

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.330 of 2021

Sri Shyamal Sarkar, son of late Babulal Sarkar, resident of Lankamura, P.O.
Lankamura, District- West Tripura

.....**Petitioner**

-VERSUS-

1. The State of Tripura,

represented by the Secretary, Government of Tripura, Department of Home, having its office at Civil Secretariat, New Capital Complex, P.O. Kunjaban, Agartala, District- West Tripura
Government of India, New Delhi-110017

2. The Director General of Police,

Government of Tripura, having its office at Fire Brigade Chowmuhani, P.O. Agartala, District- West Tripura

3. The Assistant Inspector General of Police (Esstt),

having its office at Fire Brigade Chowmuhani, P.O. Agartala, District- West Tripura

4. The Superintendent of Police (Security) Tripura,

having its office at Fire Brigade Chowmuhani, P.O. Agartala, District- West Tripura

....**Respondents.**

For the Petitioner (s)	:	Mr. TD Majumder, Sr. Advocate Ms. R. Debbarma, Advocate
For the Respondent (s)	:	Mr. D. Bhattacharjee, GA Mr. K. Dey, Addl. GA
Date of hearing & delivery of judgment & order	:	13.02.2023
Whether fit for reporting	:	Yes

HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT & ORDER (ORAL)

1. This is a case where a person is deprived of protection of service as enshrined under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, "PWD Act, 1995") read with

Sections 3 and 4 of The Rights of Persons with Disabilities Act, 2016 (for short, "RPwD Act").

2. The petitioner, Sri Shyamal Sarkar was serving as Constable under the State-respondents. During the performance of his duties, he suffered cerebral attack which incapacitated him from performing his normal duties. State-respondents have alleged that the petitioner made an application on 19.10.2019 to the Superintendent of Police praying for voluntary retirement, which was accepted by the competent authority. Later on, the son of the petitioner submitted an application to the competent authority of the police department (Annexure 6 to the counter affidavit) wherein he sought for compassionate appointment commensurate to his qualification on the pretext that his father was allowed invalid pension entitling him to come within the purview of suitable appointment under the State's "Die-in-harness scheme". After one year of the application of the son of the petitioner for compassionate appointment, the competent authority had regretted his claim on the ground that his father, that is, the petitioner herein had sought for voluntary retirement on his own accord, and the employee seeking for voluntary retirement would not be entitled to get the benefit of the scheme in vogue. It is the further case of the petitioner that his service is protected under Section 47 of the PWD Act, 1995. Having come to learn the legal

position, he approached this court seeking to invoke this court's discretionary and extra-ordinary jurisdiction under Article 226 of the Constitution of India.

3. The respondents-State submitted counter affidavit. In the counter affidavit, they have stated that neither the petitioner is entitled to be reinstated in service nor his son is eligible for appointment under the die-in-harness scheme since the petitioner herein himself has sought for voluntary retirement.

4. In the above context, I have heard Mr. TD Majumder, learned senior counsel assisted by Ms. R. Debbarma, learned counsel appearing on behalf of the petitioner. I have also heard Mr. D. Bhattacharjee, learned GA assisted by Mr. K. Dey, learned Additional GA appearing for the State-respondents.

5. At the very outset, Mr. Majumder, learned senior counsel drawing my attention to the letter dated 19.10.2019 (Annexure 1 to the counter affidavit) written by the petitioner to the Superintendent of Police, Security Unit, has submitted that the contents of the said letter does not justify the statements made by the respondent that the petitioner had ever sought for voluntary retirement, rather, it transpires that the petitioner asked only for 'retirement' and not for 'voluntary retirement' from service. The word "voluntary"

appeared to be missing initially and added afterwards in the said correspondence.

5.1. This court in its order dated 20.01.2023 requested the learned GA to produce the "Orderly Rule Register" wherein relevant official notes of the concerned authorities were reflected. From the note it clearly reveals that initially the note was that "*C/752, Shyamal Sarkar of Security unit submitted a prayer on 19.10.19 and seek retirement from service on medical ground*".

