

(2010) 05 DEL CK 0106
In the Delhi High Court
Case No : Writ Petition (C) 3113 of 1995

J.K. Satija

APPELLANT

Vs

Indian Oil Corporation and Another

RESPONDENT

Date of Decision : 11-05-2010

Acts Referred:

Companies Act, 1956 — Section 617
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 47

Citation : (2010) 126 FLR 863 : (2010) 4 LLJ 484 : (2010) 3 SLR 769

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : V.K. Rao and Vaibhav Kalra, for the Appellant; Jagat Arora and Rajat Arora, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The petitioner by this writ petition impugns the order dated 4th August, 1995 of the respondent Indian Oil Corporation (IOC) retiring the petitioner from service with effect from 31st August, 1995 on medical grounds. The petitioner also sought a direction against the respondent IOC to allow the petitioner to work till he attains the age of superannuation i.e. 58 years on 31st December, 2002.

2. It is the case of the respondent IOC that it has a "Premature Retirement Scheme on Medical Grounds"; under the said Scheme the competent authority of respondent IOC on the basis of the recommendations made by the Medical Board can order premature retirement of the employees falling under the category mentioned in the Scheme; this premature retirement is given by offering adequate monetary compensation to the concerned employee; that the Medical Board consists of eminent doctors; that after the examination of the petitioner, it was reported that the petitioner cannot perform his duties effectively; that the report of the Medical Board was considered by the competent authority which then took the decision to retire the petitioner from services in accordance with the Scheme aforesaid. It is further informed that in accordance with the said

Scheme the petitioner had been paid terminal benefits of Rs. 4,64,620/-. It is further pleaded that the decision to retire on medical grounds does not constitute a disciplinary action or taking any punitive action and has no bearing to the past records/conduct of the employee. The respondent IOC has along with its counter affidavit also filed the report of the Medical Board which found that the petitioner "has disturbed mental functions; his comprehensions and understanding is poor; he cannot give straight answers to simple questions; gets lost during conversations and drifts away from the points on the discussion; his speech comes indistinct as well as incoherent while he is talking and he cannot write simple sentences to dictation and gets lost."

3. The petitioner in the petition, besides contending that the order of such premature retirement has never been served on him, has contended that he is not suffering from any such ailment or illness because of which he could not perform his duties; that the result of the Medical Board was not disclosed to him and no show cause notice was given to him. The petitioner has also in the petition referred to his career and promotions in the respondent IOC. He has thus contended the action of his premature retirement to be illegal.

4. Notice of the petition was issued on 28th August, 1995. Rule was issued in the petition on 14th May, 1996. On 14th July, 1998 this Court directed production of the record of the medical examination of the petitioner and which was on the next date directed to be placed on record. The writ petition was dismissed for non prosecution on 24th February, 2009 and thereafter restored on 20th July, 2009. The writ petition was again dismissed for non prosecution on 17th December, 2009 and restored on 6th January, 2010.

5. The senior counsel for the petitioner commenced his submissions on 16th April, 2010. It was enquired from the counsels whether the Scheme aforesaid of the respondent IOC would not be contrary to The Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995. The counsel for the respondent IOC on that date contended that the premature retirement of the petitioner was on 31st August, 1995 while the Act aforesaid came into force on 7th February, 1996 and hence the provisions of the said Act would not be applicable to the petitioner. However, the attention of the counsels was drawn to the judgment of the Division Bench of this Court in Delhi Transport Corporation Vs. Sh. Harpal Singh, holding that the benefit of the said Act shall also be extended to the pending proceedings. The counsels however informed that they had not considered the matter in the said perspective and sought time to address.

6. The senior counsel for the petitioner on the next date contended that that "disability" as defined in Section 2(i) of the Act means inter alia mental retardation and mental illness and which would cover the grounds on which the petitioner was found unfit by the Medical Board constituted by the respondent IOC. I may notice that the notes of the Personnel Section of the respondent IOC, filed as Annexure-R2 to the counter affidavit, record that the petitioner is suffering from "dementia".

7. The counsel for the respondent IOC however on that date sought time to take instructions. The counsel for the respondent IOC has today contended that he has instructions to oppose the petition.

8. The Premature Retirement Scheme on Medical Grounds has been approved by the Board of Directors of the respondent IOC. However, the same is not a statutory scheme. The said Scheme empowers the Competent Authority constituted thereunder to refer an employee to Medical Board inter alia when an employee owing to physical and mental infirmity or deterioration in general health is unable to effectively discharge his duties; it also enables the employees to voluntarily seek premature retirement on medical grounds. The Scheme also provides for payment of full PF contribution of the employer, gratuity, encashment of Earned Leave, encashment of sick leave, resettlement concession, notice period pay, superannuation benefit, post retirement medical facility etc. to an employee prematurely retired under the said Scheme.

9. The Disability Act was enacted to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region adopted in December, 1992 to which India is a signatory. Section 47 of the said Act provides that no establishment shall dispense with or reduce in rank, an employee who acquires a disability during his service. If the employee after acquiring the disability is not suitable for the post he was holding, it requires the establishment to shift the said employee to some other post with the same pay scale and service benefits. It further provides that if it is not possible to adjust the employee against any post, he is to be kept in supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. An "establishment" is defined in Section 2(k) of the Act as a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in Section 617 of the Companies Act, 1956 and includes Departments of a Government. There is no doubt that the respondent IOC is an establishment within the meaning of the said Act.

