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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9125 OF 2014**

The State of Maharashtra
Through the Joint Director, Vocational
Education and Training Office,
Trimbak Naka, Old Agra Road,
Post Box No.456, Nashik 422 002

... Petitioner

Versus

Shri. Kuber Govindrao More,
R/o Flat No.15,
Gurugangeshwar Apartment,
Nashik 422 002.

... Respondent

Mr. P.G. Sawant, AGP, for the Petitioner.
Mr. Kuber Govindrao More, Respondent in person.

**CORAM : A.S. OKA &
V.L. ACHLIYA, JJ.**

DATE : 20th OCTOBER, 2015

ORAL JUDGMENT (Per A.S. Oka, J.)

. As per the Administrative order dated 9th September, 2015 passed by the Hon'ble Acting Chief Justice, this Petition has been specially assigned to this Bench. Heard the learned AGP appearing for the Petitioner and the Respondent appearing in person. As per the request made by the Respondent appearing in person, we have permitted him to make submissions in Marathi language. We have also perused the written submissions made by him.

2. The Respondent was in the service of the State Government. On 15th November, 2011, the Joint Director of Vocational Education and Training exercised powers under clause (b) of Sub-Rule (4) of Rule 10 of the Maharashtra Civil Services (Pension) Rules, 1982 (for short “Pension Rules”) and by his order informed the Respondent that on completion of the notice period of three months i.e. with effect from 16th February, 2012, the Respondent shall stand compulsorily retired from the Government service. The Respondent approached the Commissioner appointed under Sub-Section (1) of Section 60 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short “the Disabilities Act”) by invoking his jurisdiction under Section 62 of the Disabilities Act. By order dated 5th December, 2011 the operation of order /notice dated 15th November, 2011 was stayed by the Commissioner. By final order dated 24th January, 2014 the the Commissioner vacated the order of stay dated 5th December, 2011 and directed the Joint Director to take appropriate decision in accordance with law after sympathetically considering the case of the Respondent. Further order was made on 3rd February, 2014 by the Joint Director under which it was directed that with effect from 3rd February 2014 the Respondent shall stand compulsorily retired.

3. Thereafter, the Respondent again moved the Commissioner under the Disabilities Act with a complaint by invoking jurisdiction of the Commissioner under Section 62 of the Disabilities Act. By the order impugned in this Petition under Article 226 of the Constitution of India which is dated 5th June, 2014, the Commissioner purported to set aside the order dated 3rd February, 2014 of the compulsory retirement of the Respondent and directed reinstatement of the Respondent within a period of 30 days with back wages and other benefits. It is this order which is the subject matter of challenge in this Petition under Article 226 of the Constitution of India.

4. The learned AGP invited our attention to the provisions of the Disabilities Act and in particular Sections 61 and 62 thereof. His submission is that the Commissioner appointed under Sub-Section (1) of Section 60 had no power or jurisdiction to entertain a complaint against an order of compulsory retirement as well as to set aside the said order by directing reinstatement of the Respondent.

5. The Respondent appearing in person has made submissions even on the merits of the order of compulsory retirement and the manner in which his Annual Confidential Reports (ACRs) were written. He invited our attention to the provisions of Section 47 of the Disabilities Act. He urged that he was discriminated against only on the

ground that he is a person with disabilities. He submitted that his rights under Section 47 have been infringed by the State Government. He also relied upon the decision of the Apex Court in the case of Bhagwan Dass and Anr. vs. Punjab State Electricity Board¹. He also invited our attention to the circular issued by the Government of India on 19th May, 2015 on the basis of the said decision of the Apex Court. He urged that he being a person with disability, it was the duty of the State to explain to him the legal consequences of passing an order of compulsory retirement and he should have been informed about his rights. A submission is made that considering the wide powers conferred on the Commissioner under Sections 61 and 62, he was well within his powers to pass an order of reinstatement inasmuch as the rights of the Respondent were infringed by the State Government. He urged that the ACRs on which reliance is placed while passing the order of compulsory retirement are written contrary to law and the order of compulsory retirement could not have been made on the basis of the said ACRs. He submitted that after being satisfied that he had jurisdiction that the Commissioner had entertained the complaint of the Respondent. He also made a grievance regarding the failure of the Petitioners to give him promotion. Lastly, he submitted that the issue of legality and validity of the order of compulsory retirement should be tested by this Court.

1 (2008) 1 SCC 579

6. We have given careful consideration to the submissions. We have perused the impugned order. We have also perused the written submissions tendered by the Respondent appearing in person. The main issue which arises for consideration is whether the Commissioner appointed under Sub-Section (1) of Section 60 of the Disabilities Act had jurisdiction to go into the issue of legality and validity of the order of compulsory retirement made by the State Government under Sub-Rule (4) of Rule 10 the Pension Rules.

