

(2002) 08 PAT CK 0030
In the Patna High Court
Case No : L.P.A. No. 733 of 2002

Mamta Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-08-2002

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 18, 25, 34, 47, 66

Citation : (2002) 4 PLJR 125

Hon'ble Judges : Ravi S. Dhavan, C.J.; R.N. Prasad, J

Bench : Division Bench

Advocate : Kamal Kishore Mishra, for the Appellant; Rajeshwar Prasad, for State and Jitendra Prasad, for Zila Parishad, for the Respondent

Judgement

Ravi S. Dhavan, C.J.—Mamta Kumari filed a writ petition before the High Court after her father, Sarda Nand Tiwari, had suffered a paralytic attack in the lower limbs, thereafter an attack of tuberculosis and had to go on medical leave for three years between 1992-95. When her father attempted to join the office half paralyzed, he was not given the back wages. Her father had to file a writ petition, CWJC No. 7748 of 1996 in 1996 to seek reliefs. The High Court was of the opinion that the claim of the Petitioner for salary during the period of sick leave could not be ignored. The superior authority under whom the Petitioner was serving was under a direction to consider the claim, in effect, for medical leave. In case this relief had been granted the Petitioner perhaps would have received some emoluments as a consequence of his employment. The Court was of the opinion that as long as the Petitioner is allowed to continue in service and no disciplinary action is taken, in accordance with law, it would not be proper for the authorities to withhold his salary, provided he performs his duties. The order of the High Court is dated 5 March 1997. The Petitioner's father did not get his salary despite the High Court directing that his sickness, his leave, medical or otherwise may be examined and payment made accordingly. The Petitioner's father was sick and paralysed. He was down but not out of service. He filed a

petition complaining of inaction by State-Respondents contemptuous to High Court's order MJC No. 3003 Of 1997 He sought interim relief from the Court. It was denied. But, in the end the contempt proceedings record on 21 April 1999 that on a show cause notice it was stated by the Deputy Development Commissioner/ Chief Executive Officer, Zila Parishad, Patna, that arrears of Rs. 27,242.30 was paid by cheque dated 15.4.1999. Even after an order of the High Court it took a sick, paraded, disabled public servant two years to shake the bureaucracy on a contempt action. A soulless babu's writ still rules Bihar, law or no law. And in the present case, there was a law, a special law, but with disdain along with the babu's bidi dona and Kullarh it was clumped into the waste basket, if there was any in the office.

2. The plight of the Petitioner's father, a paralysis ridden public servant, by status a petty babu himself was becoming a case of concern; a plea for basic human rights for sustenance.

3. Gradually, the health of the Petitioner's father took for the worst and incapacitated him beyond his paralyzed condition. The daughter now asked the authorities concerned, whether the Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Patna; the Collector and District Magistrate, Patna, the Zila Parishad, Patna or the State of Bihar, for employment for sustenance as her father was immobile.

4. The daughter now needs a job to take care of her father and mother when earlier the father had a job to take care of his daughter. What exactly was the job of the Petitioner's father. He was a typist. He worked with the office of the District Engineer, Zila Parishad, Patna. He joined this organisation in 1975. But for the fact that he has been reduced to an immobile invalid, he would be still on the job and earning for his family. It is admitted that he had discharged 24 years of service before being disabled.

5. Many issues arise in this matter. Before the Court one of them is, can any person lose his public service for the only sin that during service he has been disabled; not dead, but dead for service? Would the rule of harness in service or compassionate appointment not apply in providing employment to whoever may be looking after such a public servant who has been disabled? Has the law not provided for such an unkind situation? Would the State tell a public servant rendered disabled during service: you are unfit for the job now and the time has come for you to go?

6. It is possible that the daughter who brought the petition before the High Court which did not succeed with a direction to the State-Respondents, hence the appeal, pleads that in her father's case justice still eludes the family. She was not aware that the law has provided for such situations.

7. Seven years ago the Parliament had enacted the Persons with Disabilities, (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. This came into effect in 1996. This is a social welfare legislation in keeping with the

preamble of the Constitution and its socialist goal to provide equal opportunities to all. This legislation is for the disabled but in the State of Bihar it means nothing to those who run the government. The very Preamble to the Act has been left unread not even lip service has been paid to the Act. In the circumstances, the Court cannot refrain from making a comment that while the legislature provides the law, the execution of it at the hands of the executive remains a dead letter.

8. India seems to participate in international conferences and so readily adopts Proclamations out of these conferences but when it comes closer to home and there is a need to implement the goals and objectives, beyond passing the law, the spirit and determination to implement the law remains a dead letter and the will and interest is lacking. This case is one instance.

9. The Act which is known as the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was the result of India along with other nations, being a signatory at the Economic and Social Commission for Asian and Pacific Region, held at Beijing on 1st to 5th December 1992. India participated at this convention and adopted the proclamation on the Full Participation and Equality of people with Disabilities in Asia and the Pacific region and to dedicate 1993-2002 to the disabled.

