

(2014) 06 MAD CK 0335

In the Madras High Court

Case No : Writ Appeal (MD) No. 575 of 2013

The Tamil Nadu Wakf Board

APPELLANT

Vs

M. Abudl Rahim

RESPONDENT

Date of Decision : 26-06-2014

Acts Referred:

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

Citation : (2014) 4 LLN 500 : (2014) 5 LW 156 : (2014) WritLR 889

Hon'ble Judges : V.M. Velumani, J;V. Ramasubramanian, J

Bench : Division Bench

Judgement

V. Ramasubramanian, J.—One Mr. M. Abdul Rahim, who is the petitioner in the writ petition and who is the 1st respondent in the writ appeal, was appointed as an Assistant Professor of Zoology on 04.09.1980 in the M.S.S. Wakf Board College at Madurai. After getting regularised on 03.10.1980, he became a senior grade lecturer and subsequently the Head of the Department of Zoology, in the year 2002. In February, 2008, the writ petitioner sought medical leave on the ground that he had suffered fracture in the left leg. Medical leave was refused and the writ petitioner was referred to the Regional Medical Board. The Regional Medical Board gave an opinion on 17.08.2010 that the writ petitioner is not fit to carry out the duties and responsibilities of the post of Lecturer.

2. According to the writ petitioner, he submitted a letter on 11.09.2010, unwillingly and under coercion, to go on voluntary retirement. It appears that the request was accepted by a letter dated 15.09.2010. But, the petitioner sent a letter on 24.09.2010, withdrawing his request for voluntary retirement. But, the Management of the College took a stand, through their letter dated 05.10.2010, that the envelop in which the letter of withdrawal of request for voluntary retirement was sent, did not contain anything inside. After taking such a stand, the Management of the College sent a communication dated 12.10.2010, claiming that the writ petitioner would stand relieved from the post of Assistant Professor of Zoology with immediate effect on Invalidation Pension Scheme.

3. Challenging the said communication dated 12.10.2010, the writ petitioner filed W.P.(MD)No. 12963 of 2010 on the file of this Court. The writ petition was admitted and an interim stay was granted on 21.10.2010.

4. Thereafter, when the writ petition came-up for final hearing on 11.10.2012, it was reported to this Court that the order dated 12.10.2010 would be withdrawn by the Management and that the request for voluntary retirement already stood accepted. In view of the said statement, a learned Judge of this Court dismissed the writ petition in W.P.(MD) No. 12963 of 2010, leaving it open to the parties to work out their remedies in a manner known to law. Thereafter, the Management of the College issued a communication dated 09.01.2013, accepting the request of the petitioner for voluntary retirement, with effect from 14.12.2010, the date of expiry of 90 days from the date of submission of the letter of voluntary retirement. Therefore, challenging the said communication, the writ petitioner filed W.P.(MD) No. 1395 of 2013. On 28.01.2013, the writ petition was admitted and an interim stay of the order dated 09.01.2013 was granted. The stay order was extended on 19.04.2013, until further orders. In the meantime, this Court also passed another order directing the Dean of the Government Rajaji Hospital, Madurai, to constitute a Medical Board and assess the health condition of the writ petitioner. In the meantime, the Management of the College as well as the Tamil Nadu Wakf Board, under whose administrative control the college in question comes, filed the above W.A.(MD)No.575 of 2013, challenging the order dated 19.04.2013, extending the interim order of stay. On 24.06.2013, the writ appeal came up for admission before the Division Bench of this Court. At that time, it was represented by the learned counsel for the writ petitioner that they were ready to argue the main writ petition itself, along with the writ appeal. Therefore, the writ petition itself was directed to be tagged along with the writ appeal and both were taken-up for hearing, by consent of the parties.

5. Normally, writ petitions (except Public Interest Litigation and certain special types of writ petitions) are heard and disposed of by Single Judges and any person, aggrieved by an order passed by the learned Judges, is entitled to file appeal before the Division Bench under Clause 15 of the Letters Patent. But, in this case, the Division Bench passed an order on 24.06.2013, when the writ appeal came up for admission, posting the writ petition itself along with the writ appeal. The said order is extracted as follows:

"Mr. T. Lajapathi Roy, learned counsel, takes notice for R-1.

Learned counsel for R-1 and the learned counsel for the appellants submit that they have no objection to hear W.P.(MD) 1395/13 along with this Writ Appeal.