The file being produced before this court and on close scrutiny with bird's eye view, it comes to fore that this portion of the note containing the words "seek voluntary" had been manipulated and interpolated. The word 'seek' was very cleverly and unscrupulously added with suffix '-ing' and the word 'voluntary' was inserted before the word 'retirement', so that this portion of the note was to be read and understood as **"seeking voluntary retirement"**. Moreso, it is noticed that natural continuous flow in adding the suffix- 'ing' with the word 'seek' followed by the word "voluntary" is found to be missing.

In a separate note the concerned authority sent the petitioner to the District Disability Medical Board of West

Tripura District. The petitioner was examined and the medical board declared him 100% disabled. Thereafter, the petitioner was asked to go on retirement w.e.f. 31.10.2019 and he was given pension.

5.2. On conjoint reading of the 2 (two) aforesaid "Notes" as stated above, this court unhesitantly has come to a conclusion that such manipulation and interpolation in the correspondence dated 19.10.2019 were caused and aimed to confuse the entire contour of the true and honest intention of the petitioner to declare him permanently invalid so that he could get all sorts of service benefits considering his permanent disability.

6. Mr. Datta Majumder, learned senior counsel has submitted that the respondents having found the petitioner 100% disabled arbitrarily asked him to go on retirement, instead, his service ought to have been protected under Section 47 of the PWD Act, 1995, which the respondents should have rectified now. Alternatively, as urged by learned senior counsel for the petitioner is that the petitioner may be allowed to go on permanent invalid pension as envisaged under Rule 38 of the CCS (Pension) Rules, 1972, adopted in the State of Tripura so that his son may come within the purview of State's 'Die-in-harness scheme'.

7. To counter the submissions of learned senior counsel appearing on behalf of the petitioner, Mr. Bhattacharjee, learned GA has reiterated the contentions made in the counter affidavit that the petitioner is not entitled to be reinstated in service and his son is also not entitled to get appointment under die-in-harness scheme. However, learned GA has drawn my attention to Clause 2.10 of the "**Scheme for Compassionate Appointment/Benefit for Government Employees in Tripura**".

8. I have perused the scheme. *The object of the Scheme is to extend benefits either by an appointment in the Government service on compassionate ground or admissible financial assistance to an eligible dependant member of the family of a government servant dying-in-harness or in case of permanent physical invalidity while on government duty or missing, thereby leaving his family in penury and without any means of livelihood. The scheme is meant to relieve the family of the government servant concerned from financial destitution and to help it get over the emergency.* To achieve the objectives, necessary provisions have been made to extend the benefit of the scheme to a government employee who has suffered permanent invalidity while on duty, causing incapacitation to perform government duties. Here, it would be useful to extract Clause 2.10 of the Scheme, which reads as under:

“2.10. “Permanent invalidity of Government Servants” means the Government servant is suffering from permanent invalidity while on duty, causing incapacitation to perform Government duties.

Provide that the State Government Medical Board has recommended and certified the permanent invalidity and the competent authority has full satisfaction on such permanent invalidation”.

9. Having given much emphasis upon this Clause, learned GA has fairly urged this court to refer the matter to State Government Medical Board for physical examination of the petitioner so that the respondents can take an appropriate decision regarding re-instatement of the petitioner in service or alternately to declare him as permanently invalid so that his son may be considered for appointment under **invalidity pension scheme** as embodied in Rule 38 of the CCS (Pension) Rules, 1972.

10. I have considered the respective submission advanced by learned counsel appearing for the parties.

11. Without making further comments relating to manipulation of the “notes” prepared by the concerned authorities, I am of the considered view that even the petitioner had sought for voluntary retirement, then, also it was the bounden duty of the authorities concerned to inform the legal position *qua* the right of the petitioner under the PWD Act, 1995. In the opinion of this court, the concerned authorities and the respondents being the benevolent employer acted arbitrarily in allowing the petitioner

to go on retirement from service before the actual date of his superannuation.

12. The schematic pattern of Section 47 of the PWD Act, 1995 clearly indicates its mandatory nature. The very opening part of the sentence under section 47 of the PWD Act, 1995 reads as '*no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service*'. In this context, Mr. Datta Majumder, learned senior counsel for the petitioner has referred to a judgment of the Hon'ble Apex court rendered in ***Bhagwan Dass and another vs. Punjab State Electricity Board***, reported in **(2008) 1 SCC 579** (paras 18, 19 and 20).

