
(2014) 01 KAR CK 0090

In the Karnataka High Court

Case No : Writ Appeal No. 450 of 2013 (L-KSRTC)

D.C. Chandrashekariah

APPELLANT

Vs

Divisional Controller, KSRTC

RESPONDENT

Date of Decision : 09-01-2014

Acts Referred:

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

Citation : (2014) 2 AKR 322 : (2014) ILR 1115

Hon'ble Judges : D.H. Waghela, C.J.;B.V. Nagarathna, J

Bench : Division Bench

Advocate : Nafeesa Baig, for Sri I. Tharanath Poojary, for the Appellant; Arun Govindraj, for Sri L. Govindraj, for the Respondent

Judgement

D.H. Waghela, C.J.—The appellant, a workman employed under the respondent-State Transport Corporation (KSRTC, Chickmagalur), has called into question the order dated 13.08.2010 in Writ Petition No. 10744/2010 of learned Single Judge of this Court, whereby the petition of the appellant was partly allowed, so as to modify the award of the Industrial Tribunal, partly holding in favour of the appellant. The interesting facts, in brief, of the case of the appellant are that he was employed as a Conductor under the respondent and after nearly 11 years" of service, he was compulsorily retired on 07.03.2001 on the ground of surgical amputation of his leg due to which, he had remained absent from 03.04.2000 to 30.09.2000. According to the respondent, the appellant was admitted to hospital due to pain in his left leg and he remained hospitalized from 18.04.2000 to 30.04.2000, when his leg was amputated due to gangrene developing in the leg. Thereafter, he was termed by the respondent to be unable to perform his duties and hence, the order to compulsorily retire him was made. The appellant raised an industrial dispute, which was referred to the Industrial Tribunal, Mysore as late as on 27.12.2005 and that dispute was resolved by the award dated 30.06.2008. Although the Industrial Tribunal, in terms, set aside the order dated 07.03.2001, it directed the respondent to ascertain whether the nature of

disease for which the appellant had to undergo surgical treatment was due to the nature of his job or any problem aggravated by that job and then to consider his prayer. The respondent was also directed to consider the prayer of the appellant on humanitarian ground as well and after obtaining opinion from the medical officer concerned.

2. Being aggrieved by the award and order of the Industrial Tribunal, the appellant approached this Court by way of Writ Petition No. 10744/2010, which was disposed by the order impugned herein and learned Single Judge, taking note of the fact that the appellant was already reinstated in the post of Sweeper with effect from 06.07.2009, only directed the KSRTC to notionally fix his pay, so as to afford him current wages for the post of Sweeper and extend the benefit of continuity of service only for the purpose of terminal benefits. Being aggrieved by the limited relief granted to the appellant, he is before this Court in appeal.

3. Learned counsel Ms. Nafeesa Baig appearing for the appellant vehemently argued that under the express provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short "the Act"), the respondent was prohibited from dispensing with the service of the appellant or reducing the rank of the appellant, on the basis that he had acquired a disability. She also argued that the respondent again violated the express provisions of Section 47 of the Act in reducing the rank of the appellant while re-employing him with effect from 06.07.2009 and hence, the appellant is entitled to the difference of salary and other allowances to which he would be entitled, if he had been continued in the same post and same scale of pay. It was fairly conceded that neither the Industrial Tribunal nor learned Single Judge was apprised of the provisions of Section 47 of the Act and therefore, the award or the impugned order does not contain even a passing reference to the relevant provisions of the Act.

4. Learned counsel Mr. Arun Govindraj appearing for the KSRTC submitted that the award of the Industrial Tribunal has been duly complied with and after entertainment of the appeal, the service condition of the appellant has been improved, by employing the appellant as Desk Clerk of Source Section, from his earlier posting as a Sweeper. He also expressed his regret that a person with the physical disability from which the appellant was suffering could not and ought not to have been re-employed as a Sweeper. He, however, submitted that in view of the undisputed fact of the industrial dispute having been referred after more than four years of the date of termination of service and the pendency of about four years of the reference made to the Industrial Tribunal, the appellant may not be awarded full back wages or part of the back wages inasmuch as, no service is rendered by him during that period. As against that, it was submitted for the appellant that the termination of service of the appellant being ex facie illegal and in violation of the provisions of Section 47 of the Act, the order of continuity of service and full back wages would automatically follow for doing complete justice to the appellant.

5. The relevant statutory provision of Section 47 of the Act reads as under:

47. Non-discrimination in Government employments.-

(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.

(2) 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.