In view of the above, post the said writ petition on 01.07.2013 along with this Writ Appeal."

6. Therefore, we took-up the writ appeal and the writ petition together for disposal and we have heard Mr. T. Lajapathi Roy, learned counsel for the writ petitioner, Mr. M. Alagadevan, learned Special Government Pleader for the

Director and Joint Director of Collegiate Education, who are the respondents 1 and 2, Mr. K.K. Senthil, learned counsel appearing for the Management of the College, which is the 4th respondent, and Mr. M. Mohammed Athiff, learned counsel for the 3rd and 5th respondents.

7. At the outset, it should be pointed out that the moment the writ petition was taken up for final disposal, the writ appeal, arising out of the interim order, would become infructuous. Therefore, W.A.(MD)No.575 of 2013 is dismissed. No costs. Connected miscellaneous petitions are also dismissed.

8. Now we shall take up the writ petition for disposal.

9. As pointed out earlier, the writ petitioner made a request to go on voluntary retirement and the same was accepted by the Management. But, subsequently, the writ petitioner attempted to withdraw the request for voluntary retirement. Without either permitting him to withdraw the request for voluntary retirement or refusing the request for withdrawal of voluntary retirement, the Wakf Board passed an order on 12.10.2010 relieved the petitioner from service. When the petitioner challenged the said order and obtained interim stay, the Management offered to withdraw the letter dated 12.10.2010 relieving the petitioner from service. Thereafter, the Management passed an order dated 09.01.2013, accepting the request for voluntary retirement. Thus, the whole sequence of events would show that both parties are guilty of approbating and reprobating. The only difference is that the Management of the College is guilty of the same in a greater measure than the writ petitioner.

10. The letter seeking voluntary retirement, dated 11.09.2010 reads as follows:

"Respected Sir,

Assalam Alaikkum,

After serving in this college for the past thirty years I under the pressure of certain unavoidable circumstances and as requested earlier by the Chairman and some members of Governing Body I opt for VRS. I pray almighty to forgive me and bless everyone with his grace."

11. The letter of acceptance dated 15.09.2010 given by the Management of the College reads as follows:

"As per the application dt: 11.09.2010 to opt for VRS is accepted and you are to be relieved on the 91st day.

During the VRS period you have to avail only (a) Leave on private affairs, (b) Earned Leave only.

On the 90th day you should be physically present in the college for putting signature in the staff attendance register."

12. The letter dated 24.09.2010 sent by the writ petitioner seeking to withdraw the request for voluntary retirement reads as follows:

"Assalau Alaikum. My wife had informed OS Mr. Nazar that after 1st Week of October I will inform you regarding my decision as my close blood relatives are out of Station now. He said he had also conveyed the message to you. The Principal in charge did not heed to us directly or by phone. So I had to inform OS. By force and by concern and due to under pressure I was forced to seek VRS unwillingly and without my own decision. Hence I request you to withdraw my unwillingness VRS Letter. I am protected under "The Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995 Section 47."

13. A reading of the above letter shows that the writ petitioner sought to withdraw the request for voluntary retirement, not merely because the letter of voluntary retirement was purportedly obtained by coercion, but also because of the wisdom that dawned on him later, perhaps after legal advice that he was protected by the Persons with Disabilities (Equal Opportunities protection of rights and Full Participation) Act, 1995.

14. The Management of the College took a stand by their communication, dated 05.10.2010, that what was sent purportedly as a letter of withdrawal was not found inside the envelop. The letter of the Management dated 05.10.2010 reads as follows:

"This is to inform you that a RLAD No. 8174 Dt.24.09.2010 was sent to me and it was received by the office on 27.09.2010. While the letter was opened it is shocked that no matter is available inside the cover. On the enquiry by me on 04.10.2010 you have informed that the withdrawal of VRS letter is enclosed in this cover and assure that a copy of the same is submitted at once. But you have not yet submitted the copy of the above said letter. On what intention that you have done this kind of action"

15. Thereafter, Management sent the Communication, dated 12.10.2010, relieving the petitioner from service. The said letter reads as follows:

"ORDER:

As per the decision of the 10.07.2010 Governing Body Meeting you are directed to appear before the Medical Board. Accordingly you have appeared before the Medical Board on 03.08.2010 and admitted on the same day and was discharged on 07.08.2010.

As per the Proceedings cited 2nd above we have received a report on you examination that you are not fit for the post of Associate Professor in Zoology Department.

