

(2007) 03 CHH CK 0018
In the Chhattisgarh High Court

Bihari Lal Thawait

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 22-03-2007

Acts Referred:

Constitution of India, 1950 — Article 21, 38, 39, 42, 43
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 32, 33

Citation : (2007) 4 MPHT 25

Hon'ble Judges : Dharendra Mishra, J

Bench : Division Bench

Judgement

Dhirendra Mishra, J.—The petitioner has filed this petition for a direction to the respondents to offer employment to the petitioner according to his qualification and ability, to provide possible medical treatment to the petitioner at State expense and further to pay compensation to the petitioner.

2. Case of the petitioner is that he was suffering from Polio and both his lower limbs were affected and he was able to move with the support of his hands. However, in the year 1988 under the order of District Collector, the petitioner underwent operation in a private hospital of Dr. Ladikar free of cost but the operation was unsuccessful and his condition worsened. The District Medical Board vide certificate of Annexure P-2 certified the extent of disability at 75%. The petitioner submitted application of Annexure P-3 to the District Collector, Bilaspur for providing employment whereupon the District Collector promised him all assistance for his rehabilitation and passed an order on 29-6-1995 for his employment as Assistant Teacher in the Block Development Division, Janjgir but the above order was not implemented.

3. In these circumstances, the petitioner approached the National Human Rights Commission, New Delhi (for short hereinafter referred to as "the Commission") with the prayer for compensation of Rs. 15 lacs, a direction for treatment of heart ailment and management of his disability as also his employment to the

job of an Assistant Teacher. The Commission issued notice to the Collector Bilaspur and obtained report from the Collector as also from the State Government. After considering the complaint of the petitioner and the report submitted by the Collector and the State Government, the Commission observed that the well intentioned action initiated by the Collector for arranging medical treatment and recommendation for his employment as Assistant Teacher did not materialize and the petitioner could not get any substantial relief. Neither his disability was cured pursuant to the operation nor he got job of an Assistant Teacher. Without going into the question whether the condition of the petitioner worsened after operation or not, the Commission observed that the fact remains that the petitioner continues to be in a hapless state inasmuch as he is not in a position to move by himself due to the permanent disability of his lower limbs and has to seek help of his neighbours/sympathizers even for performing his daily routine personal activities. In view of this, considering that the State Government is a welfare State and can alleviate the plight and suffering of this handicapped petitioner to possible extent so as to help him to rehabilitate himself and lead a meaningful life, made following recommendation:

- (i) To grant ex-gratia monetary relief to the tune of Rs. One lac to the petitioner either from the fund established by the State Government for the welfare of the handicapped persons or from the Chief Ministers' Relief Fund.
- (ii) To offer a job to the petitioner commensurate with his academic qualifications and physical ability in accordance with the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.
- (iii) To arrange for the medical treatment, management and care of the petitioner for the ailments with which he is suffering at State expense.

The above recommendations were to be complied with within six weeks.

4. The grievance of the petitioner is that the recommendations of the Commission dated 8-12-1999 have not been complied with and even after a lapse of more than 7 years, employment has not been provided to him.

5. In their counter affidavit, the respondent Nos. 1 to 3 have not disputed that the petitioner is a handicapped person and the Commission in his complaint made recommendations as detailed above. It is stated that the medical treatment is being regularly provided to the petitioner free of cost. They wanted to take the petitioner to Medical College, Raipur for his treatment, however he declined to go to Raipur for treatment. With regards to providing employment, it has been contended that power of appointment at village, Janpad and district levels have been conferred by the Panchayat to the respective Gram Panchayat, Janpad Panchayat and Zila Panchayat. In case of any vacancy in these institutions, the petitioner may be considered for recruitment from handicapped quota provided he applies for the post. It was further contended that the Chief Executive Officer, Janpad Panchayat, Akaltara sanctioned Social Security Pension for the benefit of the petitioner vide his letter dated 21/22-10-2001 of Annexure

R-6. However, the petitioner did not acknowledge receipt of the letter and misbehaved with the Government employee who had gone to serve the order of Chief Executive Officer.

6. During the pendency of the petition, balance of Rs. 10,000/- was paid to the petitioner as per direction of the Commission. On 4-12-2006; documents were filed by the State Government where by M/s. Renuka Enterprises, Korba had given ad hoc appointment order dated 7-12-2006 id the petitioner for the purpose of Office Assistant. On that date, it was submitted that the State was making all endeavours to appoint the petitioner on some suitable post available with the State as per the recommendations of the Commission and till such time they had persuaded M/s. Renuka Enterprises to provide job to the petitioner for time being. Subsequently, an affidavit of said M/s. Renuka Enterprises was also filed along with ad hoc offer of appointment order for the post of Office Assistant on 15-12-2006.