13. For convenience, Section 47 of the PWD Act, 1995, may be reproduced here-in-below:

"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."

14. The Ministry of Personnel, Public Grievance & Pensions, Department of Personnel & Training issued office memorandum dated 25.02.2015, which reads as under:

" No. 18017/1/2014-Estt(L)

Government of India

Ministry of Personnel, Public Grievances & Pensions

Department of Personnel & Training

New Delhi, the 25th February, 2015

OFFICE MEMORANDUM

Subject: Amendment to Central Civil Service (Leave) Rules, 1972- Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PWD Act, 1995)- regarding

The Central Civil Services (Leave) Rules, 1972 were amended vide the Department of Personnel and Training Notification No. 13026/1/2002-Estt(L) dated the 15/16th January, 2004 consequent to the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PWD Act, 1995)* which came into force from 7th February, 1996.

2. Section 47 of the PWD Act, 1995 provides that services of no employee can be terminated nor can he be reduced in rank in case the employee has acquired a disability during his service. The first proviso to the Section 47 lays down that if such an employee is not suitable for the post he was holding, he could be shifted to some other post. However, his pay and service benefits would be protected. The second proviso provides that if it is not possible to adjust such an employee against any post, he would be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Further, the Clause (2) of Section 47 provides that no promotion shall be denied to a person merely on ground of his disability. In *Kunal singh v Union of India (2003) 4 SCC 524*, Hon'ble Supreme Court has observed that the very frame and contents of Section 47 of the PWD Act, 1995 clearly indicate its mandatory nature.

3. the issues relating to leave or absence of Government servants who have acquired a disability while in service are required to be dealt with in the light of the provisions of the Section 47 of *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PWD Act, 1995)*. The case of a disabled government servant who is declared fit to resume duty but who may not be able to perform the duties of the post he was holding earlier may be dealt with as per the first proviso to Section 47 of the PWD Act, 1995. The second proviso shall apply if it is not possible to adjust him against any existing post. In all such cases, the Government servant so adjusted shall be entitled to the pay scale and other service benefits attached to the post he was holding.

4. A disabled Government servant who is not fit to return to duty shall be adjusted as per second proviso to the Section 47 mentioned above, until he is declared fit to resume duty or attains the age of superannuation whichever is earlier, with the same pay scale and service benefits. On being declared fit for resuming duty, the Government servant who is not fit for the post he is holding, may be adjusted as per the first proviso to Section 47.

5. Leave applied on medical certificate in connection disability should not be refused or revoked without reference to a Medical Authority, whose advice shall be binding. The ceiling on maximum permissible leave laid down in rule 12 may not be applied to leave on medical certificate applied in connection with the disability. Any

leave debited for the period after a Government servant is declared incapacitated shall be remitted back into his/her leave account.

6. For a government servant who is unable to submit an application or medical certificate on account of disability, an application/medical certificate submitted by a family member may be accepted. The provisions relating to examination of disabled Government servants and the Medical Authorities competent to issue such certificates are also being amended.

7. Necessary amendments to the Central civil Services (Leave) Rules, 1972 are being notified separately."

15. PWD Act, 1995, being repealed is replaced by The Rights of Persons with Disabilities Act, 2016 (for short, "RPwD" Act) w.e.f. 19.04.2017. RPwD Act, 2016 was enacted to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto. More rights have been conferred on the disabled persons and more categories have been added. Access to justice, free education, role of local authorities, National fund and State fund for persons with disabilities have been created. **RPwD Act, 2016 is noticeably a sea-change in the perception and requires a march forward look with regard to the persons with disabilities and the role of the States, local authorities, educational institutions and the companies. [Justice Sunanda Bhandare Foundation v. Union of India, (2017) 14 SCC 1]**

16. The United Nations General Assembly adopted its Convention on the Rights of Persons with Disabilities on the 13th day of December, 2006. The aforesaid Convention lays down

the following principles for empowerment of persons with disabilities-

**“(a) respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
(b) non-discrimination;
(c) full and effective participation and inclusion in society;
(d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
(e) equality of opportunity;
(f) accessibility;
(g) equality between men and women;
(h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities;
And whereas India is a signatory to the said Convention;
And whereas India ratified the said Convention on the 1st day of October, 2007;
And whereas it is considered necessary to implement the Convention aforesaid.”**

