
(2013) 10 RAJ CK 0042
In the Rajasthan High Court
Case No : S.A. (W) No. 904 of 2013

Union of India and Another	Vs	APPELLANT
Nahari Thakkar and Another		RESPONDENT

Date of Decision : 28-10-2013

Acts Referred:

Citation : (2014) 141 FLR 65 : (2014) 1 LLJ 213 : (2014) 1 LLN 534

Hon'ble Judges : Pratap Krishna Lohra, J;Dinesh Maheshwari, J

Bench : Division Bench

Advocate : V.K. Mathur, for the Appellant;

Final Decision : Dismissed

Judgement

Dinesh Maheshwari, J.—By way of this intra-court appeal, the Union of India and the Chief Post Master General, Rajasthan seek to question the order dated 18.7.2013 passed in S.B. Civil Writ Petition No. 4573 of 2010 whereby, a learned Single Judge of this Court has rejected their challenge to the order dated 4.2.2010, as passed by the Deputy Commissioner for Persons with Disabilities in Case No. 1/1024/08-09, which was registered on a complaint made by the present respondent No. 1, a person with 100% visual impairment, stating violation of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("the Act"/"the Act of 1995") when the appellants dispensed with his services on an application seeking voluntary retirement. In brief, the relevant facts and background aspects of the matter are as follows: The respondent No. 1 joined the services with the appellants on the post of Postal Assistant on 11.3.1983; and was, in the due course of time, promoted to the post of Special Post Master ("SPM"). As would appear hereafter, it was rather an indisputable position that while serving as SPM, the respondent No. 1 gradually started losing his eyesight leading to substantial disability. On 7.5.2004, the respondent No. 1 submitted an application seeking transfer to Sagwara or to the Head Post Office at Dungarpur with the submissions that he was unable to work as the Incharge of Post Office

because of failing eyesight.

2. It appears that with reference to the prayer so made by the respondent No. 1, the department made a request to the Chief Medical and Health Officer on 27.12.2004 to constitute a Board for the purpose of his medical examination. In this regard, the department further sent the reminders on 13.1.2005 and on 2.2.2005 but the Medical Board could not be constituted. The respondent No. 1, however, produced a medical certificate from L.V. Prasad Eye Institute, Hyderabad to the effect that he was suffering from 100% visual disability.

3. The case of the respondent No. 1 had been that upon submission of such a disability certificate to the superiors, instead of extending help and coming to the rescue, they asked him to seek voluntary retirement from service and else, his services might be terminated. According to the respondent No. 1, it was under the compelling circumstances and having not been extended proper advice and counselling that he moved an application on 6.4.2005, in the form of a notice under Rule 48/48-A of the Central Civil Services (Pension) Rules, 1972 ("the Rules of 1972"), seeking voluntary retirement with effect from 21.7.2005.

4. The Superintendent of Post Offices, Dungarpur granted the prayer made under the aforesaid notice after due verification; and sanctioned voluntary retirement of the respondent No. 1 who was, accordingly, relieved from service on 21.7.2005 while being given the admissible terminal benefits.

5. More than three years after voluntary retirement, the respondent No. 1 filed a complaint on 3.11.2008 before the Chief Commissioner of Persons with Disabilities, inter alia, with the submissions that his case was squarely covered u/s 47 of the Act of 1995. It was submitted that an obligation was cast upon the respective authorities/departments to inform their employees, particularly those in the lower rungs, about their rights under the law/statute. The respondent No. 1 alleged that he was not made aware about the rights u/s 47 of the Act to continue in service in the appropriate manner; and was made to seek voluntary retirement, contrary to his legal rights. As regards delay in filing the complaint, the respondent No. 1 stated that he was rather compelled to take voluntary retirement from service but came to know about the provisions of the Act of 1995 and his rights enshrined in Section 47 thereof through participation in a training programme on "disability and law", which was organized by an NGO in the month of November 2007; and, thereafter, he took time in seeking legal aid. The respondent No. 1 prayed for directions against the present appellants to reinstate him without break in service and to make due payment after appropriate reconciliation.

6. On being noticed, the appellants filed a reply, while contesting the allegations levelled by the respondent No. 1 and his claim. It was, inter alia, submitted that the respondent No. 1 was never advised to take voluntary retirement from service; and, in fact, he could not be examined by the Medical Board due to non-availability of members but then, he voluntarily sought retirement by tendering

three months notice. It was submitted that the complainant-respondent No. 1 himself having opted for voluntary retirement, the provisions of Section 47 of the Act of 1995 could not be invoked. It was also suggested that no medical certificate issued by the competent authority was available on record which could prove that he was a disabled person.

