

(2026) 03 BOM CK 0383
In the Bombay High Court, Nagpur Bench
Case No : Writ Petition No. 6535 Of 2024

Rameshwar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 26-03-2026

Acts Referred:

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

Citation : (2026) 03 BOM CK 0383

Hon'ble Judges : M. W. Chandwani, J

Bench : Single Bench

Advocate : P. B. Patil, Vinay Rathi, C. A. Lokhande, Vikas Kulsange

Final Decision : Dismissed

Judgement

M. W. Chandwani, J

1. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsels appearing for the parties.

2. The controversy in this petition lies in a narrow compass i.e. whether in the process of shifting a disabled person to other suitable post/cadre in view of the mandate of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation), Act, 1995 (hereinafter referred to as "the Act of 1995"), seniority of the employees in the said cadre can be disturbed.

3. The relevant facts that require mention here are as follows :

In the year 2002, the petitioner was appointed on the post of 'Lab Technician' with respondent no.3 – Zilla Parishad, Yavatmal by following due procedure. In the year 2010, the petitioner incurred disability of low vision. Therefore, the petitioner requested respondent no.3 to shift his services to some other post with the same pay-scale and other benefits. Since, respondent no.3 did not take any decision, the petitioner filed Writ Petition No. 6254/2015 before this Court. The

Division Bench of this Court allowed the petition on 08.03.2016 with a direction to respondent no.3 to submit the appropriate proposal to respondent no.2 for absorbing/appointing the petitioner as Extension Officer (Panchayat) in accordance with the provisions of the Act of 1995 and the Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967 (hereinafter referred to as "the Rules of 1967"). Pursuant to the said direction, the petitioner was absorbed on the post of Extension Officer (Panchayat) vide appointment order dated 16.06.2016. The petitioner joined the services on the post of Extension Officer on 01.07.2016 and is continuously working on the said post with respondent no.3, since the last six and half years.

4. On 01.01.2023, respondent no.2 published a provisional Seniority List of the Zilla Parishad employees who were eligible for promotion in Maharashtra Vikas Seva Group-B category in which, the name of the petitioner was not included. The petitioner raised an objection before respondent no.2 as to his seniority as well as non-inclusion of his name in the list of candidates eligible for promotion. The said objection was overruled and final Seniority List was published for promotion in Maharashtra Vikas Sewa Group-B category on 20.08.2024, wherein the name of the petitioner was not included. Feeling aggrieved, the present writ petition has been filed.

5. Mr. P. B. Patil, learned counsel appearing on behalf of the petitioner submits that the petitioner's initial appointment was on 18.02.2002 as 'Lab Technician'. Due to the disability incurred by the petitioner during service, he was absorbed on the post of 'Extension Officer (Panchayat)' with respondent no.3. While being absorbed to the post of Extension Officer (Panchayat), the petitioner was put at the bottom of the Seniority List. According to the learned counsel, since the petitioner has been transferred from the post of Lab Technician to the post of Extension Officer (Panchayat), for the purpose of seniority, his initial date of appointment should have been considered by respondent no.2 while preparing the Seniority List of Extension Officers who were eligible for promotion. However, respondent no.2 ignoring the date of appointment of the petitioner on the post of Lab Technician, erroneously considered the date of his appointment on the post of Extension Officer (Panchayat) for determination of seniority, which is against the mandate of Section 47 of the Act of 1995. To buttress his submission, the learned counsel seeks to rely on the decision in the case of Kunal Singh vs. Union of India and another, reported at (2003) 4 SCC 524 wherein, the Supreme Court in paragraph 9 has held as under:

"9. 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 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 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"

6. Reliance is also placed upon the decision of the Punjab and Haryana High Court in the case of Sahib Singh Vs. Uttar Haryana Bijli Vitaran Nigam Ltd. and others, reported at 2013 SCC Online P&H 225 wherein, at paragraph 8, the Court has observed as under:

"8 In the aforesaid memo, a condition was put in that the petitioner will lose his seniority in the cadre of ALMs and will be placed at the tail-end of seniority of Meter Readers. This condition certainly goes against the spirit of Section 47 of the Act, which provides that no establishment shall dispense with or reduce in rank an employee who acquires disability during service. However, in case an employee if he acquires disability is not suitable for the post he was holding, he could be shifted to some post with same pay scale and service benefits. In the case in hand, the action of the respondents in taking away the benefits of the past service of the petitioner till such time he was adjusted on the post of Meter Reader is totally contrary to the spirit of Section 47 of the Act. It is nothing else but a punishment without any fault of the petitioner. He may have been assigned the duty of a Meter Reader as he was capable of performing the same or he may have been assigned any other duty as well carrying some pay scales or service benefits, but by no means he could be deprived of his past service or the benefits accruing to him subsequent to his adjustment on the new post taking into consideration his past service. In the present case, the petitioner has been denied that benefit. As the persons junior to the petitioner in the cadre of ALMs, have been granted certain benefits to which they became entitled to considering their length of service as ALM, however, the petitioner was denied those benefits as he was considered as freshly appointed Meter Reader on 1.8.2000. Such an action has to be declared illegal and arbitrary. Ordered accordingly. The condition that the petitioner will be placed at the tail-end of the seniority of Meter Readers is quashed. The respondents are directed to calculate all the benefits to which the petitioner may be entitled to considering him in the seniority of ALMs where he was placed before the accident took place and grant him the same. However, it is directed that payment of arrears, if any, shall be restricted to 38 months from the date of filing of the writ petition."

