

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

WP(C).No. 11438 of 2014 (D)

PETITIONER:

RANI PAUL, W/O.LATE K.P.KRISHNAN,
THONIPPATTU HOUSE,
P.O.MUVATTUPUZHA-686 661,
ERNAKULAM DISTRICT.

BY ADVS.SRI.P.K.IBRAHIM
SMT.K.P.AMBIKA
SMT.A.A.SHIBI
SRI.G.KIRAN

RESPONDENTS:

1. KERALA STATE ROAD TRANSPORT CORPORATION
TRANSPORT BHAVAN, THIRUVANANTHAPURAM
REP. BY ITS MANAGING DIRECTOR. PIN-695 001.
2. THE DISTRICT TRANSPORT OFFICER/ASSISTANT
TRANSPORT OFFICER, KERALA STATE ROAD
TRANSPORT CORPORATION,
MUVATTUPUZHA, PIN-686 661.

BY ADVS. SRI.M.G.K.NAMBIAR
DR.THUSHARA JAMES

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
21-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 11438 of 2014 (D)

PETITIONER'S EXHIBITS:

EXT.P1- TRUE COPY OF THE INTERIM ORDER DATED 23.09.2010 IN WPC.NO.29264/2010.

EXT.P2- TRUE COPY OF THE ORDER DATED 25.02.2011 IN WPC NO.29264/2010.

EXT.P3- TRUE COPY OF THE JUDGMENT DATED 24.05.2012 IN WPC NO.29264 OF 2010.

EXT.P4- TRUE COPY OF THE MEMORANDUM DATED 14.09.2012 OF THE 1ST RESPONDENT.

EXT.P5- TRUE COPY OF THE MEDICAL CERTIFICATE DATED 10.10.2012 ISSUED BY THE CHAIRMAN AND DISTRICT MEDICAL OFFICER OF HEALTH, ERNAKULAM.

EXT.P6- TRUE COPY OF THE RECEIPT ISSUED DATED 14.11.2012 BY THE 2ND RESPONDENT FOR RECEIVING EXT.P5 MEDICAL CERTIFICATE.

EXT.P7- TRUE COPY OF THE PROCEEDINGS ISSUED BY THE 2ND RESPONDENT DATED 23.09.2013.

EXT.P8- TRUE COPY OF THE SUBMISSION MADE BY THE PETITIONER ON 25.09.2013.

EXT.P9- TRUE COPY OF THE JUDGMENT IN WPC NO.24769/2013 DATED 11.10.2013.

EXT.P10- TRUE COPY OF THE SUBMISSION (HEARING NOTE NO.PL.15/030691/10) DATED 24.02.2014 MADE BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P11- TRUE COPY OF THE MEMORANDUM DATED 03.04.2014 OF THE 1ST RESPONDENT.

EXT.P11(A)- TRUE COPY OF THE MEMO DATED 16.04.2014 OF THE 2ND RESPONDENT.

EXT.P12- TRUE COPY OF THE APPLICATION FOR LEAVE ALONG WITH THE MEDICAL CERTIFICATE MADE BY THE PETITIONER TO THE 2ND RESPONDENT DATED 17.4.2014.

EXT.P13- TRUE COPY OF THE APPLICATION DATED 29.10.2013 UNDER RTI ACT AND THE INFORMATION OBTAINED BY THE PETITIONER DATED 08.11.2013 UNDER RTI ACT.

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.11438 OF 2014 d

Dated this the 21st day of January, 2015

JUDGMENT

The Adjudicatory Ambit:

Does a person 'acquiring' a disability, to have the benefit of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('the Act'), ought to have 'acquired' any of the disabilities as defined or enumerated in Section 2 of the Act? Alternatively, whether Section 47 of the Act is required to be read independent of the lexical clause in Section 2 of the Act, thereby distinguishing 'persons with disability' from those 'acquiring disability'? Further still, does the 'disability', as defined under Section 2 of the Act, apply to the threshold appointments, while the 'acquisition of disability' under Section 47 takes into its fold all sorts of

incapacitating instances of a serving employee, independent of the lexical clause? Compendiously viewed, interpretatively, to what extent the legislative expression 'unless the context otherwise requires' controls the definitions under Section 2 of the Act?

Factual Matrix:

2. To unravel the controversy, we may refer to the facts to the extent required for the purpose. The petitioner, a widow with SSLC qualification, having a visually challenged minor daughter, secured employment as a Conductor in the last quarter of 2004 in the respondent Corporation on compassionate grounds after the death of her husband in harness. After serving three years as Conductor 'in-line bus', when the petitioner developed hypertension and respiratory problems, on her request, the respondent Corporation assigned to her 'light duty' as ticket issuer (other duty conductor). Though the petitioner had been continuing on light duty since 2006, when her request

for a permanent posting as a ticket issuer was not considered, she filed W.P.(C)No.29264/2010, which, after certain interim directions through Exhibits P1 and P2, was eventually disposed of by this Court through Exhibit P3 judgment dated 25.02.2011, directing the respondent Corporation to take a decision on changing the petitioner's category on the basis of the recommendation to be made by the Medical Board.

