

IN THE HIGH COURT OF DELHI AT NEW DELHI

W. P. (C) 12867/2006

RAJPAL Petitioner
Through: Mr. Sakesh Kumar, Advocate

versus

DELHI TRANSPORT CORPORATION ... Respondent
Through: Mr. Sarfaraz Khan, Advocate.

CORAM: JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

ORDER
04.08.2011

1. The challenge in this petition is to an order dated 3rd February 1999 issued by Delhi Transport Corporation ('DTC'), the Respondent herein, fixing the pay of the Petitioner in the scale of peon. The Petitioner also challenges an order dated 25th January 2006 passed by the Labour Court dismissing the Petitioner's application under Section 33C(2) of the Industrial Disputes Act, 1947 ('ID Act'). The third prayer in this writ petition is for a

direction to the DTC to pay to the Petitioner the same scale of pay and allowances as was drawn by him at the time he met with an accident, as revised from time to time and also to pay the arrears of the salary for the intervening period, i.e., from the date of the accident till the date of payment at the same rate with interest.

2. The Petitioner was appointed as a driver in the Respondent DTC on 24th December 1978 on a regular basis. While in service the Petitioner suffered medical disability. By an order dated 5th September 1991 issued by the DTC he was declared unfit for service and prematurely retired on medical grounds under para III of clause 10 of the DRTA (Conditions of appointment and Service) Regulations, 1952 ('DRTA Regulations'). The industrial dispute raised by the Petitioner was referred to the Labour Court. The Labour Court by an Award dated 12th December 1995 rejected the Petitioner's claim.

3. The Petitioner challenged the said Award by filing Writ Petition (Civil) No.2092 of 1996 in this Court. By an order dated 23rd July 1997 this Court set aside the Award and directed the Respondent to offer the Petitioner an equivalent or lower post. If the Petitioner accepted the offer, his appointment was to be made within a period of four weeks. It was further directed that pay for the intervening period would be as per Rules.

4. By the impugned order dated 3rd February 1999 DTC offered the Petitioner appointment to the post of peon. The order *inter alia* stated that the terms and conditions of his appointment would be in accordance with the DRTA Regulations. In view of the above order, Contempt Case No. 44 of 1998 filed by the Petitioner was disposed of on 26th July 2000 granting the Petitioner liberty to seek appropriate remedies for any other claim.

5. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('Disabilities Act') was enacted in 1995 for granting equal opportunities to disabled persons. Section 47(1) of the Disabilities Act, which is relevant for the present case, 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.”

6. In terms of the above provision an employee after acquiring disability, if found not suitable for the post which he was holding, could be shifted to

some other post “with the same pay scale and service benefits.” Even if the Petitioner was medically unfit to hold the post of a driver, the DTC ought to have while shifting him to the post of a peon protected his pay scale and service benefits as driver.

7. The Petitioner accepted his appointment as a peon and filed an application under Section 33C(2) of the ID Act claiming that the reduction of his salary to that of peon was illegal. Before the Labour Court, counsel for the Petitioner urged that Section 47 of the Disabilities Act applied retrospectively and the Petitioner was entitled to the protection of his pay scale as a driver. The Labour Court held that since the Petitioner had agreed in terms of the order of this Court to be shifted to a lower post he could not claim the pay scale of the higher post.

8. Mr. Sakesh Kumar, learned counsel appearing for the Petitioner submits that the proviso of Section 47 of the Disabilities act left no room for doubt that the pay and allowances granted to the Petitioner in the post of driver are required to be protected even if the Petitioner was appointed to a lower post of peon upon being found medically unfit for the post of a driver. He

submits that at the time when this Court disposed of the Petitioner's Writ Petition (Civil) No. 2092 of 1996 on 23rd July 1997, the attention of the Court was not drawn to Section 47 of the Disabilities Act. However, in any event, the DTC was bound to fulfill its statutory obligations.

9. Appearing for the DTC Mr. Sarfaraz Khan, learned counsel submits that the scope of the present petition is only to examine the correctness of the Award dated 25th February 2006 passed by the Labour Court. The said Award has dealt with and rejected the submissions made on the basis of Section 47 of the Disabilities Act and the said determination does not call for interference. The earlier decision dated 23rd July 1997 of this Court had been fully complied with by the DTC. Having accepted the post of peon in terms of the said decision pursuant to the offer made by the DTC, the Petitioner was estopped from contending that his pay should be equal to that of a driver even though he was appointed to a lower post.

