
(2004) 05 MP CK 0015

In the Madhya Pradesh High Court

Case No : Writ Petition No. 18697 of 2003

Ashok Kumar Tiwari

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 04-05-2004

Acts Referred:

Nishakta Vyakti (Saman Avsar, Adhikar Sanrakshan aur Poorna Bhaagidaari)
Adhiniyam, 1995 — Section 63

Citation : (2004) 4 MPLJ 49

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : N.S. Ruprah and Manikant Sharma, for the Appellant; A.S. Raizada, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

The petitioner joined in the post of Sub-Engineer under the respondents department on 1-1-1979. On 1-4-1986 he met with an accident at Seoni, as a result of which he sustained injuries on his shoulder. Despite availing best medical treatment he could not get strength on his right hand. He gave information about the accident of permanent disablement to the respondent Nos. 2 and 3 but the same was not paid heed to as it was not entered in his service book. It is putforth that by such an action of the respondents the usual benefits which are to flow in favour of an employee suffering from 50% permanent disablement, could not get the benefit. The petitioner submitted numerous representations but it was of no avail. In the year 1994 a charge-sheet was served on the petitioner alleging that he was not meeting the inspection targets and collection of inspection fees. The applicant co-operated in the expeditious disposal of the departmental inquiry against him. Though, the inquiry was completed in the year 1996, as setforth in the petition, the same was not finalized. It is contended that though the petitioner had put in 12 years of service

by 1991 he was not given the time-bound superior pay-scale (kramonnati) though, other junior Sub-Engineers were extended the said benefit. It is alleged that the juniors to the petitioner were given the promotion but the case of the petitioner was totally ignored.

According to the writ petitioner all the Sub-Engineers who were appointed along with the petitioner and after him have been made permanent but no such order has been passed in respect of the petitioner. At this stage, the petitioner moved to Commissioner, Nishaktajan, M.P., Bhopal vide Annexure A-6 and the said respondents in exercise of powers vested in him u/s 63 of the "Nishakta Vyakti (Saman Avsar, Adhikar Sanrakshan aur Poorna Bhaagidaari) Adhiniyam, 1995" (for brevity "the Act") called for the explanation from the Chief-Engineer, the respondent No. 2 herein, on certain points. On receipt of the said letter, the respondents No. 2 and 3 sent a reply vide Annexure A-8 which shows that the petitioner was conferred the same benefit but he was superseded before 1996. There is also silence with regard to final order passed in the departmental proceeding. A reply given by the respondents No. 2 and 3 were stood to be cross-checked and so the petitioner submitted a further representation clarifying the position. When the matter stood thus, the respondent No. 3, thought with a pre-determine mind to teach the petitioner a lesson by conveying an adverse ACR for the first time on 26-3-2000 as per Annexure A-12. The petitioner has represented against the said adverse entry. When the writ petition was pending the respondent No. 2, Chief Engineer, Bhopal by the impugned order dated 14-12-2001, Annexure A-1, passed an order of compulsory retirement against the petitioner and three others with effect from 31-12-2001. Though, the order is dated 14-12-2001, the same was communicated on 20-12-2001. It is urged in the petition that the petitioner has not yet completed 25 years of service and, therefore, the respondents have no authority to pass an order of compulsory retirement. It is also urged that the order of compulsory retirement has been passed without appreciating the facts in proper perspective and absolutely in an arbitrary manner. In this backdrop, prayer has been made to quash the impugned order dated 14-12-2001 contained in Annexure A-1.

A reply has been filed by the respondent No. 1 to 3 stating, inter alia, that the stand taken by the petitioner that he could not have been visited with the order of compulsory retirement as he had not completed 25 years of service is incorrect as Rule 42(1)(b) of M.P. Civil Services (Pension) Rules 1976, postulates that 20 years of completed service is required for the authority to pass an order of compulsory retirement. It is put forth that on the basis of the recommendation of the Scrutiny Committee which has been constituted in accordance with the Circular of the State Government issued on 22-8-2000, the petitioner was compulsorily retired. The said order has been passed on the overall assessment done by the Committee. The said Committee has screened the entire service record of the petitioner from the initial date of appointment and on the basis of said scrutiny and the entries made in the service book and his past records, it is urged that the order of compulsory retirement has been passed in the public

interest and, hence, the petitioner could not have any grievance.

I have heard Mr. N.S. Ruprah, learned counsel for the petitioner and Mr. A.S. Raizada, learned Government Advocate.

The heart of the matter is whether the petitioner could have been visited with the order of compulsory retirement. Submission of Mr. Ruprah, to the effect that the petitioner had not reached the qualifying service is sans substance as on the perusal of the Rule it is quite clear that any public servant can be compulsorily retired after completion of 20 years of service in public interest. As the petitioner joined in the year 1979, he had completed 20 years of service. Thus, the aforesaid submission of Mr. Ruprah is not acceptable.