7. Respondent no. 3 appeared and filed its reply inter alia, contending that it is the petitioner who himself had applied for transfer from the post of Lab Technician to the post of Extension Officer (Panchayat). He has been appointed afresh on the said post. Thus, his appointment is a fresh appointment. The order appointing him on the post of Extension Officer (Panchayat) clearly stipulates the condition that he will be placed at the tail-end of the seniority list of Extension Officers. According to Mr. Kulsange, learned counsel for respondent no.3, once the said condition is accepted and the petitioner joins the services on the post of Extension Officer, he cannot say that he should be placed in the Seniority List by considering the date of his initial appointment as Lab Technician, that too after six years. It is also submitted that the petitioner had not completed seven years of service on the post of Extension Officer on 01.01.2023, which is the minimum period of service required to qualify for promotion.

8. The sum and substance of the submissions of the learned counsel for respondent no.3 Mr. Kulsunge is that Section 47 of the Act of 1995 will not help the petitioner because he himself sought transfer on the post of Extension Officer. Respondent no.3 never wanted to shunt him from the post of Lab Technician. Section 47(2) of the Act of 1995 does not apply in this case and therefore, he sought rejection of the petition.

9. The submission of both the counsels takes me to Section 47 of the Act of 1995, which reads thus :

"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 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."

10. There is no manner of doubt that an employee who acquires disability during his service is required to be protected under Section 47 of the Act of 1995. It is mandatory on the part of the employer or establishment not to dispense with or reduce in rank, an employee who acquires disability during service. Due to such disability, if he is not suitable for the post which he was holding before acquiring the disability, he should be shifted to some other post with the same pay-scale

and service benefits. If it is not possible, then the establishment/ employer has to keep him on a supernumerary post until a suitable post is available or until he attains the age of superannuation.

11. Notably, when the petitioner acquired disability, respondent no.3 did not intend to/attempt to dispense with or to reduce the petitioner in rank while he was working as Lab Technician. It is the petitioner who on his own, sought transfer from the post of Lab Technician to the post of Extension Officer (Panchayat) that too, with the intervention of this Court. Thus, there was no breach of Section 47(1) of the Act of 1995 on the part of respondent no.3 at all. Be that as it may, the employer has already taken care of Section 47(1) of the Act of 1995. The petitioner, who was working as Lab Technician and acquired disability of low vision, has been absorbed on the post of Extension Officer (Panchayat) by giving new appointment with effect from 16.06.2016.

12. Here, the entire focus of the petitioner is on clause (2) of Section 47, which mandates that no promotion shall be denied to a person merely on the ground of his disability. According to the petitioner, after he was absorbed/appointed on the post of Extension Officer (Panchayat), he was kept at the bottom of the seniority list of the absorbed post, which is now coming in the way of his promotion.

13. Section 47 of the Act of 1995 runs in two parts. The first part gives protection to an employee who acquires disability during service from being shunted or being reduced in rank or pay scale. Whereas, the second part i.e. sub-section (2) deals with protection to a disabled employee from being discriminated against during promotion on account of his disability.

14. Axiomatically, reduction in rank is a punitive demotion to a lower grade, class or hierarchical post, often reducing salary and status. Reduction in rank causes a direct, immediate decrease in rank, pay and responsibilities. Thus, the expressions 'reduction in rank' and protection of 'same pay scale and service benefits' as used in Section 47 of the Act of 1995 have to be understood in the contextual background of shifting a disabled employee to some other post in the same organization. Therefore, as per Section 47(1) of the Act of 1995, a disabled employee may be protected from dispensing with or reduction in rank, so that he receives regular emoluments even without discharging duty until he is superannuated.

15. In contrast, reduction in seniority is reordering of an employee's position within the same grade or rank, which may affect chances of future promotion but does not lower their current post or salary. Reduction in seniority primarily affects promotion, not current salary or grade.

16. Promotion is not a vested right. The aspect of promotion is dealt with on a different pedestal. The legislative intent of the Act of 1995 is clear that it is not every denial of promotion that attracts the rigors of sub-section (2) of Section 47. The legislative mandate is that promotion cannot be denied only on the ground of disability. The legislative intent will have to be respected.

Jurisprudence and pragmatic logic clearly explains why removal or reduction is treated differently than promotion.

17. While the legislative intention is to continue the protection of employment available to an employee even after acquiring disability, the same cannot be at the detriment of another employee who is working on a regular basis in a cadre where the disabled employee is being shifted, to continue the protection of pay scale and service benefits to him. The expression 'same pay scale and service benefits' would mean that after acquiring disability, such employee would be entitled to be posted in a cadre/department on a post where the pay scale and service benefits are commensurate with the post which the disabled employee was holding before acquiring the disability and nothing else.

