
(2014) 12 SHI CK 0107
In the High Court Of Himachal Pradesh
Case No : LPA No. 25 of 2009

Union of India

APPELLANT

Vs

Bali Ram

RESPONDENT

Date of Decision : 23-12-2014

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 47, 72

Citation : (2015) LabIC 1062

Hon'ble Judges : Mansoor Ahmad Mir, C.J; Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : Ashok Sharma, Assistant Solicitor General of India, Advocate for the Appellant; Suneet Goel, Advocate for the Respondent

Judgement

Tarlok Singh Chauhan, J.—This Letters Patent Appeal is directed against the judgment passed by the learned writ Court whereby the writ petition filed by the writ petitioner came to be allowed and he was directed to be reinstated in service and the amount of terminal benefits received by him was ordered to be adjusted against the amount of his salary from 11.03.1998 onwards.

The facts, in brief, may be noticed thus.

2. The respondent is the writ petitioner (hereinafter referred to as writ petitioner) was enrolled in the Central Reserve Police Force (for short "CRPF") as a constable driver on 31.07.1985. At the time of enrollment, he was physically examined and found fit. In 1996, the writ petitioner suffered some problem in his eye and was medically examined at Government Medical College and Hospital, Jammu, where he was found suffering from Disseminated Choroiditis and Retinal Atrophic Pathihs Macular involvement left eye. His visual acuity was 6/12 in right and 6/60 in left eye with no improvement with glasses i.e. he was found blind by left eye and partially blind in right eye. The Chief Medical Officer (NMSG) Station Hospital, GC, CRPF, Jammu, recommended his case to be put up before the Departmental Rehabilitation Board. The writ petitioner was declared unfit for

driving as well as combatant duties and referred to Medical Invalidation Board on 17.01.1997 as per circulation order 28/29. The Medical Board constituted by Base Hospital-II, CRPF, Hyderabad, examined the writ petitioner on 10.04.1997 and found him to be permanently incapacitated for further service of any kind in the department. On the basis of such recommendations, a notice dated 12.02.1998 was served upon the writ petitioner by the respondent No. 4 asking him to submit representation against the order of his medical invalidation. On 26.02.1998, the writ petitioner submitted application to the respondent No. 4 wherein he sought full 100% financial benefits from the department on his invalidation from service. Vide order dated 11.03.1998, the writ petitioner was invalidated from service with effect from 11.03.1998. The writ petitioner on 15.10.2000 made a representation to the respondents which was rejected in December, 2000.

3. The writ petitioner thereafter approached this Court by filing CWP No. 206/2003 which came up for consideration before this Court on 05.01.2005 and the following orders came to be passed:-

"When this case was taken up today, it was not disputed on behalf of the parties that after receipt of legal notice on behalf of the petitioner from his counsel Shri Sanjay Kalia, Advocate, Dharamshala, no decision had been taken on it till the date of swearing of affidavit, i.e. 12th July, 2004. Shri Baldev Singh, learned Addl. Central Government Standing Counsel, was not in a position to inform the Court whether any reply to this notice has been sent and/or whether the petitioner was found entitled to any relief in accordance with relevant rules and regulations.

In this view of the matter and without having gone into merits of the case, this writ petition is disposed of by directing the respondents to take decision on the legal notice admittedly received by them. Decision will be taken by or before 15th February, 2005, and shall then be conveyed to the petitioner. In case petitioner is found entitled to any relief in accordance with law, needful will be done by the respondents by or before 31st March, 2005. In case legal notice has already been examined and decision taken on it before today, in such a situation, respondents are directed to forthwith convey such decision to the petitioner. If he (the petitioner) feels dissatisfied with the same, he will be entitled to have such recourse as available to him in law and in that event, this order will not come in his way.

Writ petition is finally disposed of in these terms."

4. In compliance to the orders passed by this Court on 31.03.2005, the respondents vide order dated 27.06.2005 again rejected the case of writ petitioner by according the following reasons:-

"2. You are hereby informed that your legal notice has been ignored being devoid of any merit as the disease suffered by you was not caused or attributable to service conditions. As per risk fund rules, you were entitled to Rs. 15000/- only

which has been paid to you in lumpsum and you are not entitled to Rs. 1000/- PM as claimed by you. This is for your information."