Accordingly you have relieved from the service of Associate Professor Zoology with immediate effect on invalidation pension scheme."

16. The above sequence of events would show that the claim of the writ petitioner that he had withdrawn the request of voluntary retirement, was not

accepted by the Management. The Management took a positive stand in their communication dated 05.10.2010 that the letter of withdrawal of the request of voluntary retirement, dated 24.09.2010, was not received by them. The petitioner made no attempt to send the letter of withdrawal once again.

17. As a matter of fact, the stand taken by the writ petitioner in his letter dated 24.09.2010 that the letter to go on voluntary retirement was obtained by force and coercion, cannot be accepted in the light of the natural manner in which the letter dated 11.09.2010 has been written. The letter dated 24.09.2010 branding the letter to proceed on voluntary retirement as vitiated by coercion appears to be artificial. Moreover, if a request for voluntary retirement had been made under coercion and force, the question of withdrawal would not arise. A request for voluntary retirement made under coercion or force is no request at all in the eye of law. Therefore, the question of withdrawal of such a request for voluntary retirement does not arise. The very fact that the writ petitioner, by his letter dated 24.09.2010, sought for the withdrawal of the previous request would show that it could not have been obtained by force or coercion.

18. In *Gyanendra Sahay Vs. Tata Iron and Steel Co. Ltd.*, , an employee of the respondent company submitted an application for voluntary retirement. But, subsequently, he claimed that his request was made under undue influence and excessive pressure, exercised by the officers of the company. The Supreme Court pointed out that such a plea cannot be accepted when the request for voluntary retirement was made in the petitioner's own hand writing and when the petitioner could not name any officer who was responsible for bringing pressure and undue influence upon him. Therefore, the contention of the writ petitioner that his request for voluntary retirement was made under coercion and undue influence cannot be accepted.

19. But, on account of an absurd action on the part of the Management in relieving the writ petitioner from service on 12.10.2010, and thereafter offering to withdraw the same during the course of hearing of the first writ petition, the management conferred an unintended benefit upon the writ petitioner. This has resulted in the petitioner being entitled to be treated as in service with all attendant benefits, upto the date of the order impugned in the writ petition, namely, 09.01.2013. By the letter dated 09.01.2013, the Management accepted the request for voluntary retirement. It is needless to point out that a request for voluntary retirement can be accepted at any time till it is withdrawn. There is no proof to show that the letter of withdrawal dated 24.09.2010 was actually served on the Management. Therefore, the Management was well within its rights to accept the request for voluntary retirement by the order impugned in the writ petition, dated 09.01.2013.

20. But, the only mistake committed by the Management is that they accepted the request for voluntary retirement with effect from the date of expiry of 90 days from 11.09.2010. This could not have been done by the Management. Till the request of a person to go on voluntary retirement is accepted, he is deemed

to be in service. The Management of the college is not entitled to sleep over the request for voluntary retirement from 11.09.2010, for a period of more than two years and accept it on 09.01.2013 with retrospective effect. Therefore, the only mischief in the order impugned in the writ petition is the date from which it is entitled to be given effect.

21. The learned counsel for the writ petitioner contended that in any case, the writ petitioner is entitled to the benefit of the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. He relied upon the decision of the Supreme Court in Bhagwan Dass and Another Vs. Punjab State Electricity Board, and the decision of K. Chandru, J in C. Narayanan Vs. The Deputy Director-cum-Principal in Charge, Government Industrial Training Institute and The Director, Employment and Training, . Therefore, we have to consider whether in the light of the provisions of the Act, the writ petitioner could be allowed to go on voluntary retirement at all, solely on account of his disabilities suffered by him, during the course of his employment.

22. The object of the 1995 Act is to ensure equal opportunities to persons who suffer from disabilities and also to ensure protection of their rights and full participation in all walks of life in the society. Section 47(1) of the Act mandates that no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service. If the employee becomes unsuitable for the post he was holding, he could be shifted to some other post with the same pay scale and service benefits. If he could not be accommodated against any post, the second proviso to Section 47(1) mandates the creation of a supernumerary post until a suitable post is available or until he attains the age of superannuation.

