

(2009) 10 MAD CK 0167

In the Madras High Court

Case No : Writ Petition No. 35780 of 2006 (O.A. No. 7310 of 1998)

C. Shanmuganathan

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 08-10-2009

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 47, 47(1)
Tamil Nadu Pension Rules, 1978 — Rule 36, 36(2)

Citation : (2010) WritLR 92

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Ilamvaludhi, for the Appellant; R. Neelakantan, Government Advocate, for the Respondent

Judgement

K. Chandru, J.—The petitioner was working as a Special Grade Field Assistant in the fourth respondent's Office. He filed O.A. No. 7310 of 1998 before the Tamil Nadu Administrative Tribunal seeking to challenge the order of the third respondent dated 21.07.1998.

2. By the impugned order, the third respondent informed the petitioner that on the basis of the report of the Medical Board and also the request made by the petitioner, since the petitioner was not able to do the field work, the petitioner was declared medically invalid in terms of Rule 36(2) of the Tamil Nadu Pension Rules with effect from 01.08.1998 and he was also relieved from the post of Field Assistant with effect from 31.07.1998.

3. Despite notice from the Tribunal, the respondents have not filed any counter affidavit justifying the order passed by the third respondent.

4. It is seen from the records that the petitioner met with an accident and his bones of the right arm got crushed. He got steel plates inserted into his right arm and it became totally unusable. The petitioner was not sent to any field duty. As he had already qualified as a Lab Technician, he was doing duty as Lab

Technician for 10 years.

5. It was stated by the petitioner that a Health Supervisor developed a grouse against him and by his memo dated 19.09.1996 directed to report whether he can discharge the duties of the Field Assistant. The petitioner informed that he was not doing the work of Field Assistant and he was only doing the duty of Lab Technician as the condition in his right arm is not in a position to perform the Field work.

6. The petitioner's case was referred to Medical Board attached to Chenglepet Medical College and Hospital. The Medical Board opined that the petitioner cannot work as Mosquito Collection Worker which needs right hand function. Thereafter, the second respondent made a reference asking the petitioner, whether he can work as Head Mazdoor. The petitioner sent a representation on 27.04.1998 stating that though he was designated as Field Assistant, he was only attending to the work as a Laboratory Assistant and sending him to the field work is only a punishment. It was on the finding that the petitioner was unable to do any field work given by the Medical Board, the impugned order came to be passed.

7. To discharge the petitioner, Pension Rule viz., Rule 36 was invoked. Rule 36 of the Tamil Nadu Pension Rules, 1978 deals with the invalid pension. In the Note No. 11.2, it was stated as follows:

(11)(2) Where the Medical authority referred to in Sub rule (i) has declared a Government servant fit for further service of less laborious character than that which he has been doing, he may, if possible, be employed on lower pay and if there be no means of employing him even on a lower pay he may be admitted to pension.

How far this Pension Rule can have any validity has to be seen in the context of the Disabilities Act, 1995.

8. In the present case, it was admitted that the petitioner had an acquired disability while in service. Such disability is well defined u/s 2(i) of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 hereinafter, called as "the Disabilities Act". The term disability is defined u/s 2(i)(v) as locomotor disability. The term locomotor disability is further defined in Section 2(o) of Disabilities Act which reads as follows:

(o) "locomotor disability" means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy.

9. Section 47(1) of the Disabilities Act reads as follows:

(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.

10. The said act has come into force with effect from 07.02.1996. It is not clear as to why the respondents especially the Health Department was not even aware of the Central Act which has application to the present case. When it is a matter of fact that the petitioner had disabled himself to discharge field duty and when he demanded some other position where his service can be utilised, the respondents had illegally invoked the Pension Rules, which has no relevance in the present case. Even otherwise the said pension rule will have to give way to the provision of the Disabilities Act which is a Special law which holds the field since 1995.

11. In the present case, when the reference was made and the Medical Board opined that he cannot perform his field work, they could have assigned him some other position. But he cannot be terminated or discharged on the ground that he had acquired disability during his service. It was rather unfortunate that the respondents were ignorant of a Central Act which has direct bearing to the present case.