5. The learned writ Court after invoking the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (for short the "Act of 1995") allowed the writ petition by holding that the writ petitioner would be deemed to be in service and entitled to all annual increments till the date of his retirement. The amount received by way of terminal benefits was ordered to be adjusted against the amount of his salary from 11.03.1998 and he was directed to be continued in service till the actual date of his superannuation according to service record.

6. The writ respondents, who are appellants, (hereinafter referred to as writ respondents) have challenged the judgment passed by the learned writ Court on the ground that the services of the writ petitioner could not be utilized anyway in the department since he was totally disabled. It is further contended that the writ respondents could not be compelled to pay a person while sitting idle and that pension has already been paid to the writ petitioner. It was also stated that the provisions of the Act were not applicable to the Armed Forces and a specific notification exempting the Armed Forces from applicability of this Act had been issued by the Central Government.

We have heard the learned counsel for the parties and gone through the records of the case.

7. It is not disputed that the writ petitioner was hale and hearty at the time of his enrollment with the writ respondents and, therefore, in absence of disability or disease noted or recorded at the time of entry into service/Armed Forces, there would be a presumption of sound physical and mental condition at the time of said entry in service and any disability, disease suffered by the writ petitioner later on would be deemed to be attributable or aggravated by the service.

8. In taking this view, we are fortified by the judgment of the Hon''ble Apex Court in Dharamvir Singh Vs. Union of India (UOI) and Others, wherein after discussing relevant law on the subject, the Hon''ble Supreme Court culled out the following principles:-

"29. A conjoint reading of various provisions, reproduced above, makes it clear that:

29.1. Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event

of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 read with Rule 14(b)].

29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).

29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].

29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].

29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and

29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the Guide to Medical Officers (Military Pensions), 2002-"Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

9. 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. The Disability Rights Movement in India commenced in 1977 of which National Federation of the Blind was an active participant. To realize the object that people with disabilities should have equal opportunities and keeping their hopes and aspirations in view, a 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. A proclamation was adopted in the said meeting to which India was a signatory and they agreed to give effect to the same.

10. The launch of the Asian and Pacific Decade of Disabled Persons in 1993-2002 gave a definite boost to the movement. The main need that emerged from the meet was comprehensive legislation to protect the rights of persons with disabilities. In this light, the crucial legislation was enacted in 1995, viz. the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, which empowers persons with disabilities and ensures protection of their rights. This Act provides some sort of succor to the disabled

persons.

11. Employment is a key factor in the empowerment and inclusion of people with disabilities. It is an alarming reality that the disabled people are out of job not because their disability comes in the way of their functioning rather it is social and practical barriers that prevent them from joining the workforce. As a result, many disabled people live in poverty and in deplorable conditions. They are denied the right to make a useful contribution to their own lives and to the lives of their families and community.

12. The learned Assistant Solicitor General of India has argued that the learned writ Court has wrongly applied the provisions of Act of 1995. The applicability whereof had been specifically excluded to the Armed Forces including the writ respondents.

13. It would be seen that the Act of 1995 came into force with effect from 7th February, 1996, while the writ petitioner was found unfit for driving and combatant duty by the Departmental Rehabilitation Board in its meeting held on 17.01.1997. Therefore, on the date on which the writ petitioner's medical condition had been adjudged, undisputedly, the provisions of Act of 1995 had already come into force. It was only on 28.03.2002 that the Ministry of Social Justice and Empowerment issued notification whereby in its exercise of powers conferred under Section 47 of the Act, the Central Government having regard to the type of work carried out, exempted all the categories of posts of the combatant of the Armed Forces from the provisions of Section 47. Undisputedly, the notification was only prospective in nature. Thus, it can safely be concluded that the Act of 1995 was applicable to the CRPF at the time when the decision was taken by the writ respondents to invalidate the writ petitioner with effect from 11.03.1998.