7. On 8-1-2007, the petitioner appeared in the Court in person along with his Advocate. Considering that the petitioner is a resident of Kotmi Sunar and he was provided employment at Village Amartal Kirari, State was advised to provide suitable accommodation near the place of his working. However, on 17-1-2007, Counsel for the parties submitted that looking to the physical disability of the petitioner, it would be appropriate that the petitioner is medically examined to ascertain whether he will be able to discharge his duty regularly and that too independently or not and in view of the above submission, the respondents were directed to get the petitioner examined by the District Medical Board, Bilaspur for their opinion. In pursuance of this direction, the petitioner was medically examined by the Medical Board which submitted its report dated 27-1-2007 and opined that PPRP both lower limbs involving both hip, knee and ankle and percentage of disability is 95% and he is unable to discharge his duties independently and regularly.

8. Thus from the report of the Medical Board, it is crystal clear that the disability of the petitioner is of such a nature that even if he is given employment as per recommendations of the Commission, he cannot discharge his duties regularly and independently, therefore, the recommendations of the Commission for providing employment to the petitioner cannot be complied with. As observed by the Commission and also observed by this Court, the disability of the petitioner is to such an extent that he is not in a position to move, by himself due to permanent disability of his both lower limbs and he is required to be shifted with the help of others for moving one place to another and he needs help for performing his daily routine personal activities.

9. The petitioner has filed instant writ petition for direction to the respondents to provide him employment according to his academic qualification and ability as per the recommendations of the Commission, however, considering the extent of his disability, this Court is of the opinion that the relief claimed by the petitioner cannot be given because the petitioner himself is not in a position to discharge

any duty regularly and independently.

10. In the present case, the unfortunate petitioner was suffering from Polio infecting both of his limbs. However, initially he was able to move with the help of his hands. A well intentioned District Collector bonafidely believing on an Orthopedic Surgeon provided the petitioner free medical aid and surgery was performed upon both of his limbs as per the directions of the Collector. Unfortunately, condition of the petitioner instead of improving, deteriorated and it deteriorated to such an extent that the petitioner's handicap further increased and now he is not in a position to move without assistance of others.

11. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short referred to as "the Act of 1995") was enacted and the same came into force with effect from 7-2-1996. The background for enactment of this Act was that the Economic and Social Commission for Asian and Pacific Region convened a meeting in December, 1992 to launch the Asian and Pacific Decade of Disabled Persons 1993-2002 and in that meeting the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and the Pacific Region was adopted and India was a signatory to the abovesaid Proclamation. As per statement of objects and reasons, it was thought necessary to enact suitable legislation to provide for the following:

(i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;

(ii) to create barrier free environment for persons with disabilities;

(iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-a- vis non-disabled persons;

(iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;

(v) to lay down a strategy for comprehensive development of programmes and services and equalization of opportunities for persons with disabilities; and

(vi) to make special provision of the integration of persons with disabilities into the social mainstream.

12. With the Aims and Objects of the Act of 1996, Chapter VI provides for employment. Section 32 deals with identification of posts which can be reserved for persons with disabilities and Section 33 deals with reservation of posts for persons or class of persons with disability. As has already been mentioned in the instant case, the disability of the petitioner is of such a nature that even if he is provided employment, he is not in a position to discharge his duties independently and regularly.

13. Right to life as enshrined under Article 21 of the Constitution of India extends

to receiving proper and able medical treatment from the medical practitioner whether working in the Government hospital or private practitioner. The petitioner in the instant case who was admittedly the patient of Polio saw a ray of hope when he was extended helping hand by the well intentioned Collector that his difficulties would come to an end if he is treated by a competent surgeon and he would be walking on his limbs as a normal being and in these circumstances, he was operated upon in the year 1988.

