

(2010) 05 SHI CK 0108
In the High Court Of Himachal Pradesh
Case No : LPA No's. 6 and 45 of 2010

H.R.T.C. and Another

APPELLANT

Vs

Puran Dutt
 Puran Dut Vs H.R.T.C. and Another

RESPONDENT

Date of Decision : 21-05-2010

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 38
Constitution of India, 1950 — Article 14, 15, 16
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 47, 47(1), 47(2)

Citation : (2010) 05 SHI CK 0108

Hon'ble Judges : Kurian Joseph, C.J;Deepak Gupta, J

Bench : Division Bench

Judgement

Deepak Gupta, J.—Both these appeals are being decided by a common judgment since they arise out of one judgment.

2. The admitted facts are that Sh. Puran Dutt (hereinafter referred to as the Petitioner) was appointed as Driver in the Himachal Road Transport Corporation (hereinafter referred to as the HRTC) on 20.12.1990. He, unfortunately, met with an accident and remained hospitalized from 30.7.1999 to 20.12.1999, when he was declared fit to resume duties. However, the doctors advised that he should be given light duty. Consequently, he was posted in the Garage Section and was assigned light duties. This is apparent from Annexures A-2 to A-4 attached with the Original Application.

3. Vide letter dated 25.3.2000, the Petitioner was directed to appear before the Chief Medical Officer, Deen Dayal Upadhyay Hospital, Shimla. He was examined by the Medical Board. The Medical Board opined that the Petitioner was not fit to drive a vehicle but he was declared fit to do other light duties. Certificate issued in this behalf is attached as Annexure A-6 to the O.A. Thereafter, the HRTC vide Annexures A-7 to A-10 again assigned light duties to the Petitioner. The Petitioner was again examined by the Medical Board after one year. The Medical

Board vide its certificate Annexure A-12 advised that the Petitioner should be given sedentary job. The HRTC complied with these directions.

4. Suddenly, about two years after he had been given light duties, the Petitioner was again directed to make himself available before the CMO, Deen Dayal Upadhyay Hospital, Shimla who constituted a Medical Board to examine the Petitioner in the month of July, 2001. The Medical Board vide Annexure A-14 dated 3.8.2001 found that the Petitioner was unfit to perform the duties of a driver. Consequently, the Petitioner was retired from service on medical grounds vide order dated 19.9.2001.

5. The Petitioner challenged his retirement on various grounds. He raised the plea that the HRTC had not followed the mandate of Rule 38 of the Central Civil Services (Pension) Rules, 1978 and he prayed that since he had been found fit to discharge light duties and had in fact been given light duties for almost two years, this arrangement should have continued till his retirement. This petition was originally filed before the H.P. State Administrative Tribunal but on the abolition of the Tribunal it was transferred to this Court. During the course of hearing, Counsel for the Petitioner raised an additional ground that the termination of the services of the Petitioner is contrary to the provision of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as the Act).

6. The learned Single Judge held that the termination of the services of the Petitioner was contrary to Section 47 of the Act and relying upon the judgment of the Apex Court in Kunal Singh Vs. Union of India (UOI) and Another, , allowed the petition by the impugned judgment. He quashed the retirement order dated 19.9.2001, Annexure A-15, and directed the HRTC to suitably adjust/accommodate the Petitioner as per the mandate of Section 47 of the Act.

7. Aggrieved by this judgment the HRTC has filed LPA No. 6 of 2010 in which the main ground raised is that the Petitioner had never raised the plea that there is violation of the provisions of Section 47 of the Act and therefore his petition could not have been allowed on this ground. On the other hand the original Petitioner in his appeal has prayed that as a consequence of the quashing of the order the HRTC should have been directed to pay back-wages along with interest.

8. There is no manner of doubt that in the original petition, the Petitioner had not taken a plea that there has been violation of Section 47 of the Act. In our view though it may have been better if the Petitioner had amended the petition but keeping in view the fact that a long time has elapsed and the HRTC is aware of the legal provisions of law, the learned Single Judge was justified in permitting an oral argument, in this behalf, being raised. The Act is a beneficial piece of legislation enacted to ameliorate sufferings of disability.