12. In this context, it is necessary to refer to the decision of the Supreme Court in Bhagwan Dass and Another Vs. Punjab State Electricity Board, . The following passages found in paragraphs 2 and 16 to 19 will make the position clear and they are as follows:

This case highlights the highly insensitive and apathetic attitude harboured by some of us, living a normal healthy life, towards those unfortunate fellowmen who fell victim to some incapacitating disability. The facts of the case reveal that officers of the Punjab State Electricity Board were quite aware of the statutory rights of Appellant 1 and their corresponding obligation yet they denied him his lawful dues by means that can only be called disingenuous.

16. The disabled employee then approached the Punjab and Haryana High Court in Civil Writ Petition No. 12534 of 2004 seeking relief in terms of Section 47 of the Act and the circulars issued by the State Government and the Board in its furtherance. In the writ petition he was joined by his son, Appellant 2, and an alternative relief was sought for employment of his son in his place. Unfortunately, before the High Court it was the second relief that came into focus and the High Court dismissed the writ petition by a brief order referring to the decision of this Court in Umesh Kumar Nagpal v. State of Haryana. In the High Court order there is no mention of Section 47 of the Act and the disabled employees' claim/right on that basis. Against that order this appeal is preferred in which the disabled employee agitates his rights on the basis of Section 47 of the Act.

17. From the materials brought before the court by none other than the

respondent Board it is manifest that notwithstanding the clear and definite legislative mandate some officers of the Board took the view that it was right to continue a blind, useless man on the Board's rolls and to pay him monthly salary in return of no service. They accordingly persuaded each other that the appellant had himself asked for retirement from service and therefore, he was not entitled to the protection of the Act. The only material on the basis of which the officers of the Board took the stand that the appellant had himself made a request for retirement on medical grounds was his letter dated 17.7.1996. The letter was written when a charge-sheet was issued to him and in the letter he was trying to explain his absence from duty. In this letter he requested to be retired but at the same time asked that his wife should be given a suitable job in his place. In our view it is impossible to read that letter as a voluntary offer for retirement.

18. Appellant 1 was a Class IV employee, a lineman. He completely lost his vision. He was not aware of any protection that the law afforded him and apparently believed that the blindness would cause him to lose his job, the source of livelihood of his family. The enormous mental pressure under which he would have been at that time is not difficult to imagine. In those circumstances it was the duty of the superior officers to explain to him the correct legal position and to tell him about his legal rights. Instead of doing that they threw him out of service by picking up a sentence from his letter, completely out of context. The action of the officers concerned of the Board, to our mind, was deprecable.

19. We understand that the officers concerned were acting in what they believed to be the best interests of the Board. Still under the old mindset it would appear to them just not right that the Board should spend good money on someone who was no longer of any use. But they were quite wrong, seen from any angle. From the narrow point of view the officers were duty-bound to follow the law and it was not open to them to allow their bias to defeat the lawful rights of the disabled employee. From the larger point of view the officers failed to realise that the disabled too are equal citizens of the country and have as much share in its resources as any other citizen. The denial of their rights would not only be unjust and unfair to them and their families but would create larger and graver problems for the society at large. What the law permits to them is no charity or largesse but their right as equal citizens of the country

13. In view of the abolition of the Tribunal, the matter stood transferred to this Court and was renumbered as W.P. No. 35780 of 2006.

14. It is stated by the learned Counsel for the petitioner that even at the time of filing of the O.A., the petitioner was 57 years old and even in the normal course, he would have got retired during the year 1999 itself.

15. Since the relief claimed by the petitioner was directly in consonance with the mandatory provisions of the Disabilities Act, more particularly Section 47, the writ petition stands allowed. The respondents are directed to pay full backwages for the remaining period of service together with interest at the rate of 6% from

the date of discharge till the date of the payment. This exercise shall be undertaken by the respondents within a period of two months from the date of receipt of a copy of this order. No costs.