14. The learned Assistant Solicitor General thereafter has strenuously argued that the writ petitioner had already been paid the entire retiral benefits and was getting full pension and, therefore, was not entitled to re-employment. We are afraid that these submissions cannot be countenanced and have to be rejected outrightly in view of the following observations of the Hon'ble Supreme Court in Kunal Singh Vs. Union of India (UOI) and Another, wherein the Hon'ble Supreme Court observed as under:-

"11. We have to notice one more aspect in relation to the appellant getting invalidity pension as per Rule 38 of the CCS Pensions Rules. The Act is a special Legislation dealing with persons with disabilities to provide equal opportunities, protection of rights and full participation to them. It being a special enactment, doctrine of generalia specialibus non derogant would apply. Hence Rule 38 of the Central Civil Services (Pension) Rules cannot override Section 47 of the Act. Further, Section 72 of the Act also supports the case of the appellant, which reads:-

"72. Act to be in addition to and not in derogation of any other law:- The

provisions of this Act, or the rules made thereunder shall be in addition to, and not in derogation of any other law for the time being in force or any rules, order or any instructions issued thereunder, enacted or issued for the benefits of persons with disabilities."

12. Merely because under Rule 38 of CCS (Pension) Rules, 1972, the appellant got invalidity-pension is no ground to deny the protection, mandatorily made available to the appellant under Section 47 of the Act. Once it is held that the appellant has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay-scale and service benefits; if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation, whichever is earlier. It appears no such efforts were made by the respondents. They have proceeded to hold that he was permanently incapacitated to continue in service without considering the effect of other provisions of Section 47 of the Act."

15. We cannot be insensitive to the cases like that of the writ petitioner. In *National Federation of Blind Vs. Union Public Service Commission and Others*, , the Hon"ble Supreme Court directed the Government and the UPSC to permit blind and partially blind eligible candidates to compete and write in Civil Services Examination in Braille script or with the help of a scribe. It also recommended to the Government to decide the question of providing reservations to visually handicapped persons in Group "A" and "B" posts in the government and public sector enterprises.

16. In *Javed Abidi Vs. Union of India and Others*, , the Hon"ble Supreme Court directed the Indian Airlines to give concessions to orthopaedically handicapped persons suffering from locomotor disability to the extent of 80% for travelling by air in India. The Court was mindful of the financial position of Indian Airlines and yet felt that this direction was in keeping with the objectives of the Act and was in consonance with the concession already given by the Indian Airlines to visually disabled persons.

17. In *Kunal Singh's case (supra)*, the Hon"ble Supreme Court was seen as interpreting the Disabilities Act in the manner so as to further its objectives when the Hon"ble Supreme Court held that Section 47 of the Act mandates that an employee, who acquires disability during service must be protected. If such an employee is not protected, he would not only suffer himself, but all his dependants would also undergo sufferings. Therefore, merely granting him pension would not suffice, but there must also be an attempt to secure him alternative employment.

18. In *Indian Banks' Association, Bombay and Others Vs. Devkala Consultancy Service and Others*, , the Hon"ble Supreme Court expressed its dismay over the implementation of the Act of 1995 by observing that "despite the progressive stance of the Court and the initiatives taken by the Government, the

implementation of the Disabilities Act is far from satisfactory. The disabled are victims of discrimination inspite of the beneficial provisions of the Act". The Court further went on to create a fund for the aforesaid purpose for the implementation of the Act and the Comptroller and Auditor General of India was requested to effect recoveries of all the excess amount realized by the Union of India by way of interest tax and interest by the banks and other financial institutions and create the corpus of such fund therefrom. The Indian Banks" Association and other appellants in the case were also directed to contribute to the extent of Rs. 50 lacs each in the said fund. The Comptroller and Auditor General of India was made Chairman of the said Trust and the Finance Secretary and the Law Secretary of the Union of India were made its ex-officio members. The corpus so created could invest in such a manner so as to enable the trustees to apply the same for the purpose of giving effect to the provisions of the Act.

19. Reverting to the case, it can safely be concluded that merely granting invalidity pension is no ground to deny the protection mandatorily made available to the writ petitioner under Section 47 of the Act. Further, once it is held that the writ petitioner had acquired disability during his service and he was not suitable for the post he was holding, he could be shifted to some other post with same pay scale and service benefits. If it was not possible to adjust the writ petitioner against any post, even then he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation, whichever is earlier. This being the mandate of law, the writ respondents cannot contend that the writ petitioner being under disability, his services cannot be utilized anyway in the department.

20. In view of the aforesaid discussion, we find no infirmity in the judgment passed by the learned writ Court and the appeal being devoid of any merit is dismissed as such leaving the parties to bear their own costs. The pending application (s), if any, also stands disposed of.