
(2009) 02 RAJ CK 0161
In the Rajasthan High Court

Roop Kishore Dixit

APPELLANT

Vs

Rajasthan State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 13-02-2009

Acts Referred:

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

Citation : (2009) 2 WLN 305

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mohammad Rafiq, J.—This writ petition has been filed by the petitioner with the prayer to direct the respondents to provide any other alternate job petitioner and regularize his services from the date of his initial appointment in the Corporation and also pay him his salary for the period from the date he met with the accident till he resume his duties along with compensation.

2. The factual matrix of the case is that respondents issued an advertisement for selection for appointment on the post of Driver in the Rajasthan State Road Transport Corporation (for short, "Corporation") vide Annexure-1. The eligibility for appointment on the post of Class-VIII is license of heavy vehicle and experience of three years. As per condition No. 3 of the advertisement, respondents initially prepared a panel of candidates and provided that those selected in the panel would be paid a consolidated sum of Rs. 210/- per month in the first year and on satisfactory working, they shall be given Rs. 150/- as incentive and further in the third year on satisfactory working, the incentive amount would be Rs. 200/- per month. If upon completion of three years satisfactory service by any of such candidates, he would be liable to be regularized in service with regular pay scale. Petitioner was selected and accordingly was appointed as Driver vide order of the respondents dt. 13.08.2001 but he joined on 31.08.2001. He was granted appointment for a

period of two months and it was extended from time to time. Petitioner while driving the bus of the RSRTC met with an accident on 27.07.2003 at 11.15 p.m. He had to remain hospitalised for number of days and due to the accident, he suffered permanent disability and all four fingers in his right hand got imputed. The medical board vide its opinion dt. 25.09.2004 assessed the extent of disability of the petitioner at 45%. When petitioner reported on duty, respondents declined to accept him on duty on the premise that he was now no longer capable of driving the vehicle. Petitioner submitted representation to the respondents and also served notice for demand of justice in which he requested that he should be provided an alternate job but to no avail.

3. Shri Bipin Gupta, learned Counsel for the petitioner has argued that petitioner having been appointed on the basis of panel, despite his appointment in various orders issued by the respondents from time to time being described as contractual, would be entitled to regularisation upon completion of satisfactory service of three years. Learned Counsel has submitted that all those who were empaneled along with the petitioner pursuant to the selection made in 2000-01, were regularized in service and were granted regular selection. Petitioner has placed on record copy of the panel in which name of the petitioner was mentioned at Sr. No. 152 in which, Karan Singh at Sr. No. 509, Lakhan Singh at Sr. No. 472 and Nahar Singh at Sr. No. 568, respectively were regularized in revised order of the respondents dt. 30.03.2005, which is also on record. He relied on the provisions of Section 47(1) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1985 and argued that according to the aforesaid provision, no establishment shall dispense with or reduce in rank, an employee who acquires a disability during his service. However, liberty is given to the employer that if such an employee is not suitable for the post he was holding, he could be shifted to some other post with the same pay scale and service benefits. It has been provided 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. In order to buttress his argument, learned Counsel relied on the judgments of Supreme Court in Kunal Singh Vs. Union of India (UOI) and Another, Bhagwan Dass and Another Vs. Punjab State Electricity Board, and recently delivered judgment passed by this Court in Ram Kishan Verma v. State of Rajasthan and Anr. SBCWP No. 9878/2002 decided on 12.02.2009.

4. Ms. Shruti Dixit, learned Counsel appearing for the respondents opposed the writ petition and argued that appointment of the petitioner was merely contractual and that petitioner was rendered completely unfit for being retained in service on the basis of such contractual appointment. He was therefore not granted the extension and his name was struck off from the panel. It was argued that regularization of empaneled incumbent on the post of Driver was subject to the condition of his satisfactory service. Since petitioner was responsible for the accident while driving the vehicle of the Corporation, his services cannot be said to be satisfactory. Even otherwise, so long he was not regularized, he could not

claim benefit of Section 47(1) supra. It was argued that judgments relied on by the petitioner are all distinguishable on facts and do not apply to the controversy involved in the present matter. Learned Counsel submitted that petitioner has already availed of remedy before the Motor Accident Claims Tribunal where substantial amount has been awarded to him as compensation. Apart from the aforesaid remedy, petitioner has also approached the Workmen Compensation Commissioner. The writ petition is therefore liable to be dismissed.

5. I have given my anxious consideration to the arguments of the parties and perused the material on record and the cited case law.

