
(2013) 11 JH CK 0068
In the Jharkhand High Court
Case No : Writ Petition (S) No. 2535 of 2008

Nimmi Khalkho

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 22-11-2013

Acts Referred:

Citation : (2014) 2 AJR 249

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Saibal Mitra, for the Appellant; Anshuman Kumar, J.C. to Sr. S.C.-I, for the Respondent

Final Decision : Allowed

Judgement

S. Chandrashekhar, J.—"Whether an employee who suffered injury while on duty can be denied the benefit of regular service on the ground that the employee is unable to discharge his/her duty" is the only issue involved in this case. The brief facts of the case are that, the petitioner was appointed as A.N.M. Nurse on 23.02.1977. While she was working as A.N.M., on 23.12.2004 during her official duty of "catch up round", she met with an accident in which she sustained injury in her head and suffered disability. The petitioner was admitted in I.C.U. between period 23.12.2004 and 04.01.2005. The Civil Surgeon-cum-Chief Medical Officer, Ranchi gave recommendation that in view of disability of the petitioner, she should be given suitable work. Thereafter, the petitioner gave her joining on 22.07.2005. The petitioner was examined by the Medical Board on 16.03.2007 and in view of the report that the petitioner is not physically capable of doing her work, by order dated 25.04.2007 the Incharge, Medical Officer, Primary Health Centre, Kanke removed the petitioner from service. As directed by Memo dated 25.04.2007, the petitioner was terminated from service on the ground of disability. In these facts, the petitioner has approached this Court seeking quashing of order dated 25.04.2007.

2. A counter-affidavit has been filed contending that, the petitioner was not able

to discharge her duty and even when she was permitted to join her duty, she has been doing work with the help of her son. A plea has been taken by the respondents that the petitioner herself made request for payment of retiral benefits and her son submitted duly signed pension papers and some of the retiral benefits except final pension to the petitioner, have been granted.

3. Heard the learned counsel for the parties and perused the documents on record.

4. The learned counsel appearing for the petitioner submits that in violation of statutory provision as contained in Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the order of termination dated 25.04.2007 has been passed. He has further submitted that in view of the right which has been conferred upon the disabled persons, even though the petitioner has submitted papers seeking grant of retiral benefits, the right which has been conferred upon the petitioner cannot be denied to her on such ground.

5. As against above, reiterating the stand taken in the counter-affidavit, the learned counsel for the respondents has submitted that since the petitioner was not able to even walk independently and as she herself made request for grant of pensionary benefits, the petitioner was removed from service And she has been granted most of the retiral benefits except, final pension.

6. Before deciding the Issue, it would be useful to notice the relevant provisions under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

2.(i) "disability" means-

- (i) blindness;
- (ii) low vision;
- (iii) leprosy-cured;
- (iv) hearing impairment;
- (v) locomotor disability;
- (vi) mental retardation;
- (vii) mental illness;

2.(j) "employer" means,-

(i) in relation to a Government, the authority notified by the Head of the Department in this behalf or where no such authority is notified, the Head of the Department; and

(ii) In relation to an establishment, the Chief Executive Officer of that establishment;

2(k) "establishment" means 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 (1 of 1956) and included Departments of a Government;

.....

2.(o) "locomotor disability" means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy;

.....

2.(t) "person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority.

7. On a perusal of the relevant provisions as contained in the Act, it is abundantly clear that the persons who have suffered disability as mentioned in Section 2(i) of the Act and the disability is to the extent of 40%, cannot be denied benefit of regular service on the ground that the employee is not able to (discharge his/her duty.

8. In Union of India (UOI) and Another Vs. National Federation of the Blind and Others, tracing history of this beneficial legislation, the Hon"ble Supreme Court has held as under.

20. India as a welfare State is committed to promote overall development of its citizens including those who are differently abled in order to enable them to lead a life of dignity, equality, freedom and justice as mandated by the Constitution of India. The roots of statutory provisions for ensuring equality and equalization of opportunities to the differently abled citizens in our country could be traced in Part III and Part IV of the Constitution. For the persons with disabilities, the changing world offers more new opportunities owing to technological advancement, however, the actual limitation surfaces only when they are not provided with equal opportunities. Therefore, bringing them in the society based on their capabilities is the need of the hour

21. Although, the Disability Rights Movement in India commenced way back in 1977, of which Respondent No. 1 herein was an active participant, it acquired the requisite sanction only at the launch of the Asian and Pacific Decade of Disabled Persons in 1993-2002, which gave a definite boost to the movement. The main need that emerged from the meet was for a comprehensive legislation to protect the rights of persons with disabilities. In this light, the crucial legislation was enacted in 1995 viz., the Persons with Disabilities (Equal Opportunities, Protection of Rights and full Participation) Act, 1995 which empowers persons with disabilities and ensures protection of their rights. The Act, in addition to its other prospects, also seeks for better employment opportunities to persons with disabilities by way of reservation of posts and establishment of a Special

Employment Exchange for them.

9. In Kunal Singh Vs. Union of India (UOI) and Another, the Hon"ble Supreme Court has held as under:

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 a 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 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 dear 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 serves its purpose must be preferred to the one which obstructs the objects 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.

10. Now adverting to the contention of the respondents, I find that this has not been denied by the respondents that the petitioner suffered disability in course of her service, in paragraph No. 5 of the writ petition, the petitioner has averred as under:

5. That the petitioner has joined in the Government Service on 23.02.1977 and has been doing her service as A.N.M. Satisfactorily without any complain. That the petitioner when posted as A.N.M. In Primary Health Centre, Kanke, Ranchi on 23.12.2004 during her official duty of Catch up round she met an accident and sustained injury in her head and become disable.

11. In the counter-affidavit, the respondents have admitted that the petitioner suffered disability in course of service. The paragraph No. 8 of the counter-affidavit is extracted below:

8. That in reply to para-5 of the writ application that it is true that the petitioner in the Government service 23.02.1977. She met an accident on 23.12.2004 while returning to her residence in Motorcycle with her son and sustained injury.

12. I further find that that only ground taken against the petitioner for removing her from service is that the Civil Surgeon-cum-Chief Medical Officer opined that she is not able to discharge her duty. In this view of the matter, I am of the opinion that the plea taken by the respondents for removing the petitioner from service is not sustainable in law. The plea taken by the respondents that the petitioner herself has applied for grant of retiral benefits and her son submitted necessary papers also cannot be justified in view of the specific provision contained in Section 47 of the Act. An employee who has suffered disability during the course of his/her employment, remains an employee and would be entitled for all the benefits of service.

13. In Bhagwan Dass and Another Vs. Punjab State Electricity Board, a question arose before the Hon"ble Supreme Court whether a person who has suffered disability in course of employment can be denied benefit of regular service and the Hon"ble Supreme Court has held as under:

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 officers concerned of the Board, to our mind, was depreciable.

19. We understand that the officers concerned were acting in what they believed to be the best interests of the Board. Still under the old mindset it would appear to them just not right that the Board should spend good money on some one 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 officers failed to realise 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 largesse but their right as equal citizens of the country.

20. In light of the discussions made above, the action of the Board in terminating

the service of the disabled employee (Appellant No. 1) with effect from 21.3.1997 must be held to be bad and illegal. 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 22.3.1997 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.

In view of the aforesaid, this writ petition is allowed. Since the petitioner would have superannuated from service w.e.f. 05.03.2013, no order of reinstatement can be passed in the present proceeding. The respondents are directed to grant full back wages along with other consequential benefits to the petitioner within a period of four weeks from the production of a copy of this order.