7. The Deputy Chief Commissioner for Persons with Disabilities (hereinafter referred to as "the Commissioner") dealt with the case registered on the complaint so made by the respondent No. 1 (Case No. 1/1024/08-09) in his impugned order dated 4.2.2010. Taking note of the facts above noticed, the learned Commissioner held that the complainant-respondent No. 1 applied for voluntary retirement under the mental pressure fearing loss of job, as he remained ignorant about the protection u/s 47 of the Act. The learned Commissioner also observed that there was no evidence that any officer of the department advised him against applying for voluntary retirement nor the department made any effort to adjust him at some other place where he could have performed his duties as a person with visual impairment. The objection of the appellants that the complainant did not come under the purview of disabled person for want of medical certificate was also rejected with reference to the aforesaid certificate issued by L.V. Prasad Eye Institute, Hyderabad.

8. The learned Commissioner further observed that even otherwise, it must have been obvious to his superior officer that he had a weak eyesight as he admittedly used to work with the assistance of his son and had also made a request for transfer. The learned Commissioner concluded that the complainant became victim of ignorance, not only on his part but also on the part of his employer; and it was reasonable that keeping in view the provisions of Section 47 of the Act as also the decision of the Hon'ble Supreme Court in the case of Bhagwan Dass and Another Vs. Punjab State Electricity Board, that the department should consider his case for reinstatement with necessary recoveries of the retirement benefits already paid and adjustment of pension received by him, so far could be made in just and reasonable manner. The learned Commissioner held, inter alia, as under:

5. From the available documents and the statements, it appears that the complainant applied for voluntary retirement under mental pressure fearing loss of job, ignorant as he was, about the protection u/s 47 of the Act. There is no evidence that any officer of the respondent advised him against applying for voluntary retirement and its consequences which virtually cost him a job for 15 years. The respondent has also not submitted any record to show any effort to adjust the complainant in some other post in which he could perform his duties as a person with visual impairment. The respondent's contention that the complainant does not come under the purview of physically handicapped persons on the ground that Medical Certificate issued by the competent authority is not available in record, is not sustainable as the complainant had submitted copy of medical certificate issued by L.V. Prasad Eye Institute for the blind and Visually

Impaired. The said certificate indicates that the complainant was examined in person on 16.12.2003 and his disability is 100%. Even otherwise, it must have been obvious to his supervisory officers and other staff that he had weak eye sight as he admittedly used to work with the assistance of his son Mr. Manoj Thakar and also requested for transfer Sagwara or to Office of the Superintendent of Post Offices, Dungarpur Division in May 2004.

6. In the above circumstances, it appears that the complainant became victim of ignorance not only on his part but also on the part of his employer. The price paid by him was disproportionate especially when he had the protection of law. Therefore, it seems reasonable that keeping in view the provisions of Section 47 of the Persons with Disabilities Act, 1995 and the decision of Hon"ble Supreme Court dated 4.1.2008, the respondent should consider reinstatement of the complainant. Necessary recoveries of the retirement benefits already paid to him and adjustment of pension received by him so far, can be made in just and reasonable manner.

9. Questioning the order so passed by the Commissioner, appellants filed the writ petition (CWP No. 4573 of 2010), which has been considered and dismissed by the learned Single Judge of this Court by the impugned order dated 18.7.2013.

10. After taking note of the rival submissions, the learned Single Judge considered the provisions contained in Section 47 of the Act as also the decision of the Hon"ble Supreme Court in the case of Bhagwan Dass and Another v. Punjab State Electricity Board (supra) and found the order impugned not suffering from any illegality so as to warrant interference; and hence, dismissed the petition. Aggrieved by the order so passed by the learned Single Judge, the appellants have preferred this intra-court appeal.

11. The learned counsel for the appellants would contend that the learned Single Judge has failed to consider the crucial aspect of the matter that the Commissioner had exceeded his jurisdiction in deciding the matter by the order dated 4.2.2010 and in directing the appellants to consider reinstatement of the respondent No. 1. It is submitted with reference to provisions contained in Chapter XII of the Act of 1995 that therein, the Commissioner is not authorised to intervene in the service matters pertaining to voluntary retirement under the Rules of 1972. It is further contended that the respondent No. 1, who exercised his right to seek voluntary retirement under Rule 48 of the Rules of 1972 and got all the benefits including pension, made a baseless attempt at a very late stage with reference to alleged information gathered from an NGO programme. According to the appellants, if the respondent No. 1 had developed such a disability, he would have informed the higher authorities in proper manner but he did not do so. It is contended that respondent No. 1 had failed to prove any aspect of pressurization from the administration as alleged and as assumed by the Commissioner. It is also suggested that when the Commissioner found the respondent No. 1 himself to be equally ignorant, there was no justification in passing the order of his reinstatement.

