

(2003) 10 UK CK 0031

In the Uttarakhand High Court

Case No : Writ Petition No. 170 of 2001 (SS)

Madan Mohan Mamgain

APPELLANT

Vs

Chief Engineer (Distribution) Electricity Power Corporation
and another

RESPONDENT

Date of Decision : 21-10-2003

Acts Referred:

Constitution of India, 1950 — Article 21
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full
Participation) Act, 1995 — Section 47

Citation : (2004) 1 UC 513

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

**Advocate : Sri Ram Ji Srivastava, for the Appellant; Sri Ashish Joshi and Vijai
Kumar for Respondents, for the Respondent**

Final Decision : Allowed

Judgement

Rajesh Tandon, J.—Heard the Learned Counsel for the parties at great length.

2. The present writ petition has been filed challenging the order dated 8.4.2000 passed by Respondent No. 2, the Executive Engineer, Electricity Distribution Division, Srinagar, District Pauri Garhwal.

3. Brief facts giving rise to the present writ petition are that the Petitioner is a permanent employee of Electricity Board, Srinagar, District Pauri Garhwal. While he was on duty he met with an accident on 26th July, 1996 in village Kaparh District Pauri Garhwal when he was repairing some fault in the electricity poll. The Petitioner has lost his both the legs. He was admitted to District Hospital, Pauri Garhwal and on medical advise he was shifted to Safdarjang Hospital, New Delhi from where he was discharged on 10th September, 1996. The Petitioner further joined his duty on 3rd September, 1997.

4. The grievance of the Petitioner is that his four colleagues who were junior to

him were given promotion on the post of Sub-Station Officer while the Petitioner has not been given promotion.

5. The Petitioner has filed a Writ Petition No. 41962 of 2000 before the Allahabad High Court and on 28th September, 2000, Allahabad High Court has directed the Petitioner to submit his representation before the appropriate authority and he may decide the same within three months. The relevant portion of the order is quoted below.

6. Accordingly, I direct the Petitioner to file afresh representation before the concerned authority alongwith a certified copy of this judgment and complete copy of writ petition within six weeks from today and if a representation is being made within the time stipulated above, the same shall be decided by the concerned authority by passing a reasoned order preferably within a period of three months of receipt of the representation. The decision shall be communicated to the Petitioner apart from any other mode, by registered post also immediately on passing orders on the representation.

7. The concerned authority shall decide the matter exercising its unfettered discretion on the basis of the record before it without being prejudiced by any of the observations made in this judgment.

8. According to the Petitioner he has submitted his representation on 1.11.2000 but the Respondent No. 2 became annoyed with the Petitioner and in an arbitrary manner he rejected the representation of the Petitioner on 7.12.2000. On very next day i.e. 8.12.2000 Respondent issued three months notice to the Petitioner to quit from service. Relevant part of the notice is quoted below.

9. The Petitioner has challenged the aforesaid order by way of the present write petition.

10. On 3.3.2001 this Court has passed the following order:

Notice has been accepted by the learned Standing Counsel on behalf of opposite parties. He prays for and is allowed to file counter affidavit within three weeks. List after three weeks.

In the meantime the operation of order dated 8.12.2000 contained in Annexure-5 to the writ petition (sic) main stayed.

11. Pursuant to the aforesaid order the Petitioner is still continuing on the post.

12. In the counter affidavit Respondents have stated that the Petitioner is 100% handicapped and is not in a position to hold any post.

13. Rejoinder affidavit has been filed by the Petitioner stating therein that he is able to do table work. The Respondents have no power under U.P. State Electricity Board (Employees Retirement) Regulation, 1975 to retire the Petitioner until he completes 20 years of qualifying service or 50 years of age.

14. Right to live with dignity has been held to be a fundamental right as

contained under Article 21 of the Constitution of India. Article 21 protects the dignity of the persons.

15. In the case *Islamic Academy of Education and Another Vs. State of Karnataka and Others*, the Apex Court has relied upon the judgment in *Kapila Hingorani v. State of Bihar*, (2003) 6 SCC 1 and *Munn v. Illinois*, 94 US 113 and has observed human condition in the light of Article 21 of the Constitution of India. The observations of the Apex Court are quoted below:

Proper education" Nain Palkhivala said, should lead to civilization. Recently in *Kapila Hingorani v. State of Bihar* (supra) a Bench of this Court noticed the following observations of Field J. in *Munn v. Illinois* as to what is life, which was in the following terms:

Something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed.

Therein it was noticed:

62. The right to development in the developing countries is itself a human right. The same has been made a part of WTO and GATT. In the *World Trade Organization, Law, Practice and Policy* (Oxford) by Matusushita Schoebaum and Mauroidis at p. 389 it is stated:

The United Nations has proclaimed the existence of a human right to development. This right refers not only to economic growth but also to human welfare, including health, education, employment, social security, and a wide range of other human needs. This human right to development is vaguely defined as a so-called third generation human right that cannot be implemented in the same way as civil and political human rights. Rather, it is the obligation of States and intergovernmental organizations to work within the scope of their authority to combat poverty and misery in disadvantaged countries.

In the said scenario this Court in *Kapila Hingorani* observed:

71. The States of India are welfare State. They having regard to the constitutional provisions adumbrated in the Constitution of India and in particular Part IV thereof laying down the fundamental duties are bound to preserve the practice to maintain the human dignity." "To achieve this, the promotion of human development and the preservation and protection of human rights proceed from a common platform. Both reflect the commitment of the people to promote freedom, the well being and dignity of individuals in the society. Human development as a human right has a direct nexus with the increase in capabilities of human being as also the range of things they can do. Human development is eventually in the interest of society and on a larger canvas, it is in the national interest also. As a human right, human development finds its echo in several areas as, for example, in excellence in professional education, be it the study of Medicine, Engineering or Law. Progress and development in these fields will not only give a boost to the economy of the country but also result in better living

conditions from for the people of India.

16. Looking to this aspect of the matter the Act was passed known as The Person with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The preamble of the Act laid down as under:

An Act to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region.

17. In the case Narendra Kumar Chandla v. State of Haryana and Others 1994 (68) FLR 942 (SC) the Apex Court has held as under:

Article 21 protects the right of livelihood as an integral facet of right to life. When an employee is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the posts he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge the duties as a Carrier Attendant is unjust. Since he is a matriculate, he is eligible for the post of L.D.C. For L.D.C. a part from matriculation passing in typing test either in Hindi or English at the speed of 15/30 words per minute is necessary. For a Clerk, typing generally is not a must. In view of the facts and circumstances of this case, we direct that Respondent Board to relax his passing of typing test and to appoint him as a L.D.C. Admittedly on the date when he had unfortunate operation, he was drawing the salary in the pay scale of Rs. 1400-2300. Necessarily, therefore,, his last drawn pay has to be protected. Since he has been rehabilitated in the post of L.D.C. we direct the Respondent to appoint him to the post of L.D.C. protecting his scale of pay of Rs. 1400-2300 and direct to pay all the arrears of salary.

18. Section 47 of the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995 reads as under:

47.(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

19. The Learned Counsel for the Petitioner has placed reliance on the case Kunal Singh Vs. Union of India (UOI) and Another, . where the Apex Court has given the benefit of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The observations of the Apex Court are quoted below:

The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of the 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 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 (sic) 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.

20. In view of the findings of the Apex Court no employee can be terminated or reduced in rank by the employer on the basis of disability accrued to him during his service.

21. Consequently the writ petition succeeds. Order dated 8.12.2000 passed by the Respondent No. 2 is quashed. The Petitioner shall get his salary and all other service benefits according to rules. No order as to costs.