Having regard to the provisions of Section 47 of the Act and the undisputed fact of the appellant having acquired disability during his service, there is no escaping the conclusion that, the acts of dispensing with his service or even the subsequent reduction in his rank, was illegal and unsustainable. Therefore, the main question to be addressed is whether the appellant is entitled to the declaration that he continued in service in the eye of law, even during the period in which he was ousted from service and was struggling with his disability, as well as the litigation thrust upon him.

6. The Act for the persons with disabilities was enacted in the year 1995 and received the assent of the President on 01.01.1996 with the avowed purpose of giving effect to the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and the Pacific Region. According to the statement of objects and reasons, the meeting to launch the Asian and Pacific Decade of the Disabled Persons 1993-2002, convened by the Economic and Social Commission for Asian and Pacific Region, held at Beijing on 1st to 5th December, 1992, adopted the Proclamation on the Full Participation and Equality of People with Disabilities in the Asia and the Pacific region. India is a signatory to the said proclamation and it was necessary to enact a suitable legislation to provide inter alia for the responsibility of the State towards prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities. It was also an obligation to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-a-vis non-disabled persons, as also, to counteract any situation of the abuse and the exploitation of persons with disabilities. Pursuant to such noble objectives and in discharge of the international obligations, the provisions

are made in Chapter VIII of the Act for ensuring non-discrimination and as a part of it, the provisions of Section 47 have been made to expressly prohibit dispensing with service or reduction in rank of the employee in Government employment, who acquire disability during the service.

7. In the case of Kunal Singh Vs. Union of India (UOI) and Another, before the Supreme Court, in a comparable set of facts and circumstances, wherein a constable had suffered while on duty a leg injury, which developed gangrene and resulted in amputation of the left leg, the constable was invalidated from service and declared permanently incapacitated for further service. The Apex Court observed that, though no specific argument was raised before the High Court with regard to Section 47 of the Act, since a specific ground was raised in appeal and it being a pure question of law, the contentions were heard and considered. Further, the Apex Court in para 9 held that;

9. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. 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. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service.

The Apex Court, in Bhagwan Dass and Another Vs. Punjab State Electricity Board, , relied on the decision of Kunal Singh (supra) to hold that the termination of services of an employee of the state electricity Board, on account of his blindness was illegal, even if the employee, at that time, without being aware of his rights, chose to retire from service. The Apex Court took exception to the attitude of the Board as being directly in contravention of Section 47 of the Act and held as under;

14. ... From the larger point of view the officers failed to realize 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 largess but their rights as equal citizens of the country.

8. Therefore, in order to give full effect to the salutary provisions, the order in the dispute raised by the appellant, could only be that of reinstatement with continuity of service and there has to be cogent reasons for denying back wages . In the facts of the present case, since it is not in dispute that the termination of service of the appellant was in violation of the provisions of Section 47 and full reinstatement was also not ensured, so as to openly discriminate against the appellant by re-employing him as Sweeper, the

respondent did not deserve any sympathetic consideration either in equity or in law. It was on the contrary argued for the respondent that KSRTC was, at the relevant time, trying to obtain an exemption from operation of the provisions of the Act for KSRTC, which proves that the employer was not unaware of the provisions of the Act.

9. As far as the award of back wages is concerned, the Supreme Court in *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and Others*, held that the cases in which the competent Court or Tribunal finds that the employer acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages . The Courts must always keep in view that in the cases of wrongful or illegal termination of service, the wrongdoer is the employer and sufferer is the employee or workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee or workman his dues in the form of full back wages .

10. It is an admitted fact that during the period of his unemployment, the appellant had not and could not have rendered any service to the respondent and there was no evidence of his earning of livelihood from any other employment or avocation. It was, however, also conceded that the appellant had taken four long years in approaching the Industrial Tribunal with the industrial dispute. In these facts and circumstances and having regard to the opinion of the Supreme Court in *Deepali Gundu Surwase (supra)*, by an unavoidable guesswork, it is deemed proper and in the interest of justice that the appellant should be reinstated in his service in the same pay scale with continuity of service and paid 75% of the back wages calculated as if his service had never been terminated, so as to grant him the benefits of increments and allowances, as may be due from time to time. As for the second grievance of employing the appellant from 06.07.2009 on a lower post and in a lower scale of pay, the respondent shall be required to make good the difference and pay the amount of such difference, as also the difference, if any is still persisting, after making amends, as described by the appellant in the affidavit submitted before this Court. It also needs to be added in the peculiar facts of the case that upon the notional continuity of service being ordered, the appellant shall also be reimbursed all the medical expenses incurred by him, before and during the course of his forced unemployment, in accordance with the Rules of KSRTC. Accordingly, the respondent is ordered to comply with the provisions of Section 47 of the Act in the aforesaid terms as articulated in para 11 and make payments accordingly. The respondent shall comply with these directions within a period of one month. The appeal stands allowed, with no order as to cost.