14. In the matters of Consumer Education and Research center and others Vs. Union of India and others, , the Supreme Court while interpreting the Preamble and Article 38 of the Constitution of India in Para 18 has held thus:

18. The Preamble and Article 38 of the Constitution of India - the supreme law, envisions social justice as its arch to ensure life to be meaningful and liveable with human dignity. Jurisprudence is the eye of law giving an insight into the environment of which it is the expression. It relates the law to the spirit of the time and makes it richer. Law is the ultimate aim of every civilized society, as a key system in a given era, to meet the needs and demands of its time. Justice, according to law, comprehends social urge and commitment. The Constitution commands justice, liberty, equality and fraternity as supreme values to usher in the egalitarian social, economic and political democracy. Social justice, equality and dignity of person are cornerstones of social democracy. The concept "social justice", which the Constitution of India engrafted, consists of diverse principles essential for the orderly growth and development of personality of every citizen. "Social justice" is thus an integral part of "justice" in the generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of persons. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relieve the poor etc. from handicaps, penury to ward off distress and to make their life liveable, for greater good of the society at large. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation. Social security, just and humane conditions of work and leisure to workman are part of his meaningful right to life and to achieve self-expression of his personality and to enjoy the life with dignity; the State should provide facilities and opportunities to enable them to reach at least minimum standard of health, economic security and civilized living while sharing according to their capacity, social and cultural heritage.

Further referring to Article 1 of the Universal Declaration of Human Rights, in Para 20, the Apex Court has held thus:

20. Article 1 of the Universal Declaration of Human Rights asserts human sensitivity and moral responsibility of every State that "all human being are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood". The

Charter of the United Nations thus reinforces the faith in fundamental human rights and in the dignity and worth of human person envisaged in the Directive Principles of State Policy as part of the Constitution. The jurisprudence of personhood or philosophy of the right to life envisaged under Article 21, enlarges its sweep to encompass human personality in its full blossom with invigorated health which is a wealth to the workman to earn his livelihood, to sustain the dignity of person and to live a life with dignity and equality.

In Para 21 of the above judgment, the Apex Court held that:

21. Article 38(1) lays down the foundation for human rights and enjoins the State to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life. Article 46 directs the State to protect the poor from social injustice and all forms of exploitation. Article 39(e) charges that the policy of the State shall be to secure "the health and strength of the workers". Article 42 mandates that the States shall make provision, statutory or executive "to secure just and humane conditions of work". Article 43 directs that the State shall "endeavour to secure to all workers, by suitable legislation or economic organization or any other way to ensure decent standard of life and full enjoyment of leisure and social and cultural opportunities to the workers". Article 48A enjoins the State to protect and improve the environment. As human resources are valuable national assets for peace, industrial or material production, national wealth, progress, social stability, decent standard of life of worker is an input. Article 25 (2) of the Universal Declaration of Human Rights ensures right to standard of adequate living for health and well-being of the individual including medical care, sickness and disability. Article 2 (b) of the International Convention on Political, Social and Cultural Rights protects the right of worker to enjoy just and favourable conditions of work ensuring safe and healthy working conditions.

15. In view of the Act of 1995 and the above law pronounced by the Supreme Court, I am of the considered opinion that the petitioner was entitled for employment as per the recommendations of the Commission and this fact has not been disputed by the respondents. However, since both the parties have agreed that no meaningful purpose would be served by providing employment to the petitioner as the disability of the petitioner is to such an extent that he cannot discharge his duties regularly and independently, therefore, it would be just and proper to mould the relief in the interest of justice so that the petitioner and his dependent can lead a life with dignity and accordingly, he should be compensated suitably.

16. The State has already paid a sum of Rs. 1 lac towards compensation as recommended by the Commission. Apart from the above the payment, it is also not in dispute that the State is providing medical treatment free of cost in accordance with the recommendations of the Commission. The only question now remains to be determined is as to what would be the amount sufficient in the

facts and circumstances of the case which would enable the petitioner to live with dignity.

17. Considering the fact that the petitioner is living with his old widow mother who is an infirm and sick lady, this Court is of the considered opinion that ends of justice will be served if a monetary compensation of Rs. 3 lacs is paid to the petitioner. Respondent No. 1 is directed to set aside a sum of Rs. 3 lacs as a monetary compensation to the petitioner and invest the same in one of its equities or deposits for a monthly income of not less than Rs. 2500/- for a period of 7 years and pay to the petitioner each month the amount of interest accruing on such deposit. The State is also directed to provide the petitioner suitable medical treatment as per advice of the medical specialists of the State free of cost.

18. With the aforesaid directions, the petition is disposed of.

19. Consequently, LA. No. 11518/2006, LA. No. 11759/2006 and LA. No. 923/2007 also stand disposed of.