3. Though the petitioner produced Exhibit P5 medical certificate issued by the Medical Board that the petitioner is not suitable for "strenuous work", the respondent Corporation issued Exhibit P7 order dated 23.09.2013, directing the petitioner to resume her regular duty as Conductor. When Exhibit P8 representation dated 25.09.2013 did not yield any result, the petitioner filed W.P. (C)No.24769/2013 questioning Exhibit P7 order. In fact, this Court through Exhibit P9 judgment dated 11.10.2013 directed the Corporation to consider the request of the

petitioner in terms of Section 47 of the Act, apart from directing the Corporation to allow the petitioner to discharge light duty till then. In compliance with Exhibit P9 judgment of this Court, the respondent Corporation issued Exhibit P11 order dated 03.04.2014, rejecting the claim of the petitioner. Later the second respondent issued Exhibit P11(a) consequential order insisting on the petitioner's resuming her regular duties. Aggrieved thereby, the petitioner filed the present writ petition assailing Exhibits P11 and P11(a).

Submissions:

(a) The Petitioner's:

4. In the above factual backdrop, Mr.P.K.Ibrahim, the learned counsel for the petitioner, has strenuously contended that despite repeated directions from this Court, the officials of the respondent Corporation have been contumacious in their conduct by persistently refusing to abide by the rule of law. In elaboration of his submissions,

the learned counsel has contended that the first writ petition filed by the petitioner was disposed of by this Court through Exhibit P3 essentially based on the undertaking given by the learned Standing Counsel for the respondent Corporation that the issue would be determined based on the recommendations of the Medical Board. Secondly, though Exhibit P9 judgment directed the Corporation to extend the benefit of Section 47 of the Act to the petitioner, even that was denied.

5. It is the specific contention of the learned counsel for the petitioner that the expression “with disability” used in Chapter IV and expression “acquiring disability” used in Chapter VII of the Act are clearly distinguishable contextually. In this regard, the learned counsel has placed reliance on **G. Muthu v. Tamil Nadu State Transport Corporation (Madurai) Ltd.**¹, a judgment rendered by a learned Division Bench of the Hon'ble High Court of

¹ (2006) 4 MLJ 1669

Madras. The learned counsel has also contended that certain employees have been continuing with the light duty for years together without any illness whatsoever. According to him, the respondent Corporation has been assigning light duty on an ad hoc basis as a privilege for extraneous reasons. In support of his submissions, the learned counsel has referred to Exhibit P13, which is said to have been obtained by the petitioner under Right to Information Act. Summing up his submissions, the learned counsel for the petitioner has urged this Court to set aside Exhibits P11 and P11(a) and issue consequential directions to extend the benefit of Section 47 of the Act to the petitioner to have change of category.

(b) The Respondent's:

6. Per contra, Dr.Thushara James, the learned Standing Counsel for the respondent Corporation, in tune with the counter affidavit filed by the Corporation, has contended that the post of Ticket Issuer is a promotional

post for the last grade employees, and as such the petitioner cannot be permitted to work continuously as ticket issuer at the expense of the employees in the feeder category. In other words, it is against law to permit the petitioner to work permanently in cash counter as ticket issuer.

7. The learned standing counsel has further stressed that if all and sundry requests are accepted for light duty, it will lead to shortage of conductors, thereby adversely affecting the regular service operations of the Corporation.

8. According to the learned Standing Counsel, Exhibit P5 medical certificate does not specify the percentage of petitioner's disability, apart from saying that the petitioner is not suitable for strenuous work. It is also the specific contention of the learned Standing Counsel that Section 2 of the Act exhaustively enumerates the types of disabilities, apart from specifying the scope and nature of disability, to be entitled to any benefit under the Act. In

other words, the petitioner's disability, if any, does not fall within the purview of the Act. In expatiation of her submissions, the learned Standing Counsel has submitted that Section 47 of the Act cannot be read in isolation so as to take it away from the lexical clause, that is Section 2.

9. The learned Standing Counsel has stoutly defended the action of the Corporation in assigning light duty to certain persons whose names were reflected in Exhibit P13. According to her, all those persons have been assigned the light duty strictly in accordance with law. She has eventually contended that Exhibit P11 was passed in strict compliance with Exhibit P9 judgment and taking into account every aspect, including the applicability of Section 47 of the Act. She has placed reliance on **Union of India v. Devendra Kumar Pant & Others**².