The next aspect that requires consideration is whether the order of compulsory retirement has been passed with any kind of mala fide intention. It is urged with vehemence that when the petitioner sought certain reliefs from the respondent No. 4 and there were correspondences between the respondent No. 4 and other respondents the order of compulsory retirement came to be passed. Mr. Raizada, learned Government Advocate has referred to the Circular as well as the assessment of the Screening Committee. He has laid emphasis on Annexure R-2 to show the career graph of the petitioner. It is urged by him that in the very start of the career in the year 1979, the petitioner was given D and, thereafter, was given C, D, C, C, C, C, C, B, C, C, D, C, D, D, D, D, C, C, D, C. He has also pointed out that in the year 1980-81, 1989-90, 1991-92, 1992-93, 1993-94, 1994-95, 1999-2000 the petitioner was given D. The learned Government Advocate, has taken me through the Circular to show how the parameters are fixed. The Scrutiny Committee has been given the discretion. As far as assessment is concerned, I am not going to express any opinion in the present case inasmuch there is an additional ground which has been urged by Mr. Ruprah in favour of the petitioner. It is his submission that full protection is to be given to a handicapped person. In the return, there is no mention with regard to the status of the petitioner, though such a stand has been taken in the petition. In the case of Kunal Singh vs. Union of India and another, (2003)4 SCC 524, a two Judge Bench of the Apex Court referred to section 47 of the Act. The said provision reads as under:-

47. Non-discrimination in government employment (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

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

No promotion shall be denied to a person merely on the ground of his disability:

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, as may be specified in such notification, exempt any establishment from the provisions of this section.

In the aforesaid decision their Lordships expressed the view as under:-

....Admittedly that Act applies to the establishment of the respondents and is not exempted u/s 47 thereof. From the facts, it is clear that the disability suffered by the appellant is covered by section 2(i)(v) read with section 2(O) of the Act. That disability was admittedly acquired by the appellant during service. Chapter VI of the Act containing sections 32, 33 and 38 deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/ expression, they must be understood accordingly in terms of the definition. A person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected u/s 47 of the Act specifically. Such employee, acquiring disability, not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of section 47 clearly indicate its mandatory nature. In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. The language of section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service, (paras 9 and 7).

The need for a comprehensive legislation for safeguarding the rights of persons with disabilities and enabling them to enjoy equal opportunities and to help them to fully participate in national life was felt for a long time. To realize the objective that people with disabilities should have equal opportunities and keeping their hopes and aspirations in view, a meeting called the "Meet to Launch the Asian and Pacific Decades of Disabled Persons" was held in Beijing in the first week of December 1992 by the Asian and Pacific Countries to ensure "full participation and equality of people with disabilities in the Asian and Pacific regions". This meeting was held by the Economic and Social Commission for Asia and Pacific. A Proclamation was adopted in the said meeting. India was a signatory to the said proclamation and agreed to give effect to the same. Pursuant thereto this Act was enacted, which came into force on 1-1-1996. The Act provides some sort of succor to the disabled persons." (para 8) (quoted from the placitum)

Thereafter, in paragraph 12, their Lordships expressed the view as follows:-

.....Merely because under Rule 38 of the CCS (Pension) Rules, 1972, the appellant got invalidity pension is no ground to deny the protection mandatorily made available to the appellant u/s 47 of the Act. Once, it is held that the appellant has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay scale and service benefits; if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation, whichever is earlier. It appears no such efforts were made by the respondents. They have proceeded to hold that he was permanently incapacitated to continue in service without considering the effect of other provisions of section 47 of the Act.

If the present factual scenario is adjudged on the anvil of the aforesaid decision, there can be no iota of doubt that the case of the petitioner has not been dealt with under the said Act. There are assertions in the writ petition. There is no denial in the counter affidavit. A positive stand has been taken that the petitioner has suffered from 50% permanent disability. In view of the aforesaid, I am inclined to direct the respondents to re-consider the case of the petitioner on the anvil of section 47 of the Act. I have so directed, as it is noticeable that he has not been able to meet the Inspection target and there are certain facts which have some connectivity with his incapacity/handicap. In view of the aforesaid, I direct the respondents to consider the case of the petitioner keeping in view his physical incapacity and pass appropriate orders. As a natural corollary, I am inclined to quash the order of compulsory retirement passed against the petitioner and remit the matter to the respondents to consider his case on the anvil of the provision contained in the Act and the law laid down in the case of Kunal Singh (supra). While saying so, I may not be understood to have stated the law to the effect that an employee who has suffered 50% permanent disability can never be compulsorily retired. I have quashed the order as no stand is taken in the return though a specific stand has been put forth in the writ petition and further there have been correspondences between the respondent No. 4 and other respondents with regard to the physical disability of the petitioner. Therefore, Screening Committee shall re-consider the case of the petitioner keeping in view the aforesaid aspects. The petitioner shall be reinstated in service within a period of eight weeks from the date of receipt of the order passed today. He shall not be entitled to any backwages.

The writ petition is allowed to the extent indicated hereinabove. However, in the peculiar facts and circumstances of the case there shall be no order as to costs.