(2022) 12 GAU CK 0027

Gauhati High Court

Case No: Writ Petition (Civil) No. 5331 Of 2017

Pradip Barman APPELLANT

Vs

State Of Assam And 4 Ors. RESPONDENT

Date of Decision: Dec. 16, 2022

Acts Referred:

- Rights of Persons with Disabilities Act, 2016 - Section 20(4)

Hon'ble Judges: Achintya Malla Bujor Barua, J

Bench: Single Bench

Advocate: N Deka

Final Decision: Allowed

Judgement

1. Heard Ms. D Ghosh, learned counsel for the petitioner and Mr. H Sarma, learned Additional Senior Government Advocate for the respondents.

2. The petitioner was appointed as a Home Guard as per the order dated 12.11.1996 of the District Commandant, Home Guards, Nalbari. The

petitioner also underwent advance training for Home Guards in the Central Training Institute of Home Guards and Civil Defence at Panikhaiti,

Guwahati. As per the terms of engagement of Home Guards, the petitioner continued to serve in the department. On 15.03.1997, the Manager of

Nagrijuli Tea Estate namely Sukhpal Singh who came to Guwahati was provided with the escort cum security and in one of the cars carrying the

security personnel, the petitioner Pradip Barman was also detailed for duty. On the way back to the Tea Estate at a place near Rarne Subri village on

the Nagrijuli Tamulpur road, the convoy of the Manager of Nagrijuli Tea Estate was attacked by certain extremist elements and while performing his duty of providing security to the Manager of the Tea Estate, the petitioner sustained certain bullet injuries. The incident also resulted in Tamulpur PS

Case No. 46/1997 u/s 120/120(A)/357/302/326 IPC3.

3. The petitioner who had received bullet injuries in the incident was admitted to the Nalbari Civil Hospital and later referred to the Guwahati Medical

College and Hospital for better treatment of his injuries and the said incident had resulted in a disability of the petitioner leading to a disability

certificate in the form of Unique Disability ID issued by the Government of India. The Unique Disability ID of the petitioner provides that the

petitioner is suffering locomotor disability with a percentage of 50%.

4. This writ petition was instituted with the grievance that the petitioner because of his disability is not engaged in any duty and was discharged from

service by the order dated 31.07.2017. In the circumstance, there is an interim order dated 04.12.2017, by which the order of discharge of the

petitioner dated 31.07.2017 was stayed with the clarification that the implication of the stay order would be that the respondent authority would not

dispense with the service of the petitioner and treat him to be in service as he was earlier. Pursuant to the interim order, it is stated that the petitioner

is still continuing to serve as a Home Guard with the respondent authorities.

5. Section 20(4) of the Rights of Persons with Disabilities Act, 2016 (in short Act of 2016) provides as extracted:-

â€œ20 (4). Non- discrimination in employment- No Government shall establishment shall dispense with or reduce in rank, an employee who acquires a

disability during his or her service:

Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall 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.â€

6. A reading of the second proviso to section 20(4) of the Act of 2016 makes it discernible that it is a clear and unambiguous provision of the statute

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. The first proviso to section 20(4) of the Act of 2016 again provides that if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits, whereas section 20(4) of the Act of 2016 itself provides that no Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service.

7. In the instant case, we have already taken note that the petitioner was detailed on duty of providing security to a Manager of Nagrijuli Tea Estate who was under threat of certain extremist elements and while in course of such duty of providing security to the Manager, there was an attack by the extremist element in which the petitioner suffered certain bullet injuries which had rendered him disabled to the extent of 50% locomotor disability for which necessary unique Disability ID was issued by the Government of India in favour of the petitioner.

8. Firstly we take note of that the petitioner acquired disability while discharging his duties for the state and it has to be accepted that the petitioner acquired disability during his or her service. As it is a statutory provision that in the event an employee acquires disability during his or her service, firstly, the said employee shall not be dispensed with or reduced in rank and secondly, if after acquiring disability is not suitable for the post he was holding, he shall be shifted to some other post with same pay scale and service benefits and further 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, we are of the view that the service of the petitioner cannot be dispensed with as per the provisions of section 20(4) of the Act of 2016.

9. We take note that the Act of 2016 is a special law whereas the stand of the respondents that under the terms and conditions of engaging a Home Guard, their services are covered by the Home Guardâ€™s Act, 1947 (Act of 1947) and the service conditions provided in the Act of 1947 does not allow the respondents to retain the petitioner in service.

10. As the petitioner has an entitlement under the special law which is applicable to him in the facts and circumstances of the present case, any

disentitlement to remain in service under the general law being the Act of 1947 cannot prevail over the provisions of the Act of 2016 and as such, the

petitioner has a legal right to remain in service in the same pay scale and service benefits as he was getting at the time when he had suffered the

injuries relating to his disability, or as per the terms and conditions of service that prevailed when he was discharged from service by the order dated

31.07.2017, whichever is later.

11. Accordingly the order of discharge dated 31.07.2017 is set aside and the writ petition is allowed as indicated above.

12. The Director General of Police as well as the Director General of Civil Defence and Commandant General, Home Guard to take a conjoint

decision as to in what post the petitioner shall now be placed so that he can continue with his service as indicated above and the place of posting shall

not entail a service condition which would be lesser than what the petitioner was earlier subjected to while he was in service. We again clarify that the

terms and conditions of continuing with the service of the petitioner shall now be strictly in terms of section 20(4) of the Act of 2016 and any other

service condition that may result out of the Act of 1947 shall not be applicable to the petitioner.