
(2015) 07 P&H CK 0185
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 23748 of 2011

Nirmal Kapoor

APPELLANT

Vs

LIC of India and Others

RESPONDENT

Date of Decision : 29-07-2015

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 2(i), 2(t), 47, 47 (1)

Citation : (2015) 07 P&H CK 0185

Hon'ble Judges : Deepak Sibal, J

Bench : Single Bench

Advocate : Dinesh Kumar, for the Appellant; Prateek Mahajan, Advocates for the Respondent

Judgement

Deepak Sibal, J—While the petitioner was serving the respondent Life Insurance Corporation of India (hereinafter referred to as - the Corporation) as Assistant, he met with an accident, which rendered him 100% physically disabled. He filed a representation with the respondent Corporation seeking benefits of the provisions of Section 47 of The Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as - the Act). On rejection of the above representation, the present writ petition has been filed.

2. It is not disputed that the petitioner, while serving the respondent Corporation, met with an accident, as a result of which, he incurred 100% physical disability. That being so, in my view, Section 47 of the Act would come to his rescue, which is as under :-

"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."

3. A perusal of the above quoted provision of the Act clearly shows that if a person incurs disability while serving his employer, he is required to be adjusted to a post, where he can serve. However, in case it is not possible to adjust the person against any post, as per the second proviso to Section 47 (1) of the Act, he is to be kept on a supernumerary post until a suitable post becomes available or he attains the age of superannuation, whichever is earlier.

4. The case of the petitioner is squarely covered in his favour under the above quoted provisions. The above view taken by me finds support from the judgment of the Apex Court in Kunal Singh vs. Union of India Vs. Union of India (UOI) and Another, AIR 2003 SC 1623 : (2003) 96 FLR 990 : (2003) 2 JT 132 : (2003) 2 LLJ 735 : (2003) 2 SCALE 78 : (2003) 4 SCC 524 : (2003) SCC(L&S) 482 : (2003) 1 SCR 1059 : (2003) 2 SLJ 365 : (2003) 1 UJ 733 : (2003) AIRSCW 1013 : (2003) 2 Supreme 102 , wherein it has been held as under :-

"8. 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 person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 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 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 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 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.

9. The argument of the learned counsel for the respondent on the basis of definition given in Section 2(t) of the Act that benefit of Section 47 is not available to the appellant as he has suffered permanent invalidity cannot be accepted. Because, the appellant was an employee, who has acquired "disability" within the meaning of Section 2(i) of the Act and not a person with disability.

xx xx xx

11. 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 under Section 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."

5. To the same effect is the judgment of this Court in C. W.P. No. 8641 of 2012 - Malkit Singh Sidhu vs. State of Punjab and others, decided on 26.08.2014. The petitioner therein was also 100% physically disabled having met with an accident while in service. Due to his vegetative condition, he was also, like the petitioner, unable to serve his employer. Relying on Section 47 (1) of the Act, this Court allowed his petition by holding as under :-

"The court thus holds that the petitioner would be entitled to the benefits of Section 47(1) of the Act and the respondents are mandated to create a supernumerary post for the petitioner till the date he attains the age of superannuation. The petitioner would be paid his salary along with the arrears which have accumulated and interest @ 7 per cent per annum from the date it became due till the date of realisation within a period of three weeks from the date of receipt of a certified copy of this order."

6. In C. W.P. No. 21828 of 2014 - Dr. Anil Kumar Kundu vs. Kurukshetra University and others, decided on 31.03.2015, this Court, in the case of another employee, who had also met with an accident while in service, as a result of which he became 100% disabled and as a matter of fact, was unconscious, allowed his case, by holding as under :-

"Resultantly the petition is allowed and the respondent-University is directed to consider the petitioner to be on duty till such time as he attains the age of superannuation and to grant him all consequential benefits. It is made clear that in case the amount/s falling due to the petitioner are not paid within three months, the petitioner would be entitled to claim the same with interest at the rate of 8% p.a. from the date/s the amount/s is due to the petitioner."

7. In my opinion, the above judgments completely cover the case of the petitioner in his favour.

8. Before parting with the judgment, two objections raised on behalf of the respondents need to be dealt with.

9. Counsel for the respondents has submitted that the petitioner had earlier approached the Civil Court, as also this Court, for the same relief. The trial court had dismissed the Civil Suit of the petitioner and the writ petition filed in this Court had been withdrawn by him. It was, therefore, submitted that the present writ petition would be barred on the principles of res judicata.

10. The prayer made by the petitioner in the Civil Suit was as under :-

"Suit for Mandatory injunction praying for issuance of necessary orders/directions to the defendants to sanction Special Leave of the plaintiff w.e.f. 4.9.2004 till he is found fit by the competent authority to join duty in L. I. C. and pay him leave salary and for declaration that the orders dated 14.7.2004, whereby, the grant of reimbursement of medical bills from Exgratia account has been declined and the non-sanction of special leave as well as for getting treatment abroad as per the letter dated 7.6.2005 is illegal, void and not binding on the rights of the plaintiff in view of the Staff Regulations, 1960, which governs the service conditions of the plaintiff."

11. A perusal of the above shows that in the above prayer, the benefits of Section 47 of the Act had not been claimed, as have been claimed in the present petition. Even otherwise, at the appellate stage, with the consent of the respondents, the Civil Suit itself was permitted to be withdrawn by the Court and this was with permission to file fresh proceedings on the same cause of action. Once the respondents had themselves consented to the withdrawal of the suit filed by the petitioner, as also to filing of a fresh proceeding on the same cause of action, it does not lie in their mouth to object to the present petition.

12. So far as the objection of the respondents with regard to the withdrawal of the earlier writ petition being C. W.P. No. 12788 of 2010 is concerned, that writ petition was filed prior to the passing of the order dated 19.09.2011, which is

impugned in the present writ petition. In fact, the order dated 19.09.2011 was passed during the pendency of the above writ petition and on passing of the above said order, the writ petition was, in the presence of counsel for the respondents, permitted to be withdrawn, with liberty to challenge order dated 19.09.2011 by passing the following order :-

"Learned counsel for the respondents has placed on record the copy of the order dated 19.9.2011 declining the claim of the petitioner.

In view of the above, learned counsel for the petitioner prays that he may be allowed to withdraw the present petition with liberty to file afresh challenging the order dated 19.9.2011.

Dismissed as withdrawn, with liberty as prayed for."

13. Once the writ petition filed earlier was permitted to be withdrawn in the presence of counsel for the respondents and without any objection on his part, with liberty to challenge the order dated 19.09.2011, which has, in fact, been challenged in the present petition, no objection can be allowed to be raised on the part of the respondents with regard to the maintainability of the present petition on account of withdrawal of the earlier writ petition.

14. Counsel for the respondents has also prayed for dismissal of the writ petition on the ground of limitation. It is stated that the cause of action accrued to the petitioner in the year 2004 and the present petition has been filed only in the year 2011. It is thus prayed that the petition be dismissed on the ground of delay and laches. The record of the case shows that the petitioner has been agitating the issue earlier through Civil Suit filed in the year 2006, then through C. W.P. No. 12788 of 2010 and then through the present petition. He never slept over his rights. That being so, I outrightly reject the plea of limitation raised on behalf of the respondents.

15. In view of the above, the petitioner is held entitled to the benefits of Section 47 (1) of the Act and the respondents are directed to create and adjust the petitioner on a supernumerary post till he attains the age of superannuation, with all consequential benefits. The arrears be paid to the petitioner within two months from the date of receipt of a certified copy of this order, failing which the petitioner would be entitled to simple interest @ 9% per annum from the date the arrears became due till the date of realization.