

Rekha Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4209 OF 2017

Smt. Jyoti Jayesh Tayade
Aged about 49 yrs., Occ-Service
Resident of Flat No. 303, 3rd Floor,
Building no. 7, 'B Wing', Phase-1,
Shree Laxmi Marg, Thane-400 606

...Petitioner

Versus

1. The Commissioner
Municipal Corporation of Greater Mumbai,
Mahapalika Marg, Opp. CST Station,
Mumbai -1.
2. The Chief Security Officer,
Municipal Corporation of Greater Mumbai,
1/Z, Stores Yard, Dr. E. Moses Road,
Worlinaka, Mumbai – 400 018.
3. The Chief Labour Officer,
Municipal Corporation of Greater Mumbai,
B.M.C. Head Quarter, 6th Floor Annex
Building, Opp. CST Station, Mumbai.
4. The Deputy Chief Security Officer,
Eastern Suburbs, M.C.G.M.
5. The Divisional Security Officer,
Zone -VI, M.C.G.M.,
Resp. no. 4 & 5 having their office,
7th floor, Yangriha, Pant Nagar,
Ghatkopar, Andheri Link Road,
Ghatkopar (E), Mumbai.

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6. The Asst. Security Officer,
Municipal Corporation Office,
T Ward, Panch Rasta, Mulund (W),
Mumbai – 400 080.
 7. The Commissioner for Person with
Disabilities, Disabled Welfare
Commissionerate, 3, Church Road,
Pune – 400 001.
 8. The State of Maharashtra
Copy to be served upon the
Government Pleader, Appellate Side,
High Court of Bombay.
- ...Respondents
(Org.
Respondent
Nos. 1 to 6)

Mr. Suresh Pakale, Senior Advocate i/b. Mr. Nilesh Desai, for the
Petitioner.

Mr. A. V. Bukhari, Senior Advocate a/w Mr. Burhan Bukhari and Mr.
Santosh Parad, for the Respondents – BMC.

**CORAM: SUMAN SHYAM &
MANJUSHA DESHPANDE, JJ.**

**RESERVED ON: 10th OCTOBER, 2025.
PRONOUNCED ON: 17th OCTOBER, 2025.**

JUDGMENT : (Per *SUMAN SHYAM, J.*)

1. The Writ Petitioner herein had suffered an accident during the course of her service, incurring disability, which had rendered her unfit for job. Resultantly, her service was terminated but in the wake of an order passed by the Commissioner for Person with Disabilities, (Disabled Welfare Commissionerate), she was reinstated in service. The grievance of the Petitioner in this Writ

Petition is on account of non-payment of her wages during the period in which she had remained out of her job due to termination of her service. The facts and circumstances of the case, as available from the materials on record, shorn of unnecessary details, are as here-under.

2. On 12th April, 1995, the Writ Petitioner, who is a graduate in Arts, was appointed as a Security Guard and posted in the 'T' Ward of the Bombay Municipal Corporation. From time to time, her duties/assignment were changed. On 12th August, 2009, when the Petitioner had reported for duty and signed the attendance-sheet, she was asked to report for duty at the Security Post of Mulund General Hospital i.e. Agarwal Municipal Hospital. While travelling to the said hospital in a motorcycle with her husband, she had met with an accident. On being hit by a car, the motorcycle in which the Petitioner was travelling, was dragged to some distance and she fell down and sustained serious injuries on her head, neck, left shoulder and back. The Petitioner had to remain hospitalized for twelve days in the Agarwal Municipal Hospital and, thereafter, she was advised bed rest for three months. On 1st September, 2009, the Petitioner had applied for Special Leave, which was sanctioned for the period from 12th August, 2009 to 16th November, 2009. On 24th April, 2012, the Petitioner had made a request for assigning her some light duty. Accordingly, the authorities had assigned her light duty (fixed point duty) at the Agarwal Municipal Hospital itself. However, on 7th January, 2013, the Petitioner was referred for medical examination before the Municipal Medical Board. She