10. This Court is unable to find any merit in the submissions of learned counsel for the DTC. The Disabilities Act was enacted to protect the fundamental rights of disabled persons under Articles 12, 19 and 21 of the Constitution. It also gives effect to the rights guaranteed under the

international Convention on the Rights of Persons with Disabilities. The applicability of Section 47 of the Disabilities Act retrospectively to cover cases of premature retirement on medical grounds of employees of the DTC even prior to the enactment was affirmatively declared by this Court in ***DTC v. Rajbir Singh 100 (2002) DLT 111.***

11. The relevant observations of this Court are as under:

10. History of legislation as noticed here before clearly shows that said Act was enacted in conformity with the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region. It is not in dispute that the Act is beneficent in nature. It is also not in dispute that by reason of the said Act provisions have been made so that the persons with disability feel themselves as a part of the society which eventually may lead to his full participation at the work place. Nobody suffers from disability by choice. Disability comes as a result of an accident or disease.

11. The said Act was enacted by the Parliament to give some sort of succour to the disabled persons. By reason of Section 47 of the said Act which is beneficent in nature, the employer had been saddled with certain liabilities towards the disabled persons. Section 47 of the Act we may notice does not contemplate that despite disability, a person must be kept in the same post where he had been working. Once he is not found suitable for the post he was holding, he can be shifted to some

other post but his pay and other service benefits needs to be protected. The second proviso, appended to Section 47 of the Act in no uncertain terms, state 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. The said Act provides for social security for the disabled persons and if for the said purpose a statutory liability has been thrust upon the employer, the same cannot be held to be arbitrary.

37. There cannot be any doubt that the said Act provides for special provisions. Doctrine of *generalalia specialibus non derogant*, thus, would apply in the instant case. Service conditions laid down under the Regulations made under the Delhi Transport Corporation Act will be subject to the provisions of the said Act having regard to the aforesaid maxim. Section 47 is couched in negative language and the same, necessarily, must be construed as mandatory in nature. So construed the appellant was bound to give effect to these irrespective of any consequences.”

12. The Bench in ***Rajbir Singh*** also referred to the judgment of this Court in ***Baljeet Singh v. DTC 83 (2000) DLT 286*** where, in para 13, it was observed as under:

“13. Section 47 in clear terms mandates that no establishment shall dispense with or reduce in rank the employee who acquires the disability during his service. Even if he is not

suitable for the post he was holding, as a result of disability, he is to be shifted to some other post with same pay scale and service benefits. Even when he cannot be adjusted against any other post he is to be kept on supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. The intention of Section 47 is clear and unambiguous namely, not to dispense with the service of the person who acquires disability during his service. The purpose is not far to seek. When the objective of the enactment is to provide proper and adequate opportunities to the disabled in the field of education, employment. etc. it is obvious that those who are already in employment should not be uprooted when they incur disability during the course of employment. Therefore their employment is protected even if the destiny inflicts cruel blow to them affecting their limbs. Even if he is not able to discharge the same duties and there is no other work suitable for him, he is to be retained on the same pay scale and service benefits so that he keeps on earning his livelihood and is not rendered jobless.”

13. Thereafter, in ***Rajbir Singh*** the Division Bench gave relief to the workman by holding that Section 47 of the Disabilities Act would have retrospective effect to cover the period during which the workman’s services were terminated, which was prior to the enactment of the Disabilities Act.

14. In light of the above settled position of law, in the present case the

Petitioner would be entitled to enforce his statutory right under Section 47 of the Disabilities Act notwithstanding that in terms of the order dated 23rd July 1997 of this Court in Writ Petition (Civil) No. 2092 of 1996 he had opted for and has been appointed to the lower post of a peon. The Petitioner cannot be held to have waived his statutory right of pay protection in the post of driver in terms of proviso to Section 47 of the Disabilities Act. The Labour Court in the impugned order erred in overlooking the central issue of pay protection available to a disabled person in the post in which he was working prior to his disability.

15. Consequently, the impugned order dated 25th January 2006 of the Labour Court is hereby set aside. It is directed that, notwithstanding the order dated 3rd February 1999 of the DTC, the Petitioner would be entitled to the protection of pay as a driver with effect from 5th September 1991, the date on which he was prematurely retired from the DTC. Also, in terms of clause (2) of Section 47 Disabilities Act, the Petitioner is entitled to all the promotions that may be due to him if the disability did not exist. The Petitioner will now be paid the differential pay for the past period from the aforementioned date within a period of twelve weeks from today together with simple interest @ 6% per annum from 5th September 1991 till the date

of payment. The Petitioner's pay will also be revised on the basis that his initial pay in the post of peon is the lowest pay in the post of driver which is also the protected pay in terms of proviso to Section 47 of the Disabilities Act. Further increments will be calculated accordingly and the differential amount will be paid to the Petitioner by the DTC within a period of twelve weeks from today.

16. The writ petition is allowed in the above terms, with the costs of Rs.5,000/- which will be paid by the Respondent to the Petitioner within four weeks.

S. MURALIDHAR, J

AUGUST 04, 2011

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