
(2013) 12 MP CK 0179

In the Madhya Pradesh High Court

Case No : Writ Petition No. 20324 of 2013

M.P. State Electricity Board

APPELLANT

Vs

Mannu Lal

RESPONDENT

Date of Decision : 02-12-2013

Acts Referred:

Citation : (2013) 12 MP CK 0179

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : Anoop Nair and Mr. K. Rohan, for the Appellant;

Final Decision : Dismissed

Judgement

Sanjay Yadav, J.—Heard. Orders-dated 1.10.2010 and 19.7.2013 are being assailed vide this petition.

2. Whereas, by order-dated 1.10.2010, Labour Court, Bhopal, while entertaining an application u/s 31 read with Section 61 of the Madhya Pradesh Industrial Relations Act, 1960 (for short "1960 Act"), has set aside the order-dated 17.1.2002, whereby the respondent-workman was retired from services w.e.f. 30.11.2011 granting disability/invalid pension. By order-dated 19.7.2013, the Appellate Court dismissed the appeal preferred by the petitioner.

3. Relevant facts giving rise to the dispute, very briefly, are that the respondent-workman, while engaged as Line Helper with the petitioner and posted at Rajgarh, Rural Headquarters at Kalipeeth Division Rajgarh, was injured during course of his employment on 3.1.2001. The injuries left him incapacitated by 70%. He was, therefore, retired on invalid pension w.e.f. 30.11.2001 by order-dated 17.1.2002.

4. Alleging violation of mandate of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for brevity "1995 Act"), the respondent-workman raised grievance before the Labour

Court vide application u/s 31 read with 61 of 1960 Act.

5. The Labour Court, discarding the defence of the petitioner-employer that the workman having been incapacitated by 70% was invalid for future employment, therefore, retired on medical ground on invalid pension under Rule 35 of the M.P. Civil Service (Pension) Rules, 1976, found that as the provisions of 1995 Act are applicable to the petitioner-establishment and that the efforts as mandated u/s 47 of the 1995 Act having not taken recourse to, were not justified in dispensation with the services of the petitioner.

6. Section 47 of 1995 Act stipulates-

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.

7. It has been held in Kunal Singh Vs. Union of India (UOI) and Another, -

12. Merely because under Rule 38 of CCS Pension Rules, 1972, the appellant got invalidity pension is no ground to deny the protection, mandatorily made available to the appellant u/s 47 of the Act. Once it is held that the appellant has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay-scale and service benefits; if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation, whichever is earlier. It appears no such efforts were made by the respondents. They have proceeded to hold that he was permanently incapacitated to continue in service without considering the effect of other provisions of Section 47 of the Act.

8. In Bhagwan Dass and Another Vs. Punjab State Electricity Board, , it is held-

20.In view of the provisions of Section 47 of the Act, the appellant must be deemed to be in service and he would be entitled to all service benefits including

annual increments and promotions etc. till the date of his retirement. The amount of terminal benefits paid to him should be adjusted against the amount of his salary from March 22, 1997 till date. If any balance remains, that should be adjusted in easy monthly installments from his future salary. The appellant shall continue in service till his date of superannuation according to the service records. He should be reinstated and all due payments, after adjustments as directed, should be made to him within six weeks from the date of presentation of a copy of the judgment before the Secretary of the Board.

9. Thus, even when an employee is injured in course of his employment and is incapacitated, he is entitled for the protection u/s 47 of the 1995 Act.

10. In the case at hand, as reflected from the order passed by Labour Court that no efforts were made by the petitioner-employer to shift the respondent-workman on a suitable alternative post with same pay scale and service benefits.

11. In view whereof, the contention raised on behalf of the petitioner-employer that the Labour Court and Industrial Court grossly erred in directing reinstatement and extending the benefit as per provisions of Section 47 of 1995 Act, cannot be accepted merely because Rule 35 of the M.P. Civil Service (Pension) Rules, 1976 provides for invalid pension.

12. The orders-dated 1.10.2010 and 19.7.2013, therefore, cannot be faulted with. In the result, petition fails and is dismissed. No costs.