6. What is not in dispute and cannot be disputed is the fact that Petitioner has now been rendered disabled to the extent of 45% and this disability he suffered while in employment of the respondents. Whatever may have been the nature of employment, petitioner acquired disability while serving the respondents. He while driving their vehicle, met with an accident, as a result of which, he suffered permanent disability and all four fingers in his right hand got imputed. He is now left crippled with this handicap for rest of his life. Petitioner has thus clearly demonstrated that this disability he acquired during employment with the respondents. For extending the benefit of Section 47 supra, cause of disability and nature thereof are not as crucial as the fact that disability must have been acquired by an employee during employment or service with the establishment concerned. Section 47(1) of the Act inter-alia provides 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.

7. According to the aforesaid Section 47(1) supra, no establishment shall dispense with or reduce in rank, an employee who acquires a disability during his service. However, a liberty has been given to the employer that if such an employee is not suitable for the post he was holding, he could be shifted to some other post with the same pay scale and service benefits. The legislature has gone to the extent of providing 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. Sub-section (2) of Section 47 however provides that no promotion shall be denied to a person merely on the ground of his disability. Section 2(i) defines the disability to mean blindness, low vision, leprosycured, hearing impairment, locomotor disability, mental retardation and mental illness. Section 2(o) of the Act however

defines "locomotor disability" which means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy.

8. Supreme Court in Kunal Singh supra has examined a case where Constable of Special Service Bureau, suffered injury while on duty, which permanently disabled him. He was invalidated out from service. It was held that language of Section 47 is plain and casts certain statutory obligations on the employer so to protect an employee acquiring disability during service.

9. In Bhagwan Dass supra, the appellant who was physically handicapped was in the employment of the Punjab State Electricity Board. He requested for the voluntary retirement but subsequently he requested for withdrawal of his application for voluntary retirement which was not accepted by the departmental authorities. It was held in those facts that the said action of the Board amounted to wrongful termination in violation of Section 47(1).

10. In Rama Kishan Verma, this Court was dealing with a case in which petitioner was member of Scheduled Castes and was completely blind. He was appointed after due selection on the post of X-ray Technician/Radiographer in the department of Medical and Health, Rajasthan vide order dt. 20.04.1976. His appointment on this post was made on the strength of diploma qualification in Radiography. He suffered from an episode of headache followed by low grade persistent vision loss during which he remained in a semi conscious state for a period of two and a half months and on regaining the consciousness, he found that he had lost the vision bilaterally and was left only with the ability to perceive light but found difficulty in articulating the vision. His employer by their order dt. 29.01.1981 provided him alternate job on the post of Class-IV employee. In the said case, this Court directed the respondents to grant the benefit of selection scale to the petitioner from the date of his initial appointment on the post of X-ray Technician i.e. with effect from 26.04.1976 and also grant him pay protection assuming as if he had all through continued to hold the post of X-ray Technician and accordingly protect and revise his pay. While allowing the abovesaid writ petition, this Court observed that the case of the petitioner is subject to statutory protection provided by Section 47 and none of the provisions contained in either Circular of the Government dt. 17.02.1998 or for that matter its predecessor Circular dt. 25.01.1992 would come in the way of giving such protection to the petitioner. Even if there be any seeming conflict between the two, the Circulars of the Government would have to give way to the statutory protection provided u/s 47 of the Act. It was held that according to Section 47, first proviso to Sub-section (1) of Section 47, if an employee, after acquiring disability is not suitable for the post he was holding, he may be shifted to some other post with the same pay scale and service benefits. The respondents although have shifted the petitioner to the post of Class-IV employee which even if it is granted, would be covered by the phrase "some other post", they cannot further reduce the pay scale and service benefits as were otherwise attached to

the post earlier held by him i.e. the post of X-ray Technician.

11. In the present case, it is clearly evident that petitioner could not render continuous service due to disability which he acquired during employment whereas all other employees in his status were continued in service and were eventually regularised. He was liable to be continued in service and in that event, he would be entitled to be regularised in service and consequential regular appointment. All such benefits which he would have otherwise received, cannot therefore be withheld by virtue of protection available to the petitioner u/s 47 because petitioner has successfully demonstrated before this Court that persons selected along with him and far below in the panel than him, have been extended the benefit of regularization in service.

12. In view of the above discussion, this writ petition deserves to be allowed and is hereby allowed. Respondents are directed to continue to employ the petitioner on regular post on any other suitable or alternate post carrying the pay scale equivalent to the post of Driver. Petitioner was initially appointed on 13.08.2001 and he joined on 31.08.2001 and he met with an accident on 27.07.2003. He thus completed almost two years. Therefore, upon completion of two years, he would be entitled to be regularized in service. He completed the period of three years on 13.08.2004. Thus, for the intervening period, petitioner shall be entitled only to the notional benefits.

Compliance of the judgment shall be made within a period of three months from the date, its copy is produced before the respondents.