17. PWD Act, 1995 was enacted to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region. Over a period of time, the conceptual understanding of the rights of persons with disabilities has become more clear and there has been worldwide change in approach to handle the issues concerning persons with disabilities. India being one of the participant countries had signed the United Nations Convention and subsequently ratified the same on 1st day of October, 2007. The Convention came into effect on the 3rd day of May, 2008. Being the signatory to the Convention, India has an international obligation to comply with the provisions of the said Convention which requires entirely a new legislation. A Constituted Expert Committee being formed in the year 2010 submitted its report

in 2011, suggesting a draft bill relating to the Rights of Persons with Disabilities. The draft bill was extensively debated upon at various levels involving State Government and Union Territories and various stakeholders. The salient features of the Rights of Persons with Disabilities Bill, 2014, *inter alia* are as under:-

- “(i) Nineteen specified disabilities have been defined;
- (ii) The persons with disabilities enjoy various rights such as right to equality, life with dignity, respect for his or her integrity, etc., equally with others;
- (iii) Duties and responsibilities of the appropriate Government have been enumerated;
- (iv) All educational institutions funded by appropriate Government shall provide inclusive education to the children with disabilities;
- (v) A National Fund is proposed to provide financial support to persons with disabilities;
- (vi) Stakeholders’ participation in the policy making through Central and State Advisory Boards;
- (vii) Increase in reservation in posts from existing three per cent to five per cent in the vacancies for persons or class of persons with benchmark disabilities in every establishment and reservation of seats for students with benchmark disabilities in higher educational institutions;
- (viii) Setting up of National Commission and State Commissions to act as Grievance Redressal Mechanism, monitor implementation of the proposed legislation replacing the Chief Commissioner and State Commissioners for persons with disabilities, respectively;
- (ix) Guidelines to be issued by the Central Government for issuance of certificates of specified disabilities;
- (x) Penalties for offences committed against persons with disabilities; and
- (xi) Court of Session to be designated as Special Court by the State Government in every district to try offences.”

18. Ultimately, to achieve the objects, RPwD Act was brought into force w.e.f. 19.04.2017 [*vide S.O. 1215(E) dated 19.04.2017*].

(i) Section 2(h) of the RPwD Act defines “discrimination”, which reads as follows:

“(h) “discrimination” in relation to disability, means any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural,

civil or any other field and includes all forms of discrimination and denial of reasonable accommodation.”

(ii) Section 2(i) of the RPwD Act defines “establishment”, which reads as under:

“(i) “establishment” includes a Government establishment and private establishment.”

(iii) Section 2(t) of the RPwD Act enumerates “person with disability having high support needs”, which means *a person with benchmark disability certified under clause (a) of sub-section (2) of Section 58 who needs high support.*

(iv) Section 2(y) of the RPwD Act defines “reasonable accommodation”, which means ***necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others.***

(v) Section 3 of the RPwD Act, is an important facet of the said Act, which speaks about **“Equality and Non-discrimination”**. It provides thus:

“3. Equality and non-discrimination.—(1) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.

(2) The appropriate Government shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment.

(3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.

(4) No person shall be deprived of his or her personal liberty only on the ground of disability.

(5) The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.”

19. The opening of sub-sections (3) and (4) of Section 3 of the said Act starts with ***no person with disability shall be discriminated on the ground of disability and no person shall be deprived of his or her personal liberty.***

20. Section 20 of the RPwD Act speaks about ***non-discrimination in employment.*** Expressing the importance and consequence of sub-section (4) of Section 20 of the RPwD Act, a three-Judge Bench of the Hon'ble Supreme Court in *Ravinder Kumar Dhariwal and another vs. Union of India and others*, reported in (2023) 2 SCC 209, noticed limited scope of Section 47 compared to Section 20 of the RPwD Act and observed as under:

"42. The limited nature of Section 47 becomes apparent when it is compared with Section 20 of the RPwD Act. Section 20 of the RPwD Act reads thus:

"Section 20 - Non-discrimination in employment (1) No Government establishment shall discriminate against any person with disability in any matter relating to employment:

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, exempt any establishment from the provisions of this section.

