
(2002) 01 DEL CK 0003

In the Delhi High Court

Case No : Civil Writ Petition No. 5700 of 2000

Rajbir Singh

APPELLANT

Vs

Delhi Transport Corporation and Others

RESPONDENT

Date of Decision : 24-01-2002

Acts Referred:

Citation : (2002) 8 AD 432 : (2002) 97 DLT 19

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Jagat Rana, for the Appellant; Vinay Sabharwal, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, J.—Rule.

2. Matter is taken up for final disposal with consent of learned counsel for the parties.

3. Petitioner has filed this petition under Article 226 seeking writ of certiorari quashing the impugned order dated 10.7.1998 whereby the petitioner has been prematurely retired on medical grounds and to reinstate the petitioner with full back wages and with other consequential benefits.

4. The petitioner was appointed as a driver with the respondent on 20.12.1983. According to the petitioner he met with an accident on 12.8.1996 and as a consequence of the accident his left femora bone was fractured and thereafter the petitioner remained under treatment till 16.2.1997. It is also stated that the Doctor also advised rest for a period of three months initially on 24.1.97 and thereafter on 27.7.1997 and 15.1.1998. The petitioner claimed that he was issued a fitness certificate by Dua Nursing Home on 26.5.1998.

5. Petitioner appeared on 2.7.1998 before the Medical Board which declared him medically unfit and in pursuance thereof on 10.7.1998 the respondent passed an order retiring the petitioner pre-maturely on medical grounds in view of the

report of the Medical Board. The petitioner preferred an appeal against said decision which was rejected on 28.10.1998.

6. Learned counsel for the petitioner contends that the petitioner is entitled to the protection under the persons with Disabilities (Equal Opportunities, Protection of Rights and Full participation) Act, 1995 (hereinafter referred to as the Act) which came into effect on 1.1.1996.

7. Mr. Sabharwal, learned counsel for the respondent on the other hand has contended that since the petitioner met with an accident not during course of performance of his duties with the respondent the protection of the Act would not be available. Learned counsel further contends that though petitioner claimed that accident had occurred on 12.8.96 but no date has been specified. It is contended that if the accident is prior to the Act coming into force. then the petitioner would not be entitled to benefits under the Act.

8. In so far as the second contention is concerned. nothing has been placed record to show that the petitioner had not met with the accident on 12.8.96. It is not stated that petitioner was working during this period of time and that the accident is prior to the Act coming into force. Thus I find no force in this contention. Even otherwise to avail of the protection of the Act, not applying the Act retrospectively, a person should be employed with the organisation which admittedly petitioner was when the decision to terminate his services was taken by the respondent.

9. In so far as the contention of the learned counsel for the respondent is concerned, learned counsel for the petitioner has referred to the judgment of the learned Single Judge of this Court in Baljeet Singh Vs. Delhi Transport Corporation, to contends that it is not necessary that the petitioner should be performing his duties when he meets with an accident to avail the benefit of the said Act. It was contended that Act is beneficially legislation and has to be construed liberally. Learned counsel for the petitioner while referring to the judgment in Baljeet Singh's case (supra) invited my attention to para-7 of the judgment where the case of one of the petitioner was considered who was a driver and received injuries on his spinal cord after a fall from the roof of his house. This was certainly not a case of injury during performance of duties with the Corporation. This petitioner was granted relief in terms of the said Act.

10. An appeal was filed by the respondent against the judgment of the learned Single Judge aforesaid vide LPA 120/2000 and the same was dismissed on 26.9.2001. The Division Bench also referred to an order passed by Hon''ble the Supreme Court in Civil Appeal No. 1864/2000- Kunwar Pal Singh v. Delhi Transport Corporation and Anr.

11. Learned counsel for the petitioner has also drawn my attention to another decision of the learned Single Judge of this Court in CWP No. 382/2000- Ashok Kumar v. DTC decided on 10.5.2000. Learned Single Judge considered the ambit and scope of Section 47 of the said Act and held, "There is no distinction laid

down in Section 47 of the Act as to the place where the person has suffered a disability." Learned Single Judge was thus of the view that the only requirement was that the person should have suffered disability "during his service" irrespective of whether the disability is suffered by him at home or at his place of work. Learned Single Judge observed as under:

I am of the view that looking to the object of the Act, which has been dealt at great length in Baljeet Singh Vs. Delhi Transport Corporation, , a liberal approach has to be adopted while interpreting Section 47 of the Act. Therefore, it should make no difference whether the disability has been suffered by the petitioner at his home or at his place of work.

12. In view of the observations in the judgment in Ashok Kumar's case (supra), Baljeet Singh's case (supra) and LPA 120/2000, this issue does not remain rest integra and the benefits of the Act is to be made available to a person u/s 47 of the Act irrespective of the place where injury was suffered.

13. The writ petition is thus allowed and the order of termination dated 10.7.98 is hereby quashed. Respondents are directed to take the petitioner back into service and pay the salary from the date when respondent stopped paying full salary after termination of his service. The petitioner would be treated as in continuous employment without any break in service. In case the petitioner is not fit to perform duty which he was performing since the initial appointment till his disability, the respondent shall deal with the case of the petitioner in terms of proviso to Section 47 of the said Act.

14. Petitioner shall also be entitled to costs of Rs. 3000/-.