

(2012) 02 DEL CK 0036
In the Delhi High Court
Case No : Writ Petition (C) 7880 of 2011

Hawa Singh

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 03-02-2012

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 47

Citation : (2012) 4 AD 461 : (2012) 134 FLR 1022 : (2012) 3 LLJ 564

Hon'ble Judges : A.K. Sikri, Acting C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Ravindra S. Garia, for the Appellant; Avnish Ahlawat, Advocate with Mr. Ajit Nair and Mr. S.K. Bansal, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, Acting Chief Justice

1. The petitioner herein joined the duties with Delhi Transport Corporation (DTC) as a Driver in the year 1980. He worked in that position till the end of 2006. However, in January, 2007, the petitioner developed serious heart ailment. He was treated in AIIMS. An Automatic Implantable Cardioverter Defibrillator (AICD) was implanted. The Doctor advised light duties to the petitioner. The petitioner's request for grant of light duty was declined by the respondent Corporation and its Medical Board and the petitioner was told that if he did not perform his duty as driver of passenger bus, he would be put on rest and thus would lose all his salary and allowances. The petitioner was put on rest instead of being granted light duty and the period of rest was repeatedly extended. The petitioner was not paid the salary etc. during the period for which he was put on rest.

2. This was done on the advice of Medical Board of the DTC. After examining the petitioner, the Medical Board refused to give him light duties finding that if he could not perform regular driving duties, he should be put "on rest". The petitioner kept on making representations for assignment of light duties to him..

When his request was not acceded to, he filed Writ Petition (C) 8129/2007 claiming full pay wages and compensation. In this writ petition, DTC appeared. On 15th September, 2008 statement was made by the DTC that it was willing to give light duty to the petitioner. Accordingly, the petitioner started getting light duties. The dispute therefore is from the date when he was put "on rest" till 15th September, 2008 when he was assigned the light duties. For the intervening period, he was not paid any salary. The writ petition was transferred to Central Administrative Tribunal (CAT) and the DTC was brought under the purview of CAT. The contention of the petitioner was that he was entitled to the benefit of Disabilities (Equal Opportunities, Protection of Rights and full Participation) Act, 1999 and as per Section 47 thereof, it was incumbent upon the DTC to give him other light duties or in any case release the salary to him. He relied upon the judgment of this Court in the matter of Kumar Bharat Prasad Narain Singh Vs. Airport Authority of India, 2005 (V) AD Del 513 wherein the learned Single has held that heart ailment or adverse condition is also covered by the provisions of the Disabilities Act. The CAT dismissed this petition on 17th July, 2009. Challenging that order, the petitioner filed writ petition in this Court in which orders dated 17th February, 2010 were passed granting liberty to the petitioner to file review petition. The said review petition was dismissed by the Tribunal holding that heart ailment resulting from a heart attack followed by implanting of an AICD does not find mention in the list of disabilities mentioned in the Act. The present writ petition is filed against the order dated 17th July, 2009 passed in passed in OA and order dated 24th March, 2011 passed in the review petition.

3. At the outset we would mention that the words "disability" and "person with disability" is defined in Section 2 of the Act itself and is extracted below:-

2 (i) "disability" means-

- (i) blindness;
- (ii) Low vision;
- (iii) leprosy-cured;
- (iv) hearing impairment;
- (v) locomotors disability
- (vi) mental retardation
- (vii) mental illness;

2(t) "person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority.

4. It is clear from the above that, only a person with disability of the nature suffering mentioned in Section 2 (i) of the Act is entitled to the benefit of Section 47 of the Disabilities Act. No doubt, in Kumar Bharat Prasad Narain Singh (supra) the learned Single Judge of this Court had held that even when a person suffers

heart ailment, be as a consequence of his working with the employer, he would be entitled to the benefit of the Act. However, this judgment of the learned Single Judge was over ruled by the Division Bench in LPA 1601/2005 decided on 14th December, 2005. The Division Bench held that the definition of Disability and Section 2(i) is an exhaustive one and not an inclusive one and since heart ailment is not mentioned therein, a person suffering such ailments would not be treated as disabled within the meaning of Disabilities Act. In view thereof, the judgment of the Tribunal cannot be faulted with. It is clear that the approach of the Tribunal in the impugned order is in tune with the law laid down by this Court and, therefore cannot be faulted with.

5. We may mention here that the learned counsel for the petitioner had referred to the judgment of the Madras High Court in the case of G. Muthu Vs. The Management of Tamil Nadu State Transport Corporation (Madurai) Ltd., . In that case, the appellant was also working as a Driver in the State Transport Corporation. Since Medical Board reported that he was suffering from "color blindness" and hence unfit to work as a driver, the appellant was discharged from service on medical grounds. In this context, the question arose about the applicability of Disability Act. Section 2 (i) of the Act does not cover "color blindness". However, the Division Bench of the Madras High Court held that liberal interpretation is to be given to the provisions of Section 47 of the Act and the term "disability" used in Section 47 can draw support not only in respect of defined "disability" contained in Section 2 (i) of the Disability Act, but will also encompass such other disabilities which would disable a person from performing the work which he held immediately prior to acquisition of such "disability" and thereby entitled him to avail the benefits conferred under the said provisions for having acquired such a "disability". In fact, for this very reason, the learned Single Judge had decided the said issue which has been over ruled by the Division Bench of this Court.

6. Since we are bound by the judgment of the Division Bench of our Court, it is not possible to rely upon the judgment of Madras High Court in this behalf.

7. We would be failing in our duty if we do not refer to the judgment of Division of this Court to which one of us (A.K. Sikri, J) was a Member. In that case, entitled Union of India and Ors. Vs. Suresh Kumar, W.P.(C) 9443/2007 dated 17.12.2007 the aforesaid extracts from G. Muthu (supra) was referred to and relied upon. However, that was not on the interpretation of Section 47 of the Act but on the interpretation of "blindness" which is one of the disabilities mentioned in Section 2 (i) of the Disabilities Act. The "blindness" was held to include "color blindness" and in that context, the aforesaid judgment of the Madras High Court in G. Muthu (supra) was relied upon. Insofar as issue at hand is concerned, it is squarely covered by the Division Bench judgment of this Court in Airport Authority of India Vs. Kumar Bharat Prasad Narain Singh LPA 1601/2005 decided on 14.12.2005 and since judgment of a Coordinate Bench is binding, we find no merit in this writ petition which is accordingly dismissed.

8. There shall be no order as to costs.