(2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

(3) No promotion shall be denied to a person merely on the ground of disability.

(4) No Government 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.

(5) The appropriate Government may frame policies for posting and transfer of employees with disabilities.”

(emphasis supplied)

43. Section 47 of the PwD Act, unlike Section 20 of the RPwD Act, does not contain a provision in the nature of sub-Section (1) of Section 20 which provides that a government establishment cannot discriminate against a person with a disability in “any matter” relating to employment. While we are not interpreting the contours of “any matter” used in Section 20 of the RPwD Act in the present case, it would suffice to say that Section 20 of the RPwD Act casts a net of protection wider than Section 47 of the PwD Act.

44. Moreover, India is a signatory to and has ratified the United Nations Convention on the Rights of Persons with Disabilities (“CRPD”). Article 5 of CRPD incorporates the principles of non-discrimination and equality, in both its formal and substantive forms. Article 5 reads as follows:

“5. Equality and Non-Discrimination:

1. States Parties recognise that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.”

(emphasis supplied)

For convenience, the Bench has made a comparison between Section 47 of the PwD Act and Section 20 of the RPwD Act. At para 52 of the said judgment (**Ravinder Kumar Dhariwal, supra**), the court has held thus:

Section 47 of the PwD Act	Section 20 of the RPwD Act
“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.	“20. Non-discrimination in employment-(1) No government establishment shall discriminate against any person with disability in any matter relating to employment:

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."	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, exempt any establishment from the provisions of this section. (2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability. (3) No promotion shall be denied to a person merely on the ground of disability. (4) No Government 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. (5) The appropriate Government may frame policies for posting and transfer of employees with disabilities."
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Thus, it can safely be said that Section 20 of the RPwD Act, covers wider ambit when compared with Section 47 of the PWD Act. Section 20 fo the RPwD Act, provides for non-discrimination based on disabilities, which is a provision in pursuance of equality mandated in Article 5 of the Convention of Rights to Persons with Disabilities, 2006 (for short, "CRPD") Act.

Section 20(2) of the RPwD Act, states that every government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

[Emphasis supplied]

21. It is further observed that the said provision advances the guarantee of reasonable accommodation to the persons with physical or mental disabilities. *The government establishment has a positive obligation to shift an employee who is affected with disability during service to a suitable post with same pay-scale and service benefits. The provision further states 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 becomes available or when he attains the age of superannuation, whichever is earlier. Further, reasonable accommodation is a component of the right to equality and non-compliance of principle of reasonable accommodation would result discrimination.*

[Emphasis supplied]

22. The Bench in ***Ravinder Kumar Dhariwal (supra)*** further observed that ***"in light of Section 20(4) and the general guarantee of reasonable accommodation that accrues to persons with disabilities, the appellant is entitled to be***

reassigned to a suitable post having the same pay scale and benefits”.

It further held that ***“section 2(h) prohibits discrimination on the basis of disability. It is pertinent to note that the provision does not use the phrase ‘only’ on the basis of disability. This Court in its decisions has observed that while a causal connection may need to be established between the ground for discrimination and the discriminatory act, it is not required to be shown that the discrimination occurred solely on the basis of the forbidden ground. As long as it can be shown that the forbidden ground played a role in the discriminatory action, the action will violate the guarantee against non-discrimination.”*** [SCC p. 278, para 128]

23. In addition to the above analysis of law on the subject, it is noticed that the framers of the RPwD Act used the word “no” to start the provisions under Sub-sections 3 and 4 of Section 3 and under Sub-section 4 of Section 20 of the said Act. According to me, using the word “no”, the legislature intended to mandatorily negate any action adverse to the interest related to the employment in service of the employees suffered with physical or mental disability, and further asserts affirmative action not to discriminate such employees in providing all

service benefits including seniority, promotion, pay structures, etc. till the date of his superannuation. To achieve the objectives of the Act, the employers are obligated to provide reasonable accommodation by way of making necessary adjustments to a suitable post in the same pay-scale to ensure to persons/employees with disabilities the enjoyment or exercise of right equally with others. In appropriate cases, even the employer may have to create supernumerary post to accommodate a permanently disabled employee in service because the schematic pattern of the Act suggests that any factor or barrier in any form or manner whatsoever as envisaged in Section 2(c) of the RPwD Act must not hamper a person with long term physical or other forms of disabilities in his/their full and effective participation in institutional and societal activities.