10. The Supreme Court in V Kunal Singh Vs. Union of India (UOI) and Another, has held that if an employee acquiring disability is not protected, not only the employee but possibly all those who depend on him would also suffer. Section 47 has also been held to be mandatory.

11. The Premature Retirement Scheme on Medical Grounds of the respondent IOC enabling the respondent IOC to prematurely retire an employee acquiring disability during the course of employment is thus clearly contrary to Section 47 of the Disability Act. The action of the respondent IOC of prematurely retiring the petitioner is also violative of Section 47 of the Act and has to be struck down on this ground alone.

12. I have already observed above that even though the petitioner was prematurely retired prior to coming into force of the Disability Act but since this

writ petition challenging the action of the respondent IOC is pending, as per the dicta in Harpal Singh (supra), benefit of the Act has to be extended to the petitioner. I may even otherwise notice that even prior to the enactment of the said Act, the Courts were interfering in the action of termination of employment on medical grounds. Reference in this regard may be made to Anand Bihari and others Vs. Rajasthan State Road Transport Corporation, Jaipur and another, and to D.T.C. Vs. Suraj Bhan and Others,

13. The counsel for the respondent IOC has contended that though this petition has remained pending for nearly 15 years and even after the coming into force of the Disability Act, the petitioner has neither made any pleadings with respect to the said Act nor sought support from the same. However, such inaction of the petitioner would not prevent this Court from extending the benefit under the said Act to the petitioner if found entitled to. I also find the material on record to be sufficient for extending the said benefit. I have enquired from the counsel for the respondent IOC also whether any other pleadings are necessary for determining the applicability of the Act; if so, opportunity therefore can be given. The counsel has however fairly stated that no further pleadings are necessary.

14. The counsel for the respondent IOC has also drawn attention to Kanshi Ram Sharma v. Union of India 2002 (4) SLR 292 where a Single Judge of the Punjab & Haryana High Court has upheld the action of the respondent IOC of premature retirement of another employee under the said Scheme and further held that there is no mandate under the regulations of IOC to offer a job in a lower category to such an employee. However, in the said judgment the provisions of the Disability Act were not even considered.

15. The counsel for the respondent IOC next invites attention to Union of India (UOI) and Another Vs. S.B. Vohra and Others, to contend that ordinarily the Courts ought not to exercise the power of the authorities and ought to, in the first instance allow the authorities to perform their functions and should not usurp the said jurisdiction to themselves. The counsel contends that the matter ought to be remanded to the authorities of the respondent IOC to decide afresh in the light of the provisions of the Disability Act.

16. The aforesaid observations in S.B. Vohra (supra) were made with respect to the statutory authorities. As aforesaid, the Scheme aforesaid of respondent IOC is not a statutory scheme. I have nevertheless considered the viability of so remanding the matter but do not find it to be appropriate in the present case. The action of the respondent IOC of prematurely retiring the petitioner as aforesaid has to be necessarily struck down. The only question which remains for consideration is the relief to be granted to the petitioner. The petitioner was prematurely retired on 31st August, 1995 instead of 31st December, 2002 on which date he would have retired on attaining the age of superannuation. The effect of striking down the order of premature retirement would be that the petitioner would have continued to be in service and would have been entitled to emoluments till the date of superannuation on 31st December, 2002. However,

now the equities have to be balanced considering:

- (i) That the petitioner received the terminal benefits in the sum of Rs. 4,64,620/- in 1995 instead of on 31st December, 2002/2003.
- (ii) The petitioner has availed of pension from 31st August, 1995 onwards.
- (iii) The petitioner has not worked for the respondent IOC.
- (iv) It is quite possible that the petitioner owing to his disabilities aforesaid could not have continued to work and may have been required to avail of leave without pay also.
- (v) The petitioner failed to invoke the provisions of the Disability Act and which if invoked could have made the respondent IOC consider the matter in the correct perspective.

17. It is felt that if the matter is remanded back to the authorities of the respondent IOC to take the decision on the aforesaid aspect, it may start another round of litigation between the parties and which course is not found expedient. This Court has therefore considered the matter in the light of the aforesaid. In my opinion, equities would be balanced by, while quashing/setting aside of the order of premature retirement of the petitioner, granting the following reliefs to the petitioner:

- (i) The petitioner would be entitled to pension at such rates as if he had continued to remain in employment till the age of superannuation. The petitioner be paid enhanced pension, if any, on the said basis with effect from 1st January, 2003. The arrears, if any, of pension from 1st January, 2003 till 30th April, 2010 be paid within eight weeks of today failing which the same shall incur simple interest at 9% per annum. The pension with effect from 1st May, 2010 be paid at the enhanced rates.
- (ii) The petitioner for the period 1st September, 1995 to 31st December, 2002 be paid 60% of the emoluments which he would have earned if continued in service of the respondent IOC by virtue of Section 47 (supra) of the Disability Act. The said percentage has been arrived at after considering the factors mentioned hereinabove. Out of the amounts so payable, the amount received as pension will have to be deducted. The amounts so found due to be also paid within eight weeks of today failing which the same shall incur simple interest at 9% per annum.
- (iii) The additional terminal benefits, if any, payable to the petitioner, treating the petitioner to have retired on attaining the age of superannuation on 31st December, 2002 be also paid to the petitioner within eight weeks of today failing which the same shall incur simple interest at 9% per annum.
- (iv) The petitioner is also awarded costs of this petition of Rs. 20,000/-