10. Summing up her submissions, the learned Standing Counsel has painted a grim picture to the effect that most of the operating staff are undergoing treatments

for various diseases and physical infirmities, that if all the employees belonging to the Driver and Conductor categories with the disabilities are assigned light duty ad infinitum, the Corporation would be constrained to close down its bus services. According to her, the petitioner has enjoyed the privilege of light duty for many years and any further extension is detrimental to the interest of the Corporation. Thus, urges the learned Standing Counsel that the writ petition be dismissed.

11. Heard Mr.P. K. Ibrahim, the learned counsel for the petitioner and Dr. Thushara James, the learned Standing Counsel for the respondent Corporation, apart from perusing the record.

Issue in Perspective:

12. The issues have already been set out at the beginning; at any rate, putting them in perspective, it can be stated whether the petitioner's disability, though admittedly does not fall within the definition of disability

under Section 2 of the Act, can be taken into account for extending the benefit of Section 47 of the Act.

Discussion:

13. It is not in dispute that the petitioner was hale and hearty when she joined the service of the Corporation; it is not in dispute that the petitioner has acquired the disability during the course of her employment; and it is not in dispute that through Exhibit P5 the Medical Board has certified that the petitioner is not suitable for strenuous work. Given these admitted facts, the only issue that is required to be resolved is whether the petitioner is entitled to the benefit of Section 47 of the Act. Before proceeding further, it is apposite to examine the directions of this Court in Exhibits P3 and P9 judgments.

14. In Exhibit P3 judgment this Court observed thus:

“Learned standing counsel appearing for the KSRTC submits that if the petitioner appears before The Medical Board constituted by the Director of Health Services within 3 months from today and if the Medical Board certifies that the petitioner has to be given light duty,

then, on the basis of the recommendation of the Medical Board, she will be given appropriate posting, in accordance with law. The submission of the Standing Counsel is recorded. Interim order passed by this court will continue to be in force till a decision is taken by the respondent regarding the posting of the petitioner, based upon the recommendation of the Medical Board. Writ petition is disposed of accordingly.”

15. Indeed, through Exhibit P5, the Medical Board confirmed that the petitioner has been suffering from 'uncontrolled Hypertension and Bronchial Asthma'. It has also opined that the petitioner is 'not suitable for strenuous work'.

16. Without reference to Exhibit P5 medical certificate, the respondent Corporation issued Exhibit P7 Memo that the light duty sanctioned to the petitioner had expired; hence, she had to report back to original post, Conductor Grade II, with effect from 23.09.2013.

17. Once again, aggrieved by Exhibit P7, the petitioner filed another writ petition and invited Exhibit P9 judgment, in which this Court has pertinently observed as

follows:

“[A]n employee of the Corporation, who acquired disability while in service has to be dealt with in accordance with the provisions contained in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Section 47 of the said act provides that, if an employee acquires disability during service, the establishment shall not dispense with or reduce in rank of such employee. If due to the disability the employee became not suitable for the post he was holding, he should be shifted to some other post with the same pay scale and service benefits. It is further provided that if it is not possible to adjust the employee against any post, he should be kept in supernumerary post until suitable post is available. The respondent is not an establishment excluded from the provisions of the act by virtue of any notification issued by the state government as contemplated under the proviso to subsection to of Section 47.”

18. In the end, this Court has further observed that it is for the respondent establishment to consider whether the petitioner had acquired disability during service rendering her not suitable for the post of conductor.

19. It can be stated that the issue whether the

petitioner suffers from any disability within the purview of the Act stands concluded, though not expressly dealt with in the judgment. The respondent Corporation was directed only to consider, for extending the benefit, whether the disability was acquired by the petitioner during the course of her employment. Ipso facto, since Exhibit P9 judgment has attained finality, the Corporation is estopped from contending that the disability the petitioner suffers from does not fall within the purview of the Act. Be that as it may, given the potential of the issue to recur in the Corporation, the issue is dealt with on merits, as well.

20. Firstly, the Act, 1995 is gender neutral. In **National Legal Services Authority v. Union of India**³, the Hon'ble Supreme Court has held that the Universal Declaration of Human Rights recognises that all human beings are born free and equal in dignity and rights and, since the Covenant's provisions apply fully to all members of the society, persons with disabilities are clearly entitled to

³ (2014) 5 SCC 438

the full range of rights recognised in the Covenant. Moreover, the requirement contained in Article 2 of the Covenant that the rights enunciated will be exercised without discrimination of any kind based on certain specified grounds or other status clearly applies to cover persons with disabilities.