had accordingly appeared before which. On 15th January, 2013, the Medical Board had opined that the Petitioner has suffered permanent disability to the extent of 55% and that she was unfit for the job of Security Guard. A recommendation was, however, made that the Petitioner should be given some light duty. On 21st January, 2013, the Medical Officer of Sion Hospital had certified that the Petitioner was suffering from Motor Neuron Disease. On 1st July, 2013, a physically unfit certificate was issued in respect of the Petitioner, which was followed by the order dated 31st July, 2013, issued by the Respondent No.2, whereby the Petitioner was asked to surrender her uniform. On 23rd August, 2013, another Communication was issued by the Respondent No.2, whereby the Petitioner was asked to deposit her uniform, ID Card etc. and place claim for pension.

3. Aggrieved by the orders dated 31st July, 2013 and 23rd August, 2013, the Petitioner had preferred an Appeal under Section 62 of the Person with Disability (Equal Opportunities Protection of Rights and Full Participation) Act, 1995 (hereinafter referred as 'Act of 1995') before the Commissioner, for Person with Disabilities, Disabled Welfare Commissionerate i.e. the Respondent No.7. After hearing the arguments from both the sides, the Respondent No 7 was of the opinion that the termination of service of the Petitioner was in violation of section 47 of the Act of 1995. As such, the Appeal was disposed of by the Judgment and Order dated 4th September, 2015 with a direction to reinstate her with all benefits of service as per Rules. The operative part of the English

translation of order dated 4th September, 2015, which is in Marathi, annexed as Exh.A, is reproduced herein below for ready reference: -

“

ORDER

A) The Applicant's Application is partly being admitted.

B) Since the service termination of the Applicant, made vide letters dated 31.07.2003 and 13.08.2013 of the Respondents is in violation of Section 47, the same does not remain fair and proper. The Respondents may take the Applicant on the post of Security Guard immediately and she may be given all the benefits of service as per the rules. Similarly, the Applicant may be given works of light nature.

C) After the applicant is taken on the post of Security Guard, the Respondents may reinstate her on the equivalent post with same pay scale as per the handiap of the Applicant and if the said post is not available with the Respondents then action for creation of the equivalent post on the basis of the handicap of the Applicant may be taken as per provisions of Section 47.

This Judgment has been given on today dated 4th September, 2015 with my signature.”

4. By the order dated 4th September, 2015, the Respondent No 7 had interfered with the orders dated 31st July, 2013 and 23rd August, 2013 (wrongly mentioned as 31-07-2003 & 13-08-2013). Pursuant to the order dated 4th September, 2015, the Petitioner

was allowed to join back in her duty as Security Guard and was also paid salary in the same pay scale for the period during which she was in service.

5. According to the Petitioner, her service was wrongly terminated by orders dated 31st July, 2013 and 23rd August, 2013. However, in terms of the order dated 4th September, 2015, she was reinstated on 29th March, 2018. The Petitioner, however, claims to be entitled to receive salary and wages for the period from month of June, 2013 till reinstatement. In other words, the Petitioner is seeking back wages for the above period during which, the respondents did not pay her any salary.

6. The Deputy Chief Security Officer serving under the Municipal Corporation of Greater Mumbai, has filed reply contesting the claim of the Petitioner. It appears from the reply that on 6th October, 2022, the Petitioner had submitted an Application indicating her unwillingness to continue with the work. The said Application was apparently treated as her resignation letter and she was released from service.

7. The Petitioner has not filed any rejoinder. But the learned Counsel for the Petitioner has confirmed that his client had tendered resignation.

8. During the Course of hearing Mr. Suresh Pakale, learned Senior Counsel appearing for the Petitioner, has argued that the claim of the Petitioner is covered under Section 47 of the Act of

1995 and, therefore, the Respondents were bound to pay full wages to the Petitioner for the entire period of her service until such time, she had left the job. Contending that, the Petitioner had incurred disability during the course of her service, Mr. Pakale, learned Senior Counsel, has argued that in view of the provisions of Section 47 of the Act of 1995, the Respondents could not have terminated her service nor could they have denied the wages to the Petitioner for the entire period of her service.