10. What earthly use is it to anyone when India's representatives represent the nation at international conventions, to adopt international norms, universal declarations, and the nation enacts the laws if these are never implemented. Five star conventions abroad, brought home the year of the woman, the year of the child and the year of the disabled. But the nation's media blasts instances of rape and crimes against woman, children not excluded, child abuse and disabling the disabled without assistance.

11. Today, any concern during the decade, declared by the Act, when dedicated efforts were required to adopt the obligation of the law time has run out and in Bihar this enactment is a dead letter. The Court cannot understand a situation that the State will turn a blind eye to this Act and not provide for persons with disabilities so that they have equal opportunities and protection of rights and full participation in living a life worth living.

12. The Court is concerned because this is the second case which has come to the High Court. An earlier one was of a doctor who had qualified in her written tests but was being denied her employment on the ground of disability in one of her legs, which impairment had nothing to do with her discharging the functions of a doctor. In that case, the State of Bihar conveniently passed on the responsibility to the Bihar Public Service Commission as if there was something to be taken care of at the recruitment stage. In the present case, the situation is not one of recruitment. It is a case of typist, a very humble position in public employment. He fell sick and never came out of the convalescing period to return to normalcy. But he did report for work. By this time he was paralysed. If the

State of Bihar does not have a social welfare scheme in public employment for its servants who serve her then this State can hardly pretend that it is not aware of this enactment, more so when the Court has already reminded it about this enactment in the earlier case. Then, the State is supposed to know the laws which govern it.

13. The typist (Petitioner's father) was employed with the Zila Parishad, Patna, a local body constituted under a statute. Its representing officer and authority was the Deputy Development Commissioner. When the Petitioner sought for relief whether she could receive a job in lieu of her father's disability, the responsibility was conveniently passed on to the Zila Parishad. This is again one of those hazards of superseding institutions of self government by an executive power and power being enjoyed and exploited during the supersession of institutions of self government, but when it comes down to taking responsibility it is conveniently shifted by the administrators to the incorporated body of the government. During the supersession period all are one. This case is also one example where between the government and the local board, which the Zila Parishad is, neither will take responsibility on what to do with a disabled typist who cannot work. The State will neither provide for sustenance in disability nor succor to provide employment to his daughter who now has her father as her responsibility. It is on record of the earlier petition that when the Petitioner's father attended office her mother used to accompany him and remain at the office to bring her father home. The disability of the Petitioner's father was known at the establishment where he worked.

14. The Act puts an obligation on the State to address issues faced by persons with disabilities. This is Section 18. The Act does not permit either the State Government or the local authorities to escape from their obligation to take certain steps to meet disabilities (Section 25). The Act calls upon the State Government to open special employment exchanges for disabled people (Section 34). This Act refers to affirmative action. Normally this expression is not known to exist as a formal expression on the statute book as it is usually used for such action to be taken against the government or brought in Court. But Chapter VII of the Act contains a heading "Affirmative Action". This chapter speaks of aids and appliances to persons with disabilities. The Act ensures that there will be non-discrimination in government employment to protect persons with disabilities (Section 47). Then, the Act refers to social security under Chapter XIII whether the State Government or the local authorities all are under an obligation to provide for rehabilitation, insurance schemes for employees with disabilities and unemployment allowance (Sections 66, 67 and 68).

15. The crucial question is what has the State of Bihar done for its employees, in public employment, carrying disabilities? There is no time for long adjournments as are normally sought by the State through its attorneys; this is escapism from reality. As such people with disabilities whose locomotion is beyond repair and brought to a halt, their families have lost a bread earner. By right they look for

protection under this Act. Already this Court has before it a case where pensioners have asked a lot of uncomfortable questions from the State Government about expenditures which are being made within the government by people in power. The questions are uncomfortable (or the State government, but only so when it forgets or is unmindful of the class who is the underdog. The disabled in public employment, his family without succor, if not provided for, is an equal citizen in a sovereign, socialist, secular, democratic republic, even though he or she does not have the upper hand.

16. The daughter seeks an answer from the Court whether her father has a place under the Act or under the policy of the government known as rule of harness for compassionate appointments. She says her father is as good as dead. The Court does not have an answer for her. This answer will have to come from the State Government. The government cannot sleep for six years since this Act had been notified.

17. The Court is not looking for an answer from the government in an individual case. The answer will have to come as a policy on what the government has done under the Act. The government needs to be reminded that this is a second case coming before the Court. Let this answer be provided to the Court by Monday (26.8.2002), even if it means burning the mid night oil. The responsibility for persons like the Petitioner's father is on the government. Her father has a right under the Act. Persons like him, and he, are on the government's conscience, if it has any.

18. Put up on Monday (26.8.2002) in the supplementary list.

19. The Registrar General will send a copy of this order to the Legal Remembrancer and Law Secretary, Bihar.