12. Having given anxious consideration to the submissions made on behalf of the appellants and having examined the record, we are at one with the observations made and finding recorded in the orders impugned; and are clearly of the view that this appeal remains totally bereft of substance.

13. A bogey of suggestions has been attempted on behalf of the appellants at every stage that the department was not aware about the disability of the respondent No. 1. Such nature submissions remain rather unjustified, apart from being untenable when several facts and circumstances unfailingly establish that the department was indeed aware about the disability of respondent No. 1. It is noticed that by a memorandum dated 17.2.2003, the respondent No. 1 was proceeded under the conduct rules on the allegations that he left the headquarter without obtaining prior permission from the competent authority on 29.1.2003 and failed to open the Post Office on the scheduled time on 30.1.2003. All the facts relating to such an inquiry are not relevant for the present purpose except that the department found proved the charge against him but then, the Superintendent of Post Offices, Dungarpur Division took a lenient view looking to his "physical weakness of sight" and thus, imposed a minor penalty of withholding one increment for six months without cumulative effect. It is also noticed that in the inspection report drawn by the Assistant Superintendent of Post Offices on 18.8.2004 of 23.9.2004, it was comment made that the respondent No. 1 was a "handicapped person" and the work was suffering.

14. Moreover, the department had repeatedly requested the Chief Medical and Health Officer, Dungarpur for constitution of Medical Board for the purpose of medical examination of the respondent No. 1 in relation to the condition of his eyesight. The letters of Superintendent, Post Offices, Dungarpur dated 27.12.2004 (Annexure C) and dated 2.2.2005 (Annexure D) falsify the suggestion that the department was not informed by the respondent No. 1 about his failing eyesight.

15. Further, we find it absolutely unjustified on the part of the appellants in attempting to suggest that for want of a medical certificate of the so-called competent authority, the respondent No. 1 may not be a person falling within the purview of the Act of 1995. The facts available on the record of department read with the certificate issued by the aforesaid L.V. Prasad Eye Institute leave nothing to doubt that the respondent No. 1 had been a case of substantial, rather total, visual impairment and hence, a person directly covered under the Act of 1995.

16. Coming to the question about the ambit and scope of the powers of the Commissioner, appropriate it would be to take note of the relevant provisions of the Act of 1995, while keeping in view the objects and reasons of the enactment, which are, inter alia, 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".

Section 47 of the Act of 1995 reads 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.

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

Section 62 of the Act of 1995 reads as under:

62. Commissioner to look into complaints with respect to matters relating to deprivation of rights of persons with disabilities.-

Without prejudice to the provisions of section 61 the Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to-

(a) deprivation of rights of persons with disabilities; (b) non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights of persons with disabilities, and take up the matter with the appropriate authorities.

17. Apparent it is that an employee acquiring disability during his government employment has been invested with substantial rights against termination of service or reduction in rank or denial of promotion; and the Commissioner, has unquestionable powers to look into complaints relating, inter alia, to deprivation of rights of persons with disabilities. In the face of the provisions aforesaid and the object and purpose of the Act of 1995, the submissions on behalf of the appellants that the Commissioner is not authorised to intervene in the service matters remains hollow and deserve to be rejected.

18. If at all there was any room for entertaining some doubt in regard to the scope of powers of the Commissioner under the Act of 1995, the same ought to meet with its quietus with the authoritative pronouncement of the Hon"ble Supreme Court in the case of Geetaben Ratilal Patel v. District Primary Education

Officer: Civil Appeal No. 9324 of 2012, decided on 2.7.2013. In that case, the Hon"ble Supreme Court precisely considered the question as to whether u/s 62 of the Act of 1995, the Commissioner could look into the legality of the order of dismissal from service of a disabled person, if it comes to his notice that the person with disability had been deprived of his rights. The question arose in the backdrop of the facts that the appellant therein, a Primary Teacher who was transferred from 18.6.1999, proceeded on medical leave and then, remained absent for long spells. She was served with the charge-sheet on 28.7.2002 but did not submit any explanation despite repeated notices. Ultimately, the department dismissed her from service by the order dated 15.4.2004. In that case too, the appellant did not take any action for about three years. In the year 2007, however, she filed an application before the Commissioner taking the plea that the order of dismissal came to be passed when she was suffering from mental illness and the order was in violation of Section 47 of the Act of 1995. It was a submission on behalf of the appellant that she was divorced by her husband in the year 1998 where for she started suffering from mental depression resulting in 40 to 70 percent mental disability.