7. We have perused the provisions of the Disabilities Act. The object of the Act is to give effect of the Proclamation on the Full Participation and Equality of People with Disabilities in Asian and Pacific Region adopted in the meeting held at Beijing on 1st to 5th December, 1992. Chapter V of the Disabilities Act deals with Education, Chapter VI deals with Employment, Chapter VII deals with the Affirmative Action and Chapter VIII provides for Non-discrimination. The powers of the Commissioner have been laid down in Sections 61 and 62 which read thus :-

“61. Powers of the Commissioner - The Commissioner within the State shall- co-ordinate with the departments of the State Government for the programmes and schemes, for the benefit of persons with disabilities;

a. monitor the utilization of funds disbursed by the State Government;

- b. take steps to safeguard the rights and facilities made available to persons with disabilities;
- c. submit reports to the State Government on the implementation of the Act at such intervals as that Government may prescribe and forward a copy thereof to the Chief Commissioner.

62. Commissioner to look into complaints with respect to matters relating to deprivation of rights of persons with disabilities - Without prejudice to the provisions of section 61 the Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to -

- (a) deprivation of rights of persons with disabilities;
- (c) non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights of persons with disabilities, and take up the matter with the appropriate authorities.”

8. On plain reading of Sections 61 and 62, the same do not confer any power on the Commissioner to make an adjudication on the legality and validity of the order of compulsory retirement under the Pension Rules. Section 62 confers power on the Commissioner to look into the complaints with respect to the matters relating to :-

- a) Deprivation of rights of persons with disabilities;
- b) Non-implementation of the laws, rules, bye-laws etc. made or issued by the appropriate Governments and local authorities for the welfare and protection of rights of persons with disabilities.

9. On plain reading of Section 62, the power conferred thereunder is without prejudice to power under Section 61. The power is to deal with the complaints with respect to the matters relating to clauses (a) and (b) thereof and to take up the matters with Appropriate Authorities. There is no power conferred by Section 62 on the Commissioner to issue directions to the Appropriate Authorities after making an adjudication. Clause (a) is attracted when rights of a person with disabilities which are conferred by the Disabilities Act are infringed. Even if the Commissioner after looking into a complaint finds that there is a deprivation of rights of persons with disabilities which are conferred by the Disabilities Act or any other statutory provision, he can only take up the matter with the Appropriate Authorities.

10. The Respondent appearing in person relied upon Section 47 which reads thus :

“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.”

11. Without going into the issue whether the rights conferred under Section 47 were in fact breached, assuming that there was such a breach, all that the Commissioner could have done is to take up the matter with the concerned authorities by pointing out that there was a breach.

12. The Respondent appearing in person relied upon the

decision in the case of the *Bhagwan Dass and Anr.* We have carefully perused the said decision. The Apex Court was dealing with the case of a person who while in service had become totally blind. The Apex Court, in the light of the provisions of the Disabilities Act, held that it was the duty of the concerned authorities to explain to the person with disability the legal position as regards the application for voluntary retirement and consequences thereof. What was challenged was the termination of service of disabled employee. The Apex Court has not dealt with the issue of the powers of the Commissioner under the Disabilities Act.

13. We have perused the impugned order passed by the Commissioner. We find that the Commissioner has completely ignored the limited scope of powers conferred upon him by Sections 61 and 62 of the Disabilities Act. He has gone into the merits of the order of compulsory retirement passed by the Competent Authority in exercise of powers under the Pension Rules. He has completely ignored that the order passed under Sub-Rule (4) of Rule 10 of the Pension Rules is not at all stigmatic. In our view, the Commissioner has assumed the jurisdiction which was not vested in him. He had no jurisdiction to adjudicate upon the legality and validity of the order of compulsory retirement under Sub-Rule (4) of Rule 10 of the Pension Rules. Not only that the Commissioner has decided the issue of legality and validity, but

the Commissioner has proceeded to set aside the order of compulsory retirement.

14. Therefore, the impugned order passed by the Commissioner on 5th June, 2014 deserves to be quashed and set aside only on the ground that the Commissioner lacked jurisdiction to pass the said order. Even assuming that the Commissioner was of the view that the Respondent is deprived of his rights under the Disabilities Act or any other law by virtue of the order of compulsory retirement, at highest, he could have taken up the matter with the authorities of the State Government by submitting a report.

15. The remedy of approaching the Maharashtra Administrative Tribunal was available to the Respondent. Instead of adopting the said remedy in accordance with law, the Respondent has adopted a wrong remedy before the Commissioner. In fact, the Commissioner ought not to have entertained the complaint and advised the Respondent to adopt appropriate remedy in accordance with law.

16. Though we are setting aside the impugned order, the remedy of the Respondent challenging the order of compulsory retirement remains open. Considering the fact that the Respondent has adopted a wrong remedy, even the prayer for condonation of delay can

be favourably considered in the appropriate proceedings which may be adopted by the Respondent.

17. Hence, we pass the following order :-

ORDER

- (i) The impugned order dated 5th June, 2014 (pages 88 to 95 of the Petition) is hereby set aside only on the ground that the Commissioner appointed under Section 60 of the Disabilities Act had no jurisdiction to pass the said order;
- (ii) We, however, make it clear that the issue of legality and validity of the order of compulsory retirement made against the Respondent remains open;
- (iii) It will be always open for the Respondent to adopt appropriate remedy in accordance with law for challenging the order of compulsory retirement;
- (iv) By keeping all the contentions of the parties on the merits of the order of compulsory retirement expressly open, the Petition is partly allowed on above terms.
There will be no order as to costs;
- (v) Rule is disposed of accordingly.

(VL. ACHLIYA, J)

(A.S. OKA, J)