

(2014) 07 DEL CK 0002

In the Delhi High Court

Case No : W.P. (C) 4212/2014, CM APPL. 8457, 8458/2014, W.P. (C) 4214/2014, CM APPL. 8461, 8462/2014, W.P. (C) 4237/2014, CM APPL. 8517/2014, W.P. (C) 4240/2014, CM APPL. 8524, 8525/2014, W.P. (C) 4243/2014, CM APPL. 8527, 8528/2014 and W.P. (C) 4244/2014, CM APPL.

Suresh Chand

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 14-07-2014

Acts Referred:

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

Citation : (2014) 07 DEL CK 0002

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Anil Mittal and Anuj Kr. Ranjan, Advocate for the Appellant; Latika Choudhury, proxy for Avnish Ahlawat, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

S. Ravindra Bhat, J.—Issue notice. Ms. Latika Chaudhary, proxy counsel for Mrs. Avnish Ahlawat, Advocate for Delhi Transport Corporation (hereafter referred to as DTC) accepts notices on its behalf.

2. The petitioners in all these proceedings were initially appointed by the DTC pursuant to Notification for recruitment to the post of Drivers in a selection process conducted by the Delhi Subordinate Services Selection Board (DSSSB) in 2008. All of them underwent medical examination in 2009 by the DTC Medical Board. In the case of several such applicants (numbering about 441 in all) which include all the petitioners before us, vision defects were found. On the representation of these candidates, a decision was taken on 22.12.2009 to call for a second medical opinion. This led to a second medical examination of such candidates by the Guru Nanak Eye Centre, GNCTD. It is not in dispute that the petitioners underwent the second medical examination. It is also not in dispute

that the said medical board cleared their candidatures. Consequent upon this development, formal appointment letters were issued and the petitioners amongst others took charge of the posts.

3. The petitioners thereafter were confirmed after completion of their probation period by separate orders issued by the DTC in this regard. In this background, the DTC alleged that while one such driver was involved in an accident, it re-examined the matter and was of the opinion that re-examination of all such drivers was necessary. Accordingly, the petitioners and other such drivers were directed to report to an independent medical boards constituted by the GNCTD. After receipt of the reports-presumably adverse to the petitioners and others similarly situated-separate show cause notices were issued asking these drivers why their appointment ought not to be terminated. It was in these circumstances that the petitioners and others approached the Central Administrative Tribunal (hereafter referred to as CAT). The immediate provocation for approaching the CAT was the action of the DTC in laying them off duty. By the impugned order, the CAT refused to grant the relief which inter alia included the claim that the petitioners could not be dealt with in the manner proposed, and that they should be dealt with in terms of Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereafter called as Disability Act).

4. Counsel for the petitioners submitted that the question of the petitioners being dealt with departmentally for alleged misconduct would not arise, because in the facts of these cases, vision defects arose after the employment and in the circumstances, Section 47 of the Disability Act applies. Learned counsel relied upon several decisions including the *Shri Dilbagh Singh Vs. Delhi Transport Corporation*, , *Mohal Lal & Others v. State of Haryana & Others*, 2009(5) SLR 643 (P & H) and *Kunal Singh Vs. Union of India (UOI) and Another*, .

5. Counsel for the respondents submitted that as on date, no formal orders for dismissal/removal or imposing any other penalty, after conclusion of the departmental proceedings, has been made. She also justified the Tribunal's order contending that when the initial appointment is secured by playing a fraud, the employee forfeits the right to continue in the service. According to the DTC, examination by an independent medical board conducted in 2013 clearly established that the petitioners were never eligible to be appointed as the medical parameters were well short of the prescribed norms at the stage of their initial appointment. In these circumstances, contended counsel, that the impugned action proposing to terminate their appointments was justified and there was no question of application of Section 47 of the Disability Act.

6. It is evident that certain facts are undeniable-(i) the petitioners were appointed through properly constituted recruitment process and underwent the procedure in accordance with the prescribed rules; (ii) they were medically examined and also subjected to further medical examination by Guru Nanak Eye Centre, GNCTD in 2009 itself; (iii) there are no allegations against the petitioners

of dereliction in duty, or causing any accident and, most important, (iv) all of them were confirmed in the service for the post of driver after successfully completing their period of probation. In these circumstances, the appropriate method of terminating the petitioner's/employee's services will be after conclusion of duly constituted disciplinary proceedings through departmental enquiries. In the present case, the petitioners, or at least some of them, were issued show cause notice in that regard. There is no formal enquiry as to their alleged misconduct involving fraud till date. In these circumstances, the respondent's submissions that the initial appointments were void because the petitioners, or some of them, were guilty of practising fraud is meritless. In order to detect fraud, it is essential for the respondent-the employer, to allege the elements of fraud, call upon the delinquent or such of the petitioners which are culpable to answer the charges and after examination of the materials placed on record as well as the defence, ensure that the enquiry report is made based upon which any penalty order, including that of dismissal, can be made. There is no shortcut for such procedure. Once the employer alleges misconduct-even though it relates to the initial stage of appointment-departmental proceedings are mandatory. The course suggested by the DTC of presuming that the subsequent medical report obtained in 2013, in effect, establishes the charge of fraud against the petitioners and others cannot be accepted. The sequititer, therefore, is that the respondents have to necessarily hold an enquiry into the allegations against the petitioners-both in respect of the fraud allegedly played on them, as well as the alleged participation or complicity of the petitioners in it. It is only thereafter that the question of penalty can arise.

7. As far as Section 47 is concerned, the question of its application would arise where the employee suffers a disability after securing employment. In the facts of the present case, its application, in the opinion of the Court, is pre-mature. When the employer DTC is alleging fraud against the petitioners at the stage of their obtaining employment, and that fact is under a cloud, it is not open to the petitioners to contend or establish their innocence by taking cover u/s 47 of the Disability Act. It is only in the event of the petitioners being exonerated, and the DTC seeking to use the subsequent report of 2013 to either terminate them or pass appropriate orders against them, that they would be in a position to invoke Section 47 of the Disability Act and not otherwise.

8. In view of the above, respondents may, if they so choose, initiate and continue with the enquiry into the charges alleged against the petitioners in the show cause notice after receiving their explanation and thereafter proceed in accordance with law, having regard to the final report received from the Enquiry Office. However, it shall not be open to the respondent DTC to terminate or dismiss the petitioners on the basis of the alleged fraud, merely by giving a show cause notice and calling for a reply.

9. This Court is informed that the petitioners have been laid off and have not been paid either suspension allowance or any part of the remuneration. In case

the respondents are proceeding to hold an enquiry, the petitioners should be placed under suspension, at least from the date of their first lay off, and the concerned rules with regard to the payment of subsistence allowance shall be complied with. Time for compliance shall be six weeks from today.

10. All rights and contentions of the parties, in accordance with the DTC Conduct Rules, are hereby reserved.

11. The writ petitions (W.P. (C) Nos. 4212/2014, 4214/2014, 4237/2014, 4240/2014, 4243/2014 and 4244/2014) are disposed of in the above terms along with all the pending applications.