9. In support of his above argument, Mr. Pakale has placed reliance on a decision of this Court rendered in the case of **Edward Swalin D'Cunha vs. Commissioner for Persons with Disabilities and Anr.**¹ to contend that since the Petitioner's case is covered under Section 47 (1) of the Act of 1995, the Respondents would be duty bound to pay her the back wages.

10. Responding to the above arguments, Mr. A. V. Bukhari, learned Senior Counsel appearing for the Respondent Nos 1 to 6/ BMC Authorities, has argued that the Corporation has already reinstated the Petitioner in terms of the order passed by the Respondent No.7 and thereafter, had also paid regular salary to the Petitioner without getting any service benefit from her. Since, the Petitioner has not rendered any work/service to the organization from the period from 1st July, 2013 to 28th March, 2018, hence, going by the principle of "no work no pay" she cannot claim back wages for the above period.

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11. By placing reliance on a decision of the Supreme Court rendered in the case of **Rajasthan State Road Transport Corporation, Jaipur vs. Phool Chand (Dead) through Legal Representatives²**, Mr. Bukhari has argued that the back wages cannot be claimed by an employee as a matter of right.

12. We have considered the submissions made by learned Senior Counsel for the contesting parties and have also gone through the materials available on record.

13. In this case, there is no doubt or dispute about the fact that the Writ Petitioner had acquired disability due to a road accident, which took place when she was in employment under the Municipal Corporation of Greater Mumbai as a Security Guard. The short question arising for consideration of this Court in this case is as to whether, the relief as prayed for by the Petitioner, would be covered under Section 47(1) of the Act of 1995.

14. In order to give effect to the Proclamation for Full Participation and Equality of People with Disabilities in the Asian and Pacific Region, the Act of 1995 was enacted by the Parliament. The object of the Act was to provide for a comprehensive legal frame work for safeguarding the rights of persons with disabilities so that they can enjoy opportunities for Full Participation in life's activities.

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15. Section 47 of the Act of 1995 lays down that there should be non-discrimination in Government Employment. Section 47 of the Act of 1995 reads 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 section.”

16. The Act of 1995 was replaced by “The Rights of Persons with Disabilities Act, 2016” which contains similar provision in Section 20 protecting the interest of an employee who acquires disability during service. However, since the Petitioner’s case is covered by Section 47(1) of the Act of 1995, it would not be necessary for this Court to refer to the provisions of the Act of 2016 in this case.

17. There is no controversy in this case about the fact that the Municipal Corporation of Greater Mumbai, i.e. the employer of the Petitioner, is not an exempted organization within the meaning of section 47 of the Act of 1995. Therefore, the Act of 1995 would be applicable to the employees of that organization.

18. While dealing with an issue of similar nature pertaining to applicability of Section 47 of the Act of 1995, the Supreme Court has held that Section 47 would be mandatory and, therefore, would cast a statutory obligation on the employer to protect an employee acquiring disability during service. The observations made in para 9 in the case of **Kunal Singh vs. Union of India and Anr.**³, are relevant for this case and, therefore, are being reproduced herein below for ready reference:-

“ 9. 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 a person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those

3 (2003)4 Supreme Court Cases 524

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."

19. From a careful reading of Section 47 of the Act of 1995, it is thus, clear that Section 47 un-ambiguously lays down an obligation upon the employer to protect the interest of the employee acquiring disability during service. This Section clearly prohibits the employer from terminating the service or even reducing the employee in rank who had acquired disability during

service. Section 47(1) further provides that due to the nature of work, if the employee cannot be retained in the same post then he/she ought to be adjusted in any other suitable post and if the same is also not possible then the employee must be adjusted in a supernumerary post till a suitable vacancy is found or till superannuation of the employee. From the above, it is thus apparent that dispensing with the service of an employee who had acquired disability during service is not an option open for the employer even if it is a case where no suitable post is available in the organization to accommodate such an employee.