18. In the process of shifting a disabled employee to another cadre, the seniority of the regular employees who are already there in that cadre will also have to be protected, as otherwise, that will cause discrimination with the employees in that cadre. Promotion cannot be given to a disabled person by putting the seniority of the existing senior employees in the said cadre in jeopardy. This cannot be the purport and intent of the language used in Section 47 of the Act of 1995.

19. Here, at the first place respondent no.3 did not intend to dispense with or reduce the petitioner in rank after he acquired the disability. The petitioner on his own, sought transfer from the post of Lab Technician to Extension Officer (Panchayat). The petitioner was absorbed on the post of Extension Officer (Panchayat) on his own request, which is a post that is supposed to be filled directly from the public. The record reveals that the petitioner was appointed on the post of Extension Officer as a fresh candidate with a stipulation in the appointment order itself that he will be put at the tail-end in the seniority list of that Cadre. Having accepted the said condition and having worked for more than six years, the petitioner has raised this grievance when the process for promotion from the cadre of Extension Officer (Panchayat) was initiated. Therefore, the petitioner cannot take benefit of both the situations by complaining about non-compliance of Section 47 that too, after a period of more than six years.

20. Notably, promotion is not being denied to the petitioner merely on the ground of his disability. It seems that there are other Senior Officers who were already working in the cadre prior to transfer of the petitioner from the post of Lab Technician to the post of Extension Officer (Panchayat). The service rules mandate that for promotion to the post of Maharashtra Vikas Sewa Group-B category from the cadre of Extension Officer, experience of 7 years on the said post is required. Axiomatically, the petitioner did not possess such eligibility on the date when the process of promotion was started i.e. as of 01.01.2023. Thus, here is not the case that though the petitioner was eligible for promotion in Maharashtra Vikas Sewa Group-B, he was denied the same only on the ground of his disability. Rather, there are other employees who are senior to the petitioner in the cadre. The petitioner is not being discriminated against by denying

promotion just because he is disabled, so as to trigger the protective mechanism of Section 47 of the Act of 1995. The petitioner did not possess the minimum experience criteria required in order to be eligible for promotion on the relevant date. Thus, there is no breach of Section 47(2) of the Act of 1995.

21. A reference can be made to the decision of the Division Bench of this Court (Nagpur Bench) in the case of Shyamkumar Vs. The Union of India and others reported at 2023 SCC OnLine Bom 1076, wherein this Court has observed as under:

26. In our considered view, if the case of the petitioner is considered on the touchstone of the recruitment rules which are brought to our notice, the submission that the denial of promotion falls foul of the legislative mandate of Section 47 of the Act of 1995 or Section 20 of the Act of 2016, which is worded identically much be rejected.

22. The same is also fortified by the decision of the Supreme Court in the case of Union of India Vs. Devendra Kumar Pant and others reported at (2009) 14 SCC 546 wherein, in paragraph 32, the Supreme Court has observed as under:

“32. Where the employer stipulates minimum standards for promotion keeping in view the safety, security and efficiency, and if the employee is unable to meet the higher minimum standards on account of any disability or failure to possess the minimum standards, then Section 47(2) will not be attracted, nor can it be pressed into service for seeking promotion. In other words, where the disability is likely to affect the maintenance of safety and security norms, or efficiency, then the stipulation of standards for maintaining such safety, security and efficiency will not be considered as denying a person with disability, promotion, merely on the ground of his disability.”

23. So far as the decision of the High Court of Punjab and Haryana at Chandigarh in the case of Sahib Singh (supra) is concerned, the petitioner in that case was shifted from the post of ALM to the post of Meter Reader. The Court relying on the decision of the Apex Court in the case of Kunal Singh (supra) directed that he be placed in the seniority of ALMs, where he was placed before the accident took place, by giving him all the benefits to which he was entitled. In Kunal Singh's case (supra) this was not the issue at all. Rather, what was under consideration was discharge of the employee after acquiring disability, without applying the provisions of Section 47 of the Act of 1995. The reliance thus placed on Kunal Singh's case in the case of Sahib Singh (supra) relied upon by the learned Counsel for the petitioner is of no assistance, as it misconstrues the position enunciated in Kunal Singh (supra)

24. That apart, the decision of the Division Bench of this Court in the case of Shyamkumar (supra), is binding on this Court. Therefore, the decision in the case of Sahib Singh (supra) of the Punjab and Haryana High Court will not help the petitioner. Additionally, there was no act on the part of the respondent/establishment to even attempt to dispense with or reduce the petitioner in rank.

On this count as well, the decision of the Punjab and Haryana High Court is distinguishable.

25. To sum up, in the process of shifting a disabled employee in view of the mandate of Section 47 of the Act of 1995, seniority of the employees who are already in that cadre where the disabled employee is being shifted cannot be disturbed. Therefore, the contention that the previous service of the petitioner on the post of Lab Technician be counted for the purpose of determining his seniority in the cadre of Extension Officer (Panchayat) cannot be accepted, more particularly when the other employees who are being affected by this order are not a party to this petition. Therefore, the petition fails on all counts.

26. Accordingly, the Writ Petition stands dismissed. Rule discharged.