
(2007) 07 JH CK 0036

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2717 of 2006

Yadubansh Prasad Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 06-07-2007

Acts Referred:

Bihar Pension Rules, 1950 — Rule 116
Constitution of India, 1950 — Article 14, 21
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 47

Citation : (2008) 56 BLJR 351 : (2007) 114 FLR 1156 : (2008) 1 JCR 200

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Niranjana Singh, for the Appellant; J.C. to A.G., for the Respondent

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—In this writ petition, the petitioner has prayed for quashing the order of his compulsory retirement dated 28th June, 2005 issued under the signature of the Respondent No. 2, which was communicated by Memo No. 776(G) dated 28th June, 2005.

2. It has been submitted that the impugned order, whereby the petitioner has been compulsorily retired on the ground of disability, is violative of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter to be referred as "the Disability Act") and is wholly illegal, arbitrary and without jurisdiction.

3. Petitioner's case is that he was duly appointed as Assistant Sub Inspector of Police in the year 1991 and was posted on the said post in District Police Force, Dhanbad. According to the Secondary School Certificate, petitioner's date of birth is 1st December, 1948 and as such, he would attain the age of 60 years in December, 2008. The petitioner, while performing his patrolling duty on 3rd August, 1997, met with an accident, as the Patrolling Jeep dashed against a

truck, causing serious injuries to the occupants.

4. The petitioner sustained multiple injuries. His right leg was badly damaged. He remained under treatment for four months, but ultimately his right leg up to thigh was to be amputated. Due to that, the petitioner became physically handicapped to the extent of 80%. The Civil Surgeon-cum-Chief Medical Officer, Dhanbad has issued certificate to that effect. The petitioner was, thereafter, posted at Sindri. A quarter was allotted to him adjacent to the place of work in order to facilitate him to perform his day to day work and official duty.

5. By an order issued by Memo No. 3923/R.O. dated 5th November, 2004, the petitioner was sought to be transferred filed representation against his transfer with a request to allow him to remain at that place, on the ground of his physical disability. But the same was not heeded upon.

6. The petitioner then preferred writ petition before this Court, being W.P.(S) No. 6679 of 2004. In the said writ petition an interim order was passed staying the transfer order and the respondents were directed to seek instructions and file counter affidavit. The said writ petition is still pending.

7. In the meantime, the impugned order has been passed, whereby the petitioner has been compulsorily retired. Aggrieved by that order, the petitioner has preferred the instant writ petition. It has been stated by the petitioner that he was not physically handicapped at the time when he was appointed as Assistant Sub Inspector of Police. The disability was caused due to the said accident in course of his employment while the petitioner was on patrolling duty. After his said disability, the petitioner was allowed to perform light duty in the office, which he has been performing for the last seven years. Section 47 of the Disability Act provides for adjustment of such disabled person with all service benefits, but the respondents, contrary to the said mandatory provision, have passed the order of compulsory retirement of the petitioner on the ground that he has got 80% disability and he is not fit for performing the duty of his post. The grievance of the petitioner is that he has been given unfair treatment contrary to the provisions of the said Act and the impugned order is illegal and arbitrary.

8. A counter affidavit has been filed on behalf of Respondent No. 5. The facts stated in the writ petition, regarding appointment and accident causing disability to the petitioner, have not been denied in the counter affidavit. However, the impugned order is sought to be justified stating that the order of compulsory retirement of the petitioner has been passed in view of Rules 809(a)(i)(c) and 819 of the Bihar Police Manual and Rule 116 of the Bihar Pension Rules. Under the said provisions, a Government Servant, who is permanently incapable to perform his duty due to physical and mental disability, can be incapable to discharge active duties in Police Department. Considering his disability, the impugned order has been passed.

9. When the case was taken up for hearing on 26th February, 2007, it was found

that the counter affidavit does not cover the point raised by the petitioner particularly regarding claim of the petitioner to remain in service and get all service benefits in accordance with the provisions of the Disability Act. The State counsel appearing for the respondents had prayed for three weeks" time to file supplementary counter affidavit.

10 A supplementary counter affidavit has been filed, quoting Section 47 of the Disability Act, but there is no reply regarding the petitioner's claim made under the provisions of the said Act. Earlier statements have been repeated and reiterated, contending that the nature of job in Police Department is extremely demanding, which require performance of duties in emergency situation, in most disciplined manner. However, it has been stated that the answering respondent will comply any direction/order passed by this Court. The said reply has come on behalf of the concerned Superintendent of Police and the same is simply disappointing.

11. Public Officers are expected to follow the provision of law and discharge their duties in accordance with law. Respondent No. 5, who is Superintendent of Police, appears to be acquainted with the provision of the Disability Act. He has quoted the provision in the supplementary counter affidavit. But strangely there is no reply to the claim of the petitioner under the provision of the said Act. The said respondent has taken the plea that such provisions have been made in the Bihar Police Manual and the Bihar Pension Rules, which have no application under the facts and circumstances of the case, particularly in view of the provisions of the Disability Act.

12. Section 47 of the Disability Act provides as follows:

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 action.

13. From the plain reading of the section, it is clear that discrimination of an

employee on the ground of disability is completely prohibited.

14. It can be safely inferred from the conduct of the concerned respondents that they intended to keep the petitioner out of service at any rate without caring for the mandatory provisions of law.

15. The petitioner served the department for years, met with an accident in course of performing his duty causing him physical disability and on the ground of his disability, he is sought to be thrown out. It is a callous onslaught on humanity-violating the provisions of Section 47 of the Disability Act, apart.

16. Article 21 of the Constitution of India guarantees right to life with dignity to every citizen. Any executive action/order of the authority offending the provision and spirit of Article 21 is vitiated and can not sustain.

17. The impugned order being contrary to the mandatory provision of Section 47 of the Disability Act as well as being violative of Articles 14 and 21 of the Constitution is illegal, invalid and without jurisdiction.

18. For the reasons aforementioned, this writ petition is allowed. The impugned order, contained in Annexure-5, is hereby quashed.

19. As a consequence, the petitioner stands reinstated with all the admissible benefits, including his pay and allowances, without any break in service.

20. There is no order as to cost.