20. The decision of the Hon'ble Supreme Court in the case of **Kunal Singh (Supra)** further clarifies that provision of Section 47 is mandatory, thus laying down a statutory obligation upon the employer to protect the interest of the employee acquiring disability during service. Therefore, the employer would be bound to implement the prescription of law in letter and spirit and no departure therefrom will be permissible.

21. It must be borne in mind that the Act of 1995 is a piece of beneficial legislation which seeks to protect the interest of employees with disability. One of the underlying object of the Statue is to ensure job security of the employees who acquire disability during the course of service.

22. As noted above, Section 47 has been held by the Supreme Court to be mandatory in nature. As such, we are of the considered

view that the Respondent authorities could not have dispensed with the service of the Petitioner on the ground that she was unfit to resume her duties as Security Guard due to the disability incurred by her. In other words, no termination of service or reduction in rank of the Petitioner was permissible merely on the ground that she had acquired disability while in service. On the contrary, we are of the view that, notwithstanding the termination of her service, by operation of the legal fiction flowing from Section 47(1), the Petitioner would be deemed to have been in service all along i.e. since the time of acquiring the disability, till such time, she had submitted her resignation.

23. The Act of 1995 nowhere indicates that the disability must be incurred in course of discharge of duty. Therefore, it would be sufficient for the purpose of Section 47 if the disability is acquired during service. In any view of the matter, the assertion of the Petitioner that the accident took place at the time when she was going to report for her duty assigned at another work place, has not been denied in the Reply. Therefore, it is a clear case that the Writ Petitioner would be entitled to the protection of Section 47 of the Act of 1995.

24. During the Course of hearing the learned Senior Counsel for both the sides have addressed elaborate arguments on the issue of entitlement of the Petitioner to receive back wages. However, the question here is not of payment of back wages but the right of the Petitioner to receive her unpaid salary and allowances for the relevant period, which right, in our opinion was well protected

under the Statute. Despite acquiring disability, the Petitioner was entitled to remain in service as per the prescription of Section 47(1) of the Act of 1995. Therefore, her salary for the said period could not have been denied by her employer. In that view of the matter, we are of the opinion that the principle “no work no pay” would not have any bearing in respect of a claim which stands protected under Section 47 of the Act of 1995.

25. Moreover, the order dated 4th September, 2015, passed by the Respondent No 7 has also recognized and accepted such claim of the Petitioner to receive her unpaid dues and the said order has attained finality in the eyes of law. Since the employer of the Petitioner could not have dispensed with her service for acquiring disability, hence, non-payment salary and allowances to the Petitioner, in the same pay scale, for the said period would also not be permissible in law. Therefore, we are of the unhesitant opinion that a Writ of Mandamus would lie for enforcement of the statutory right of the Petitioner to receive her un-paid salary and allowances. In view of the above, we do not deem it necessary to burden this judgment by referring to the arguments advanced by the learned counsel pertaining to the principles for payment of back wages.

26. For the reasons stated here-in-above this Writ Petition succeeds and is hereby allowed.

27. The termination of service of the Petitioner is held to be illegal. The Respondents Nos 1 to 6 are therefore, directed to pay the arrears of the unpaid salary and allowances to Petitioner for the period during which her service was illegally terminated/dispensed with until such time, she was reinstated in terms of the Order dated 4th September, 2015, besides all other service benefits payable to her for the aforesaid period, in accordance with law.

28. In the light of the determination made here-in-above, the amount due and payable to the Petitioner be therefore, computed and the same be paid to her within a period of three months from the date of receipt of certified copy of this Order, failing which, in addition to other legal consequences, interest @ of 9% per annum would also be payable on the unpaid dues from the date of this order till realization of the amount.

29. Parties to bear their own costs.

(MANJUSHA DESHPANDE, J)

(SUMAN SHYAM, J.)