

(2003) 04 DEL CK 0024
In the Delhi High Court
Case No : C.W.P. No. 2735 of 2003

Delhi Transport Corporation	Vs	APPELLANT
Sh. Harpal Singh, Ex. Security Guard and Another		RESPONDENT

Date of Decision : 25-04-2003

Acts Referred:

Citation : (2003) 4 AD 429 : (2003) 105 DLT 113 : (2003) 69 DRJ 537 : (2004) 1 SLJ 66

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : R.D. Makheeja, for the Appellant;

Final Decision : Dismissed

Judgement

Mukul Mudgal , J.—The respondent No. 1/workman was appointed as a Security Guard on 12th November, 1982. It is not in dispute that in June, 1991, the respondent No. 1 met with an accident while in service and suffered disability. He was retired from service on 22nd February, 1994. The Labour Court by its impugned Order reinstating the respondent No. 1 has noticed the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995(hereinafter referred to as `the Act") and referred to and applied the judgment of a Learned Single Judge of this Court in Baljeet Singh Vs. Delhi Transport Corporation, .

2. 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."

3. In Baljeet Singh's case (supra), the learned Single Judge had expressed his anguish at the DTC's stance in the following words:-

"The intention of sec. 47 is clear and unambiguous namely, not to dispense with the service of the person who acquires disability during his service. The purpose is not far to seek. When the objective of the enactment is to provide proper and adequate opportunities, to the disabled in the field of education, employment etc., it is obvious that those who are already in employment should not be uprooted when they incur disability during the course of employment. Therefore, their employment is protected even if the destiny inflicts cruel blow to them affecting their limbs. Even if he is not able to discharge the same duties and there is no other work suitable for him, he is to be retained on the same pay scale and service benefits so that he keeps on earning his livelihood and is not rendered jobless. Notwithstanding the aforesaid clear and mandatory provisions contained in Sec. 47 of the Act, the respondent-Corporation has passed the orders of voluntary retirement in the afore-mentioned cases which is an "establishment" within the meaning of Sec. 2(k) of the Industrial Disputes Act as it was established under Central Act. Such obvious Legislature intent is not understood by the officials of the DTC, who are at the helm of affairs and have handed out such shabby treatment to the petitioners. Even when their attention was drawn to the provision they chose to lend deaf ears and did not rectify their wrong act."

4. Mr. Makheeja, the learned Counsel for the petitioner, DTC has contended that since the above Act came into force on 7th February, 1996 and the respondent No. 1/workman was retired prematurely on 22nd February, 1994, the said Act cannot have any retrospective effect so as to come to the aid of the respondent No. 1/workman.

5. In order to construe the impact and ambit of the Act, it is necessary to look into the Statement of Objects and Reasons of the said Act which reads as follows:

"(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."

The aforesaid extract of the Statement of Objects & Reasons of the Act clearly indicates that the Act is enacted inter alias to create barrier free environment for disabilities and to remove any discrimination against person with disabilities in the sharing of development benefits. It is also stated that the Act seeks to make special provisions of the integration of persons with disabilities into the social mainstream. Thus it is clear that the Act is a welfare measure enacted inter alias pursuant to the mandate of Article 38. The said Article 38 reads as follows:

"38. State to secure a social order for the promotion of welfare of the people.____(1) The State shall strive 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.

(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations."

6. It is not in dispute that while the respondent No. 1/workman was relieved from service on 22nd February, 1994, the espousal pertaining to his termination by way of the present reference was made after the day when the Act came into force on 7th February, 1996. The Act being a social welfare measure and enacted with a view to benefit disabled persons, the plea of the DTC which is an authority of the State, to the effect that the Act cannot be made retrospective, cannot be countenanced. Any statutory enactment incorporating a welfare measure particularly for the weaker sections of society has to be given full effect. In any case since the reference was made after the Act came into force, the benefit of the Act is available to the respondent No. 1 and giving the benefit under the Act to the respondent No. 1 cannot in any event be termed as retrospective operation of the Act.

7. Accordingly, the writ petition is dismissed in liming.