[Emphasis supplied]

24. Now, to consider the prayer for compassionate appointment, it would be useful to have a look to the notification dated 2nd March, 2019, wherein the Government of Tripura has revised the Die-in-harness scheme for compassionate appointment/benefit of government employees of Tripura.

(i) Clause 2.2. of the said Scheme defines "**Affected Government Servant**", which means, ***(i) Government servant dying-in-harness, or (ii) Government servant attained permanent invalidity while on Government duty, or (iii) Missing.***

(ii) Clause 2.6. of the said Scheme defines "**Dependant family members**", which reads thus:

- "(i) Wife or husband, as the case may be;
- (ii) Legitimate children;
- (iii) Legitimate step children;
- (iv) Adopted children;
- (v) Dependent daughter-in-law;
- (vi) Dependent parents;
- (vii) Dependent unmarried brother(s);
- (viii) Dependant unmarried sister(s);
- (ix) Dependent widowed daughter(s) and
- (x) Dependent legally divorced daughter(s)

(iii) Clause 2.10. of the said Scheme defines "**Permanent invalidity of Government Servant**", which means ***the government servant is suffering from permanent invalidity while on duty causing incapacitation to perform Government duties.***

Provided that the State Government Medical Board has recommended and certified the permanent invalidity and the competent authority has full satisfaction on such permanent invalidation.

(iv) Clause 2.13. of the said Scheme defines "**Eligibility**", which reads as under:

“Eligibility” shall be determined as on the date of occurrence of the deceased/missing/permanently invalidity of the Government employee.

(a) The family is indigent and deserves immediate assistance for relief from financial destitution; and

(b) Applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules.”

25. From the above schemes, it is clear that in case a government employee suffers from permanent invalidity, one of the eligible dependent family members of such employee would be entitled to be provided with a job commensurate to his qualification.

26. Now, coming to the context of the case, and having regard to the ultimate submission of the learned GA to refer the petitioner to State Government Medical Board to examine the petitioner as regards his claim of permanent disability and necessary certification in this regard, I am constrained to pass the following directions:

(i) *The petitioner to appear before the State Medical Board within a period of 3 (three) weeks from the date of receipt of the copy of this order;*

(ii) *The State Medical Board will physically examine the petitioner and the extent of his disability shall be determined keeping in mind that State Disability Board declared him 100% disabled in contrast to his work as Constable;*

(iii) *The state-respondents must act and take an affirmative decision whether they will re-instate the petitioner allowing him*

to continue in service or to declare him permanently invalid causing incapacitation to perform government duties as embodied in Clause 2.10 of the Die-in-harness scheme read with Rule 38 of the CCS (Pension) Rules, 1972, providing him with all service benefits till the date of his normal retirement;

(iv) *The state-respondents shall treat the period of his retirement as on duty and restore all service benefits till the date of his re-induction/re-joining in the service;*

(v) *The state-respondents shall pay arrear of salary minus the amount, the respondents paid in this intervening period towards his pension;*

(vi) *Alternatively, declare the petitioner permanently invalid in terms of the afore-stated relevant provisions so that his son being one of the "dependent family members" may be considered for appointment under the Die-in-harness scheme prevalent in the State; and*

(vii) *In case, the son of the petitioner is provided with a job under die-in-harness scheme, then, the state-respondents shall treat the petitioner as on duty till the date of joining of the son of the petitioner to the post he would be appointed.*

27. In the light of the above observations and directions, the D.O. no. 701/2019 dated 31.10.2019 issued by the respondents

asking the petitioner to go on voluntary retirement is set-aside and quashed. Resultantly, the instant writ petition is allowed in the terms as indicated here-in-above.

Pending application, if any, also stands disposed.

JUDGE



Saikat