19. The Commissioner held that as the appellant was suffering from 40 to 70 percent mental disability, the said order of dismissal was void. It was also observed that an appropriate post might be created for her as per Section 47 of the Act while treating her continuously in service without break.

20. In a challenge by the department to the order so passed by the Commissioner, the writ Court, by an interim order, though stayed the directions for payment of back wages but directed that the department would get the complainant examined by a government doctor; and if it was so opined, such duty might be assigned to her where she could comfortably and conveniently, and in a safe atmosphere, discharge her duties. However, later on, the writ petition came to be dismissed on the grounds that it had been a case of absenteeism and a grossly belated challenge was made, more than three years after dismissal. The Division Bench of the High Court affirmed the order so passed by the learned Single Judge.

21. In the appeal on behalf of the employee, with reference to the object and purpose of the Act of 1995 and then, the provisions contained in its Sections 47 and 62, the Hon"ble Supreme Court held in no uncertain terms that the power of the Commissioner "to look into the complaints with respect to the matters relating to deprivation of rights" was not an empty formality. The Hon"ble Court further held that when it comes to the notice of the Commissioner that a person with disability has been deprived of his rights or the authorities have flouted any law, rule, guideline, instruction etc., the Commissioner is required to take up the matter with the appropriate authority to ensure restoration of the rights of such disabled person and/or for implementation of law, rule, guideline, instructions, if not followed. The Hon"ble Court said,-

16. The provisions of Sections 47 and 62 of the Act, when read together,

empower the Commissioner, to look into the complaint with respect to the matters relating to deprivation of rights of persons with disabilities and non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions issued by the appropriate Governments or local authorities and to take up the matter with the appropriate authorities for the welfare and protection of rights of persons with disabilities including matter relating to dispensation with service or reduction in rank. The power of the Commissioner "to look into the complaints with respect to the matters relating to deprivation of rights" as provided u/s 62 of the Act is not an empty formality and the Commissioner is required to apply his mind on the question raised by the complainant to find out the truth behind the complaint. If so necessary, the Commissioner may suo motu inquire into the matter and/or after giving notice, hearing the concerned parties and going through the records may decide the complaint. If it comes to the notice of the Commissioner that a person with disability has been deprived of his rights or that the authorities have flouted any law, rule, guideline, instruction, etc. issued by the appropriate Government or local authorities, the Commissioner is required to take up the matter with the appropriate authority to ensure restoration of rights of such disabled person and/or to implement the law, rule, guideline, instruction if not followed. A complaint may be made by any disabled person himself or any person on behalf of disabled persons or by any person in the interest of disabled persons. Thus the issue as involved is decided affirmatively in favour of the appellant and against the respondent.

22. On the facts of the case and after finding that no specific departmental proceedings had been undertaken, the Hon'ble Supreme Court upheld the order of the Commissioner and directed the authorities to reinstate the appellant in service and also grant her arrears of salary with effect from 1.2.2008.

23. In regard to the question on the powers of the Commissioner under the Act of 1995, the ratio of decision in *Geetaben Ratilal Patel v. District Primary Education Officer* (supra) directly applies; and the contentions urged on behalf of the appellants are required to be rejected. It is but apparent that merely because any particular case is termed as a service matter or is related with pension rules, it cannot be said that the Commissioner has no power to deal with the same and to take it to the logical conclusion by issuing necessary directions for compliance by the authorities concerned. As observed by the Hon'ble Supreme Court, the proceedings before the Commissioner by any person suffering from disability are not mere paper proceedings. They are meant to be of giving substantive relief in the case where deprivation of rights is established.

