
(2005) 07 BOM CK 0032
In the Bombay High Court
Case No : Writ Petition No. 2424 of 2005

Shivaji Dongre

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 28-07-2005

Acts Referred:

Companies Act, 1956 — Section 617
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 47, 47(1), 47(2)

Citation : (2006) 2 BomCR 261 : (2006) 1 LLJ 1024 : (2006) 1 MhLj 417

Hon'ble Judges : S.P. Kukday, J; R.M.S. Khandeparkar, J

Bench : Division Bench

Advocate : Anant V. Patil, holding for V.D. Gunale, for the Appellant; Umakant Patil, A.G.P. for respondent No. 1 and M.S. Deshmukh, for the Respondent

Final Decision : Allowed

Judgement

S.P. Kukday, J.—Rule. Rule made returnable forthwith with consent of the parties. Heard both the sides and perused the records.

2. Petitioner was working as a bus driver (Buckle No. 5526) with Maharashtra State Road Transport Corporation, Latur Division, Latur since 17-12-1982. Petitioner was performing his duties properly and diligently. However, during the course of the service, he developed an ailment and was sent for medical examination to Civil Surgeon. After the medical checkup, Civil Surgeon issued certificate dated 25-8-2003 certifying that the petitioner is suffering from mental sickness of Resistant Major Depression and is unable to work as a driver, but he is fit for discharging any other light work. On the basis of this certificate, respondent No. 3 terminated services of the petitioner by order dated 26-8-2003 with immediate effect. Petitioner was informed that if he so desires, he can submit an application for employment on compassionate ground for his dependent within fifteen days from the date of the order.

3. Being aggrieved by this order of termination, petitioner made a representation

dated 23-9-2003 to respondent No. 3, making request for giving him some light work in conformity with the Certificate of the Civil Surgeon as ten years of his service is still available and he is the only earning member of the family. This representation was forwarded by respondent No. 3 to respondent No. 2. However, no decision was taken and the representation was merely kept pending. Petitioner was, therefore, constrained to file the present petition. During the pendency of the petition, directions were issued to Regional Manager of the MSRTC for deciding the representation. Accordingly, by letter dated 22/24-6-2005 it was communicated to the petitioner that only the visually impaired drivers are entitled for benefit of alternative employment. There is no provision for giving an alternative employment to the persons suffering from mental sickness, therefore his representation is rejected.

4. Heard both the sides. Learned Counsel for the petitioner contends that the petitioner developed mental sickness during the course of employment. He is, therefore, entitled to be retained in service in view of provision of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter to be referred to as Disabilities Act).

5. Learned Counsel for respondent Nos. 2 and 3, while opposing the petition submits that alternative efficacious remedy is available to the petitioner, therefore, the petition cannot be entertained. He further submits that there is no provision for providing work to persons suffering from mental sickness. Therefore, the petitioner is not entitled to seek any relief as prayed for.

6. We may first deal with the contention of the respondents that the petition cannot be entertained as other efficacious remedy is available to the petitioner. It may be pointed out that the petitioner has not approached this Court on the ground that his conditions of service have been violated. Petitioner has come to the Court with the contention that the respondents have failed to comply with the mandatory requirement of Section 47 of the Disabilities Act. Even otherwise, having regard to the decision taken by the respondents while rejecting the representation of the petitioner, it can be seen that the petitioner is entitled to invoke extra-ordinary writ jurisdiction of this Court for implementation of the provisions of the Disabilities Act. Therefore, the contention of the learned Counsel for respondent Nos. 2 and 3 that the petition is not maintainable, cannot be sustained.

7. It is not in dispute that date of birth of the petitioner is 3-7-1955. He joined service on 17-12-1982 and would have retired from service on 31-7-2003. Therefore, in the absence of termination, petitioner would have served for ten years more. It is an admitted fact that the petitioner was sent for medical check up. By Certificate dated 25-8-2003. Civil Surgeon has certified that petitioner is suffering from mental sickness of "Resistant Major Depression". He is, therefore, not capable to work as driver, but is capable of doing any other light work. Referring to this certificate, learned Counsel for the petitioner submits that the petitioner is a disabled person of the category referred to in Section 2(i)(viii) of

the Disabilities Act. At this juncture, it may be pertinent to notice relevant provisions of Disabilities Act. Section 2 deals with definitions. Section 2, which is relevant for our purpose, defines "disability" to mean mental illness. Section 2(q) defines "mental illness" as any mental disorder other than mental retardation. Section 2(k) defines "establishments" means a Corporation established by or under a Central, Provincial or State Act, or any 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 includes Departments of a Government. Section 2(w) is also relevant for our purpose, as it refers to rehabilitation. Sub-clause (w) lays down that rehabilitation refers to a process aimed at enabling persons with disabilities to reach and maintain their optimal, physical, sensory, intellectual, psychiatric or social functional levels. If these provisions are considered, contention of learned Counsel for the petitioner that the petitioner is a disabled person, as defined in Section 2(i)(vii) read with Clause (q) of the Disabilities Act, will have to be sustained. It is also not in dispute that M.S.R.T.C. is an establishment as defined by Section 2(k) and is not exempted in terms of the proviso to Sub-section (2) of Section 47 of the Disabilities Act. Once it is held that the petitioner is a disabled person, he is entitled to protection u/s 47 of the Disabilities Act. Sub-section (1) of Section 47 of the Disabilities Act provides that no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service. It 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. It further provides that if it is not possible to adjust the employee against any such 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. From the tenor of the language used it can be seen that Section 47 of Disabilities Act is mandatory. In this behalf reference can be made to the ruling of the Apex Court, reported in Kunal Singh Vs. Union of India (UOI) and Another, . That was a case of a constable from Special Service Bureau, whose leg was required to be imputed on account of gangrene. In view of the amputation, the petitioner was declared to be permanently incapable for further service and was terminated by order dated 20-11-1998. This order was upheld by the High Court as no reference was made to the provisions of Disabilities Act. However, when the matter was taken to the Apex Court, the petitioner was permitted to raise question of law. Their Lordships made reference to the relevant provisions of the Disabilities Act and after noticing that petitioner is disabled person observed in para 9 of the report thus :

"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 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 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."

8. This Court also had an occasion to deal with the issue in Writ Petition No. 350/2004, (Decided on 14-7-2004). That was also a case of bus driver of M.S.R.T.C., who came to be terminated on account of visual impairment. In that case it was found that M.S.R.T.C. is not exempted under proviso to Sub-section (2) of Section 47 of the Disabilities Act. After considering relevant provisions, this Court took a view that the petitioner is entitled to protection of Section 47 of the Disabilities Act.

9. In the present case, in view of Section 2(i)(viii) petitioner is a disabled person, he is, therefore, entitled to protection of Section 47(1) of Disabilities Act. Apparently, termination order issued by the respondents is in breach of the mandate of Section 47 of the Disabilities Act, therefore, said termination order is liable to be quashed and set aside. The certificate issued by Civil Surgeon shows that petitioner is capable of doing light work. Thus, respondents will have to adjust the petitioner by giving him some light work, if it is available. If no such light work is available, petitioner will be entitled to be kept on a supernumerary post until suitable post is available or he attains superannuation whichever is earlier.

10. The petitioner is, therefore, entitled to be reinstated in service with full backwages. In the light of this, petition is allowed. Rule is made absolute in

terms of prayer Clause (B). However, in the circumstances, of the present case, there shall be no orders as to costs.