
(2006) 05 MP CK 0008
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2618 of 2006

Shivakant Trivedi

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 20-05-2006

Acts Referred:

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

Citation : (2007) 2 MPJR 419

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Advocate : Manoj Chansoria, for the Appellant; Harish Agnihotri, Govt. Advocate, for the Respondent

Judgement

Abhay M. Naik, J.

Petitioner is a Constable in M.P. Police Department. He met with an accident in the year 1996 and received grievous injuries on his person. He was examined by Medical Department of Government of Madhya Pradesh and was advised sitting duty only on account of fracture in his leg and permanent disablement resulted from the said accident. The leg of the petitioner was fractured and an iron rod was fitted inside. Leg of the petitioner used to become immobile. This was reported to the department and the prayer was made for assigning light duty in the nature of sitting work only. Pursuant to this, the petitioner was posted in the office of Public Prosecutor and was also relieved from attending the general parade. He was directed to give attendance at the time of parade in the office of Superintendent of Police Tikamgarh. The petitioner has challenged his posting in the office of Public Prosecutor Tikamgarh on the ground of his inability to perform moving work. Certain other certificates are also annexed to the petition which are stated to have been issued by medical experts though in private capacity. Petitioner therefore sought the following relief"s:

(i) It is, therefore, prayed that this Hon"ble Court may kindly be pleased to direct

the respondents to provide light duty to the petitioner, in the interest of justice.

(ii) The Hon''ble Court may kindly be pleased to direct the respondents to pass fresh transfer order of the petitioner from district Chhatarpur to district Tikamgarh, in the interest of justice.

Petitioner is admittedly an employee of the Police Department of M.P. He has unfortunately met with the accident and has developed various physical deficiencies. The Hon''ble Supreme Court of India while dealing with an identical case in Narendra Kumar Chandla Vs. State of Haryana and others, has held that an employee developing physical infirmity is liable to be adjusted in suitable post and his pay is liable to be protected. In the case of Narendra Kumar Chandla (supra) it has been held in para 7 as under:

Article 21 protects the right to livelihood as an integral facet of right to life. When an employee is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the posts he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge the duties as a Carrier Attendant is unjust. Since he is a matriculate, he is eligible for the post of L.D.C. For L.D.C., apart from matriculation, passing in typing test either in Hindi or English at the speed of 15/30 words per minute is necessary. For a Clerk, typing generally is not a must. In view of the facts and circumstances of this case, we direct the respondent Board to relax his passing of typing test and to appoint him as a L.D.C. Admittedly on the date when he had unfortunate operation, he was drawing the salary in the pay scale of Rs.1400-2300/- Necessarily, therefore, his last drawn pay has to be protected. Since he has been rehabilitated in the post of L.D.C, we direct the respondent to appoint him to the post of L.D.C. Protecting his scale of pay of Rs. 1400-2300 and direct to pay all the arrears of salary.

Here, I feel it apt to take into consideration the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. This Act has a special background as under:

The Economic and Social Commission for Asian and Pacific Region convened a meeting at Beijing in December 1992 to launch the Asian and Pacific Decade of Disabled Persons 1993-2002. In that meeting the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and the Pacific Region was adopted. India being a signatory to the above said Proclamation, it was obligatory to enact a suitable legislation. Accordingly, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Bill, 1995 was introduced in the Lok Sabha on 26th August, 1995. Statements of Objects and Reasons for introducing this Act is reproduced hereunder:

STATEMENT OF OBJECTS AND REASONS

The meeting to launch the Asian and Pacific Decade of the Disabled Persons 1993-2002 convened by the Economic and Social Commission for Asian and

Pacific Region, held at Beijing on 1st to 5th December, 1992 adopted the Proclamation on the Full Participation and Equality of People with Disabilities in the Asia and the Pacific region. India is a signatory to the said proclamation and it is necessary to enact a suitable legislation to provide for the following:

- (i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;
- (ii) to create barrier free environment for persons with disabilities;
- (iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-a-vis non-disabled persons;
- (iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;
- (v) to lay down a strategy for comprehensive development of programmes and services and equalization of opportunities for persons with disabilities; and
- (vi) to make special provision of the Integration of persons with disabilities into the social mainstream.