23. Therefore, in Bhagwan Dass, the Supreme Court was concerned with a case where an employee, who suffered visual impairment in the course of employment and who later became completely blind, made a request for voluntary retirement. The request for voluntary retirement was accepted. Thereafter, he wanted to withdraw the request for voluntary retirement, after coming to know of the benefits available to him under the 1995 Act. The request for withdrawal was turned down by the departmental authorities. The challenge made by the employee before the High Court failed and hence he appealed to the Supreme Court. While allowing the appeal, the Supreme Court indicated that the case highlighted the insensitive and apathetic attitude harboured by some sections of society, leading a normal healthy life towards unfortunate fellow human beings who fell victim to some incapacitating disability.

24. The said decision was followed by K. Chandru, J. in C. Narayanan. Therefore, it is contended by the learned counsel for the petitioner that the petitioner is entitled to the protection under Section 47 of the 1995 Act.

25. In the light of the above submissions, it is necessary first to consider whether the case of the petitioner is covered by Act 1/1996 or not. Section 2(i) of the Act

defines "disability" to mean: (i) blindness; (ii) low vision; (iii) leprosy-cured; (iv) hearing impairment; (v) locomotor disability; (vi) mental retardation; and (vii) mental illness.

26. Section 2(t) defines the expression "person with disability" to mean a person suffering from not less than 40% of any disability as certified by a medical authority. Therefore, to be entitled to the protection under the Act, a person should satisfy the requirements of Section 2(t), with reference to the definition of the word "disability" under Section 2(i).

27. Insofar as the writ petitioner is concerned, the medical board at the Government Rajaji Hospital, Madurai, to which the petitioner was referred, has submitted a report on 25.03.2013. As per the said Report, the petitioner was a known case of Parkinson's disease, since 1988. The Neurological Assessment indicated that the petitioner was in stage IV. The relevant portion of the Report of the Medical Board is extracted as follows:

"Parkinson"s disease rating scales-

I Modified Hoehn & Yahr staging - stage III to IV (severe)

II Unified Parkinson"s disease rating scales-

Mentation, Behaviour, Mood Scale 0/16

Activities of Daily living 18/51

Motor Score - 49/108

Dyskinesia 5/23

III Schwab & England Activities of daily living 60%

Some dependency can do most chores, but very slowly with much effort and errors, some impossible.

Neurological Assessment:

Diagnosis: Parkinson"s disease - stage IV

Lecturer job requires teaching loudly, writing and drawing the diagrams neatly and sharply, supervising the students in classrooms, doing laboratory works.

Since the patient has hypophonic monotonous voice less understandable to others, with slowness of all movements and illegible micrographia, we are of opinion that he can not do the job of lecturer.

He can be given an alternate suitable job which does not involve teaching loudly, writing and equipment handling, at the discretion of the employer."

28. The opinion of the Medical Board shows that the disability suffered by the petitioner would fall under the category of "locomotor disability" under Section 2(i)(v) of the Act. The expression "locomotor" disability is defined under Section

2(o) to mean disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy. Since Parkinson's disease is usually classified as a movement disability, it affects movement. It is mostly identified by four important symptoms namely tremor at rest, rigidity, slowness of movement and postural instability.

29. The National Sample Survey Organisation (NSSO) conducted a survey of disability of persons for the first time in its 36th Round during the second half of 1981, the International Year of the Disability Persons. The second survey was carried out in the 47th Round during July-December, 1991. The third and the latest comprehensive survey on the disability persons was carried out in the 58th Round (July-December, 2002). The survey indicates "locomotor disability" to mean the following: "A person with - (a) loss or lack of normal ability to execute distinctive activities associated with the movement of self and objects from place to place and (b) physical deformities, other than those involving the hand or leg or both, regardless of whether the same caused loss or lack of normal movement of body - was considered as disabled with loco-motor disability. Thus, persons having locomotor disability included those with (a) loss or absence or inactivity of whole or part of hand or leg or both due to amputation, paralysis, deformity or dysfunction of joints which affected his/her "normal ability to move self or objects" and (b) those with physical deformities in the body (other than limbs), such as, hunch back, deformed spine, etc. Dwarfs and persons with stiff neck of permanent nature who generally did not have difficulty in the normal movement of body and limbs were also treated as disabled."

Therefore, we are of the view that the disability acquired by the petitioner would fall within the definition of the expression under Section 2(i) of the 1995 Act.

Hence, despite the claim of the respondents that they had accepted the request for voluntary retirement, we do not think that such acceptance can go contrary to statutory protection given to the petitioner. Hence, the writ petition is allowed. The impugned proceedings of the 4th respondent in TS/WBC/RO/2012, dated 09.01.2013, is quashed. No costs. Connected miscellaneous petitions are closed.