar Diwedi

APPELLANT

Vs

Registrar General High Court and Another

RESPONDENT

Date of Decision : 06-03-2009

Acts Referred:

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

Citation : (2009) 03 AHC CK 0142

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties.

2. Petitioner was appointed in Judgeship of Rae Bareilly on temporary/ ad hoc basis as ""paid apprentice" from 01.11.2001 to 15.01.2002. Appointment letter issued by Senior Administrative Officer, Rae Bareilly Judgeship is Annexure-1 to the writ petition. According to the petitioner, this appointment was extended till June, 2002. Thereafter, District Judge, Rae Bareilly, through order dated 18.06.2002 (Annexure-2 to the writ petition) appointed the petitioner as ""stenographer" on temporary/ ad hoc basis in Fast Track Court No. 4, which Court had newly been created. However, it was also provided that until further order, petitioner should perform the duty in Police Copying Section Judgeship, Rae Bareilly. At the end of the copy of the order, the date is wrongly mentioned as 18.06.2003, however in different paragraphs of the writ petition, the date is mentioned as 18.06.2002.

3. In Para-4 of the writ petition, it is mentioned that since 18.06.2002, petitioner started working as ""stenographer" in the Fast Track Court. In Para-5 of the writ petition, it is mentioned that while working as ""stenographer" he got some trouble in his ears and got treatment from Rana Beni Madhav District Hospital, Rae Bareilly. No date is mentioned in the paragraph. Annexure-3 is photocopy of bed-head ticket, the date mentioned therein is not easily legible, however at one

place it appears to be 11.08.2003. In Para-6 of the writ petition, it is mentioned that petitioner was referred to Sanjay Gandhi Post Graduate Institute, Lucknow (SGPGI). Here also no date is mentioned. In the same para, it is mentioned that petitioner was given fitness certificate on 22.09.2003 by SGPGI. Thereafter, it is mentioned that since 23.09.2003, petitioner was not permitted to join his duties, even though on 23.09.2003, he gave an application to the District Judge, copy of which is Annexure-5 to the writ petition.

4. It is also stated that petitioner should have been given job of clerk u/s 47 of Persons of Disabilities (Equal Opportunity Protection of Right and Full Participation Act, 1995. In the writ petition, it has not been stated that since when petitioner had stopped coming to work. The prayer is that respondents must be directed to permit the petitioner to resume his duties and pay salary to him with 18% interest. Thereafter, under interim orders passed in the writ petition some orders were passed against the petitioner, which were challenged through amendment in the writ petition, i.e. orders dated 20.03.2004 and 27.11.2006. The order dated 27.11.2006 was passed by Administrative judge which has been annexed along with application dated 17.10.2008. Application of petitioner given on 23.09.2003 is Annexure-5 to the writ petition. In application dated 23.09.2003 (Annexure-5), it is mentioned that about six months before, petitioner met with an accident causing injuries to his head which impaired his hearing and thereupon he got the treatment from Government Hospital, Rae Bareilly on 31.07.2003. In Para-12 of the said application, it was mentioned that at the time of his employment, he was fully fit to work on the post of ""stenographer", however due to the accident and consequent impairment of hearing, he was unable to perform the said duty.

5. Counter affidavit was filed by Special Judicial Magistrate, Rae Bareilly. In the counter affidavit, it has been stated that since his appointment petitioner was hard of hearing and he did not know short-hand (stenography), hence he was not qualified for appointment on the post of ""stenographer".

6. In his application dated 23.09.2003 (Annexure-5 to the writ petition), petitioner had prayed that he must be appointed on the post of clerk instead of stenographer. In the counter affidavit, it has been pointed out that the allegation of the petitioner in his application dated 23.09.2003 that he met with some accident six months before was false as he did not avail a single day's leave about six months before the date of the said application. It has further been stated that petitioner was posted as ""stenographer" in the court of Additional Civil Judge (Senior Division) on 07.02.2003 to work as stenographer. Presiding Officer in his report dated 15.02.2003, stated that petitioner was unable to take dictation. Petitioner gave an explanation on 05.03.2003, copy of which is Annexure-3 to the counter affidavit. In the said explanation, it was mentioned that petitioner was hard of hearing and was using hearing-aid and on 15.02.2003, the cell of hearing-aid was down, hence he could not hear the order, which was dictated. By virtue of the said explanation it is quite clear that