Accordingly, it is proposed to provide(sic) constitution of Co-ordination Committees and Executive Committees at the Central and State levels to carry out the various functions assigned to them. Within the limits of their economic capacity and development the appropriate Governments and the local authorities will have to undertake various measures for the prevention and early detection of disabilities, creation of barrier-free environment, provision for rehabilitation services, etc. The Bill also provides for education, employment and vocational training, reservation in identified posts, research and manpower development, establishment of homes for persons with severe disabilities, etc. For effective implementation of the provision of the Bill, appointment of the Chief Commissioner for persons with disabilities at the Central level and Commissioners for persons with disabilities at the State level clothed with powers to monitor the funds disbursed by the Central and State Governments and also to take steps to safeguard the rights of the persons with disabilities is also envisaged.

Assent of the Hon''ble President of India was received on 1st January, 1996 and the Act came into force on 7th February, 1996. Section 47 of the same is relevant for the purposes of this case which is reproduced below:

47. Non-discrimination in Government employments.-(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 disabilities 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, which ever is earlier.

(2) No promotion shall be denied to a person 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.

The Apex Court after considering the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, in the case of Kunal Singh Vs. Union of India and another (2003 SC SLR 374) has held as under:

7. From the facts, which are not in dispute, it is clear that the disability suffered by the appellant is covered by Section 2(i) (v) read with Section 2(o) of the Act. It is also not in dispute that this disability was acquired by the appellant during his service. u/s 2 "disability" and "persons with disability" are separately defined and they are distinct. We may also notice some provisions in Chapter VI of the Act relating to employment. Section 32 deals with identification of posts which can be reserved for persons with disabilities. Section 33 speaks of reservation of such percentage of vacancies not less than 3% for persons or class of persons with disability of such 1% each small be reserved for persons suffering from (i) blindness or low vision; (ii) hearing impairment; and (iii) locomotor disability or cerebral palsy. Section 38 requires the appropriate Governments and local authorities formulate schemes for ensuring employment of persons with disabilities. Section 47 is included in Chapter VIII of the Act. Chapter VI deals with employment relating to persons with disabilities including identification of posts and reservation of vacancies for such persons. Under this chapter, reservation of vacancies for persons with disabilities is made for initial appointments. Section 47 in Chapter VIII deals with an employee of an establishment who acquires a disability during his service.

The need for a comprehensive legislation for safeguarding the rights of persons with disabilities and enabling them to enjoy equal opportunities and to help them to fully participate in national life was felt for a long time. To realize objective that people with disabilities should have equal opportunities and keeping their hopes and aspirations in view of meeting called the "Meet to Launch the Asian and "Pacific Decades of Disabled Persons" was held in Beijing in the first week of December, 1992 by the Asian and Pacific countries to ensure "full participation and equality of people with disabilities in the Asian and Pacific Regions". This Meeting was held by the Economic and Social Commission for Asia and Pacific. A Proclamation was adopted in the said meeting. India was a signatory to the said Proclamation and they agreed to give effect to the same. Pursuant thereto this Act was enacted, which came into force on 1st January, 1996. The Act provides

some sort of succor to the disabled persons.

Considering the law of the land settled by the Apex Court in the aforesaid cases, this petition is disposed of with the direction that the petitioner be examined by the Medical Board who shall make assessment of his physical capacity to work on the post of Constable or equivalent thereto, which may allow the petitioner to discharge the duties effectively and efficiently preferably in a sitting posture. Accordingly, the Superintendent of Police, Tikamgarh is expected to assign work to the petitioner which may be discharged by a Constable posted in the office, without causing much inconvenience and pain to the latter. Obviously, the Superintendent of Police Tikamgarh shall ensure that the pay of the petitioner is protected who would be responsible to render the requisite duties. The Superintendent of Police may also seek guidance from the provisions contained in Section 47 (supra).

Accordingly, the Superintendent of Police, Tikamgarh is directed to consider the case of the petitioner from the aforesaid angles on a representation to be made by the petitioner within 30 days from today.

Petitioner is also directed to remain present for medical examination before the Board. Entire aforesaid exercise is to be made preferably within six months from the date when certified copy of this order is produced by the petitioner before the Superintendent of Police, Tikamgarh.

With the aforesaid directions, the petition stands disposed of. No order as to costs.