24. As regards the residual contention on behalf of the appellants that it had been a case of the respondent No. 1 seeking voluntary retirement of his own accord, we have no hesitation in observing that the material on record clearly negates such a suggestion. What the appellants have proposed is suggestive of rather a perfunctory approach towards this case, detached and away from the

ground realities. The case of Bhagwan Dass and Another v. Punjab State Electricity Board (supra) had been of akin nature, where a Class IV employee of Punjab State Electricity Board fell victim of same nature disability of loss of eyesight; and he made an application to the Board, seeking to retire from service but with the prayer that his wife may be provided with suitable job. The Board proceeded to dispense with his services. The Hon''ble Supreme Court commented on the rather insensitive and apathetic attitude harboured by some of us towards the victims of some incapacitating disability; and deprecated the action of the concerned Officers of the Board when they failed to explain the correct legal position and the legal rights to the employee concerned. The enormous pressure under which the request of quitting the job would come from a person visited with such disability was also consciously taken note of by the Hon''ble Supreme Court. The Hon''ble Court precisely pointed out the approach requisite in regard to the provisions of the Act of 1995, while dealing with the meaning, effect, purport and sweep thereof in the following:

18. Appellant No. 1 was a Class IV employee, a Lineman. He completely lost his vision. He was not aware of any protection that the law afforded him and apparently believed that the blindness would cause him to lose his job, the source of livelihood of his family. The enormous mental pressure under which he would have been at that time is not difficult to imagine. In those circumstances it was the duty of the superior officers to explain to him the correct legal position and to tell him about his legal rights. Instead of doing that they threw him out of service by picking up a sentence from his letter, completely out of context. The action of the concerned officers of the Board, to our mind, was depreciable.

19. We understand that the concerned officers were acting in what they believed to be the best interests of the Board. Still under the old mindset it would appear to them just not right that the Board should spend good money on someone who was no longer of any use. But they were quite wrong, seen from any angle. From the narrow point of view the officers were duty bound to follow the law and it was not open to them to allow their bias to defeat the lawful rights of the disabled employee. From the larger point of view the officers failed to realise that the disabled too are equal citizens of the country and have as much share in its resources as any other citizen. The denial of their rights would not only be unjust and unfair to them and their families but would create larger and graver problems for the society at large. What the law permits to them is no charity or largess but their right as equal citizens of the country.

25. On the facts and in the circumstances of the present case, it is difficult to accept the suggestion that the prayer for voluntary retirement was an outcome of considered and informed exercise of option by the respondent No. 1, where he was conscious of his rights under the Act of 1995. The sequence of events and material factors as noticed hereinbefore leave nothing to doubt that the respondent No. 1 was stuck with the calamity of impairment of eyesight. There had been allegations against him of not attending on the duty within time and

there had been indications even in the inspection report that because of his disablement, the work of the Post Office was suffering. He asked for transfer to other appropriate place but such a prayer was also not acceded to by the appellants, allegedly for want of constitution of Medical Board. It cannot be gainsaid that in the present case too, it was a duty of the appellants to have explained the correct legal position to the respondent No. 1 as also about his legal rights rather than choosing to sever the ties with him while relying on a prayer for voluntary retirement. Significant it is to notice that there is nothing on record to even remotely make out if the authorities concerned made the respondent No. 1 aware of his legal rights and made any attempt to provide him with a posting at an appropriate place so that he could work with dignity without compromising on the departmental requirements. We are constrained to observe that the present case appears to be yet another example of apathy and insensitivity of the department concerned towards a person with disability.

26. In the given set of facts and circumstances, it is apparent that the prayer for voluntary retirement came from the respondent No. 1 only in a state of despair and dejection. Such a prayer cannot operate towards foreclosure of the rights of the respondent No. 1, as available under the Act of 1995.

27. A cursory suggestion on part of the appellants that when the Commissioner found the respondent No. 1 himself to be equally ignorant, there was no justification in passing the order of his reinstatement has only been noted to be rejected. Looking to the object and purpose of the enactment and the nature of right infringed, the respondent No. 1 could not have been penalised for his ignorance. On the other hand, the employers of welfare State like the appellants can ill-afford any ignorance about their duties and responsibilities, as pronounced in emphatic terms by the Hon'ble Apex Court in *Bhagwan Dass and Another v. Punjab State Electricity Board* (supra).

28. As regards the suggestion about delay on the part of the complainant in approaching the Commissioner, again, looking to the object and purpose of the enactment and the nature of right infringed, the requisite relief should not, ordinarily, be declined merely with reference to delay in approaching. In the case of present nature, involving a person with visual impairment and who had not received just and due treatment from the department, it would rather be a travesty of justice if his claim be declined only with reference to the so-called delay.

29. The upshot of the discussion foregoing is that the order passed by the Commissioner appears to be perfectly just and proper, not calling for any interference. The learned Single Judge has, therefore, rightly dismissed the writ petition filed by the appellants. In the result, this intra-court appeal fails and is, therefore, dismissed.