

(2003) 02 MAD CK 0143

Madras High Court

Case No: Civil Appeal No. 1789 of 2000

Kunal Singh

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision: Feb. 13, 2003**Acts Referred:**

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

Hon'ble Judges: Shivaraj V. Patil, J; H.M. Sema, J**Bench:** Division Bench**Advocate:** Ranjit Kumar, Anil Nag, Ms. Binu Tamta, Ms. Sushma Suri, B.K. Prasad, Advocates, for the Appellant;

Judgement

Shivaraj V. Patil, J.

The appellant was recruited as a Constable in the Special Service Bureau (for short "the SSB"). When he was on duty, he suffered an injury in his left leg. The medical aid given to him did not help. Ultimately, his left leg was amputated on account of gangrene which had developed from the injury. He was invalidated from service by the respondents on the basis of the report of the Medical Board, Kullu under which he was declared permanently incapacitated for further service as per order dated 20.11.1998 passed by the Commandant, Group Centre, SSB Shamshi (Kullu). He filed a writ petition in the High Court challenging the validity and correctness of the said order on the ground that it was arbitrary and that he could have been assigned with alternative duty which he could discharge keeping in view the extent of his disability and having due regard to 17 years of his unblemished service. The writ petition was dismissed by the High Court holding that he had been permanently invalidated on the basis of the medical opinion and as such there was no scope for him to continue any further in service of any kind in the SSB. Hence, this appeal is filed assailing the impugned order. It appears, before the High Court, no argument was advanced specifically in support of the writ petition on the basis of Section 47 of the Persons

with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short "the Act"). However, a specific ground is raised in this appeal based on Section 47 of the Act. Since it is a pure question of law, we have heard learned counsel for the parties on the contentions including the one based on Section 47 of the Act. The learned counsel for the appellant, pointing to few relevant definitions contained in Section 2 and Section 47 of the Act, urged that on the facts and circumstances of the case, keeping in view the object and purpose of the Act, relief ought to have been granted as sought in the writ petition.

2. In opposition, the learned Senior Counsel for the respondents made submissions in support and justification of the impugned order. He also drew our attention to Rule 38 of the Central Civil Services Pension Rules, 1972 under which the appellant is granted invalidity pension which he is drawing. According to him, in view of the relevant definitions contained in Section 2 of the Act, the appellant is not a person with disability as he is permanently incapacitated. He also drew our attention in support of his argument to Section 2(o) of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 to make a distinction.

3. For proper appreciation of the rival submissions of the learned counsel for the parties, it is useful and necessary to notice few definitions as contained in Section 2 and Section 47 of the Act.

2. Definitions In this Act, unless the context otherwise requires, -

(a) to (d)

(e) "Cerebral palsy" means a group of non-progressive conditions of a person characterized by abnormal motor control posture resulting from brain insult or injuries occurring in the prenatal, peri-natal or infant period of development;

(f) to (h)

(i) "disability" means-

(i) to (sic)

(v) locomotor disability;

(vi) to(vii)

(j)

(k) "establishment" means a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 617 of the Companies Act 1956 (1 of 1956) and includes Departments of a Government;

(I) to (n)

(o) "locomotor disability" means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy."

(p) to (s)

(t) "persons with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority;

(u) to (v)

(w) "rehabilitation" refers to a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, psychiatric or social functional levels;

47. Non-discrimination in Government employments - (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.

4. According to the learned counsel for the appellant, his disability falls u/s 2(i)(v), namely locomotor disability. What is meant by locomotor disability is stated in Section 2(o). There is no dispute that the Act applies to the establishment of the respondents and this establishment is not exempted under any notification issued u/s 47 of the Act. "Persons with disability" means a person suffering from not less than 40% of any disability as certified by a medical authority as per the definition given u/s 2(t).

5. Short question that arises for consideration in this appeal is whether the appellant is entitled for the benefit of Section 47 of the Act.

6. From the facts, which are not in dispute, it is clear that the disability suffered by the appellant is covered by Section 2(i)(v) read with Section 2(o) of the Act. It is also not in dispute that this disability was acquired by the appellant during his service. u/s 2 "disability" and "person with disability" are separately defined and they are distinct. We may also notice some provisions in Chapter VI of the Act relating to

employment. Section 32 deals with identification of posts which can be reserved for persons with disabilities. Section 33 speaks of reservation of such percentage of vacancies not less than 3% for persons or class of persons with disability of which 1% each shall be reserved for persons suffering from (i) blindness or low vision; (ii) hearing impairment and (iii) locomotor disability or cerebral palsy. Section 38 requires the appropriate Governments and local authorities to formulate schemes for ensuring employment of persons with disabilities. Section 47 is included in Chapter VIII of the Act. Chapter VI deals with employment relating to persons with disabilities including identification of posts and reservation of vacancies for such persons. Under this Chapter, reservation of vacancies for persons with disabilities is made for initial appointments. Section 47 in Chapter VIII deals with an employee of an establishment who acquires a disability during his service.

7. 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. To realize objective 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". This Meeting was held by the Economic and Social Commission for Asia and Pacific. A Proclamation was adopted in the said meeting. India was a signatory to the said Proclamation and they agreed to give effect to the same. Pursuant thereto this Act was enacted, which came into force on 1st January, 1996. The Act provides some sort of succor to the disabled persons.

8. Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected u/s 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of Section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The Section further provides 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; if it is not possible to adjust the employee against any post he

will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service.

9. The argument of the learned counsel for the respondent on the basis of definition given in Section 2(t) of the Act that benefit of Section 47 is not available to the appellant as he has suffered permanent invalidity cannot be accepted. Because, the appellant was an employee, who has acquired "disability" within the meaning of Section 2(i) of the Act and not a person with disability.

10. 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.

11. Merely because under Rule 38 of CCS Pension Rules, 1972, the appellant got invalidity pension is no ground to deny the protection, mandatory made available to the appellant u/s 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.

12. For the reasons stated and discussions made above, the appeal deserves to be accepted. Hence the impugned order affirming the order of termination of services of the appellant is set aside and the appeal is allowed. We direct the respondents to give relief in terms of Section 47 of the Act. There shall be no order as to costs.