9. This Court in Ankush Dass Sood v. State of H.P. and Ors. CWP No. 192 of 2004 decided on 22nd June, 2007, while dealing with the scope and ambit of the Act held as follows:

India made its tryst with destiny almost 60 years back. As the country awoke to freedom at midnight on 15th August, 1947, the people had high hopes that they would all be treated equally. More than 57 years back we gave unto ourselves a Constitution promising equality to all citizens. The framers of Constitution were well aware of the fact that certain persons suffered from social and economical inequalities and, therefore, in the process of providing true equality some benefits had to be given to them. Articles 14, 15 and 16 of the Constitution of India clearly recognized this concept.

It is a well known fact that persons suffering with disabilities are unable to live a complete life not only due to their own limitations, but also due to barriers created by society. Such persons face discrimination right from the time of their birth. Disabilities, both mental and physical, can be of various types and of varying degrees. The persons who face such disabilities have difficulty in getting admission to good schools and colleges. They face problems in getting access to public places, transportation etc. They are treated with pity, but society does nothing to improve their lot. There has been little attempt to assimilate them in the mainstream of the nation's life. Even proper research has not been done to identify the disabled, ascertain their problems and to take appropriate steps to relieve them of their difficulties.

In the last fifteen years some efforts have been made in this regard. The Asian and Pacific countries decided that the decade starting from 1993 and ending in 2002 would be treated as the decade of disabled persons. A meeting of various countries, including India, was held in Beijing in December, 1992. It was called the "Meeting to Launch the Asian and Pacific Decade of Disabled Persons". In this meeting, the participating countries, including India, adopted the Proclamation on the "Full Participation and Equality of People with Disabilities in the Asian and Pacific Region". India was a signatory to the said proclamation and, therefore, it was obligatory upon our country to enact a suitable legislation so that the rights of the disabled were protected.

The Parliament of the country with a view to fulfill the promise held out in the meeting at Beijing enacted The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The avowed objects and reasons of the Act are 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-?-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.

10. Keeping in view of the nature of the Act, we feel that the benefit of such legislation should not be denied to the Petitioner on the highly technical ground that the plea had not been specifically taken in the Original Application. The HRTC has failed to point out that the Act is not applicable to it. Section 47 of the Act reads as follows:

47. Non discrimination in Government employment.

(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.

11. A bare perusal of Section 47 of the Act makes it clear that if an employee acquires a disability during service and due to this disability is not suited to hold the post which he was previously manning he should be shifted to another post with the same pay scale and service benefits. In fact the proviso to Sub-section (1) further provides that if such a post is not available in the establishment of the employer then a supernumerary post should be created for the period till such disabled person attains superannuation.

12. The HRTC does not deny that Section 47 of the Act is not applicable to it. The HRTC itself provided light job to the Petitioner for almost two years on the recommendations of the Medical Board. There is no explanation as to why there was a sudden change of mind and a decision taken to retire the Petitioner.

13. The Apex court in Kunal Singh's case (supra) was dealing with a similar matter where even during the proceedings before the High Court no plea was taken that Section 47 of the Act is applicable. The Apex Court held that once the Act is applicable the question as to how it is to be applied is a pure question of law and as such permitted the Appellant in that case to raise this plea for the

first time in the Apex Court. The relevant observations of the Apex Court in this behalf read as follows:

9. Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected u/s 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of Section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The Section further provides 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; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from Sub-section (2) of Section 47. 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 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.

14. Similar view has been taken by the Apex court in *Bhagwan Dass and Another Vs. Punjab State Electricity Board*, in which the Court made the following observations:

18. Appellant No. 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 concerned officers of the Board, to our mind, was deprecable.

19. We understand that the concerned officers were acting in what they believed to be the best interests of the Board. Still under the old mind-set 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 largess but their right as equal citizens of the country.

15. The learned Single Judge has followed the aforesaid judgment in this case. The judgment of the learned Single Judge is totally in consonance with the judgment of the Apex court and the law laid down by this Court in Ankush Dass's case (supra). We however feel that the Petitioner could not have been denied the benefit of the back-wages.

16. In view of the above discussion, we direct that the HRTC shall within three weeks of the receipt of this judgment re instate the Petitioner and post him at a post where he can perform the light duties. We further direct that within 8 weeks from today the HRTC shall pay the entire back-wages to the Petitioner. In case the back-wages are not paid within the aforesaid time the HRTC shall be liable to pay interest @ 9% p.a. w.e.f. 19.9.2001 till date of payment.

17. In view of the above discussion, the LPA No. 6 of 2010 filed by the HRTC is dismissed and LPA No. 45 of 2010 is allowed in the aforesaid terms. No order as to costs.