petitioner was hard of hearing since long and the story that he met with an accident in March, 2003, which caused hearing trouble, is concocted. It has further been stated that on the application of the petitioner given on 23.09.2003, an order was passed on the same date by the District Judge, Rae Bareilly. Copy of the said order is Annexure CA-4. In the said order, it is mentioned that through order dated 24.07.2003, petitioner was deputed to work as ""stenographer" in the court of Fast Track Court No. 4. After two days, i.e. on 26.07.2003, Presiding Officer reported that petitioner was not competent to work as ""stenographer". On 26.07.2003, itself petitioner filed an application that he was hard of hearing and he could not take dictation and he should be given some other job. The District Judge constituted the Committee of two judges and petitioner was directed to appear before the said committee so that it could be decided as to whether he was capable of taking dictation or not? However, petitioner did not appear before the committee and went on leave. Petitioner on 08.08.2003 applied for three months medical leave on which District Judge passed the order that application should be given after joining with fitness certificate. Thereupon application was given by the petitioner on 23.09.2003, which is Annexure-5 to the writ petition praying that he should be appointed on the post of clerk. The District Judge passed an order that petitioner under order of the High Court was appointed on ad hoc basis as ""stenographer", hence it was not possible to appoint him as clerk. It has also been mentioned that since 23.09.2003 petitioner is absent, hence services came to an end on 23.12.2003.

7. This fact is virtually admitted by the petitioner that after 23.09.2003 he did not report on duty and this fact is also evident from the application dated 23.09.2003. In Para-17 of the writ petition, it is stated that matter of the appointment of petitioner on the post of clerk was referred to Hon"ble Administrative Judge, who passed an order that there was no vacancy at that time, hence matter be kept in abeyance. The said order was communicated by Deputy Registrar High Court through letter dated 20.03.2004, copy of which is Annexure CA-8 to the writ petition. The said order has also been challenged through amendment. Petitioner in some applications alleged that he was coming to Court but neither he was permitted to sign attendance register nor any job was taken from him. The Administrative Judge in the order passed against the petitioner on 27.11.2006 held that since the time of his initial appointment, petitioner was hard of hearing, he never met with any accident, he deliberately did not appear before the Committee of two Judges appointed by the District Judge to test the shorthand skill of the petitioner and the petitioner was absent without leave.

8. Learned Counsel for the petitioner has cited an authority of the Supreme Court reported in Kunal Singh Vs. Union of India (UOI) and Another, , wherein it has been held that if an employee acquires disability during his service, then some other post should be given to him.

9. In the instant case, it is amply proved that petitioner was hard of hearing

since before his appointment and he did not know stenography. He did not appear before the Committee as directed by the District Judge so that his knowledge of stenography could be tested. Petitioner has not alleged that he is totally deaf. He himself stated that he was using hearing-aid. A stenographer using hearing-aid may very well perform the duties of stenographer. Petitioner's case that during service he met with some accident and due to that accident his hearing became impaired is absolutely false in view of contradictory stands taken by him as stated above. In the explanation, he stated that cell of his hearing machine (hearing-aid) was affected on a particular date, hence he could not take dictation on that date. In his application dated 23.09.2003, he stated that he met with some accident six months before. No leave was taken by him at the time of alleged accident. He got the treatment in August, 2003. According to certificate issued by SGPGI he was not totally deaf. Thereafter, he did not resume his duty as stenographer. With the modern advancements in technology, excellent hearing-aids are available. Unless a person is totally deaf or almost deaf, he can very well perform normal duties including that of stenographer. Accordingly, due to the reason that petitioner did not know stenography and he took up false case regarding the defect in his hearing having been contacted during his service due to accident, he is not entitled to any relief. Since 23.09.2003 he deliberately avoided the duty of stenographer and remained absent hence he is not entitled for conversion of his post from stenographer to clerk. Petitioner's services were ad-hoc, he never faced selection process.

10. Accordingly, there is no merit in the writ petition, hence it is dismissed.