The Scheme of the Act:

21. Section 2 of the Act begins with a disclaimer to the effect, "In this Act, unless the context otherwise requires —".

22. Section 2(b) thereof refers to blindness; Section 2(e), to cerebral palsy; Section 2(l), to hearing impairment; Section 2(n), to leprosy cured person; Section 2(o), to locomotor disability; Section 2(q), to mental illness; Section 2(r), to mental retardation; Section 2(u), to person with low vision; and Section 2(i) enumerates, by employing a comprehensive legislative term 'means', the instances of 'disability' as follows: (i) "Disability" means-(I) Blindness; (ii)

Low vision; (iii) Leprosy-cured; (iv) Hearing impairment; (v) Loco motor disability; (vi) Mental retardation; and (vii) Mental illness.

23. Pertinently, Section 2(t) defines "Person with disability" as a person suffering from not less than forty per cent of any disability as certified by a medical authority. Now, the issue is whether this disability under Section 2(t) is invariably any of the disabilities described or defined in the rest of the section or whether it can be one beyond those enumerated in the provision.

24. When we look at the scheme of the enactment, Chapter I deals with preliminary aspects; Chapter II and III, with the Central and State Coordination Committees respectively; Chapter IV, with prevention and early detection of disabilities; Chapter V, with education; Chapter VI, with employment; Chapter VII, with affirmative action; Chapter VIII, with non- discrimination; Chapter IX, with research and manpower Development; Chapter X, with

recognition of institutions for persons with disabilities; Chapter XI, with institution for persons with severe disabilities; Chapter XII, with the remedial mechanism; Chapter XIII, with social security; and Chapter XIV, with miscellaneous matters. It can be seen that the Act is a comprehensive one aimed at giving statutory shape to the Country's international treaty obligations and solemn constitutional obligation of furthering the Directive Principles of State Policy, as well as enforcing the constitutional mandate, especially under Chapter III, viz., Articles 15 and 16—to empower the persons with disabilities.

Beneficial Legislation - Interpretation:

25. Needless to observe that the primary rule of interpretation of statutes is the literal rule; however, in the case of beneficial legislations and legislations enacted for the welfare of the employees, workmen, as is the case with the present enactment, the Hon'ble Supreme Court has on

numerous occasions adopted the liberal rule of interpretation to ensure that the benefits are extended to those workers who need to be covered based on the intention of the legislature. (vide **Bangalore Turf Club Ltd. v. ESI, (2014) 9 SCC 657**).

26. It has admirably been articulated in **ESI Corpn.**

v. Francis De Costa⁴, thus:

“[E]ven in the realm of interpretation of statutes, rule of law is a dynamic concept of expansion and fulfilment for which the interpretation would be so given as to subserve the social and economic justice envisioned in the Constitution. Legislation is a conscious attempt, as a social direction, in the process of change. The fusion between the law and social change would be effected only when law is introspected in the context of ordinary social life. Life of the law has not been logic but has been experience. It is a means to serve social purpose and felt necessities of the people. In times of stress, disability, injury, etc. the workman needs statutory protection and assistance.”
(emphasis original as quoted in Bangalore Turf Club)

27. In **Kunal Singh v. Union of India⁵**, the Hon'ble

⁴ (1993) Supp 4 SCC 100

⁵ AIR 2003 SC 1623

Supreme Court has dealt with the issue of interpretation with specific reference to Section 47 of the Act, and has held as follows:

“9. [I]n 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...”

Provisions regarding Employment:

28. If we examine the Act, keeping the above interpretative spirit in view, Chapters VI and VIII are required to be considered for our purpose. Under Section 32, the Governemnt is required to identify the posts which can be reserved for the persons with disability. Section 33 deals with the aspect of reserving the vacancies not less than three per cent for persons or class of persons with disability—one percent each to the persons suffering from

(i) Blindness or low vision; (ii) Bearing impairment; and (iii) Loco motor disability or cerebral palsy. As per Section 38, the Government and local authorities shall formulate schemes for ensuring employment to the persons with disabilities. Under Section 41, the Government and the local authorities shall, within the limits of their economic capacity and development, provide incentives to the employees both in public and private sectors to ensure that at least five per cent of their work force is composed of persons with disabilities.

29. Under Chapter VIII of the Act, Sections 44 to 46 provide for the necessary infrastructure and amenities to cater to the special needs of the differently abled persons, Section 47, the talismanic provision for our purpose, deals with employment security of the persons who acquired disability during the course of their employment. Section 47, the pivotal provision, is as follows:

“47. (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.”

30. It is evident from Chapter VI that there is no carte blanche in providing reservations to the posts for disabled persons. The employer has every power and discretion to exclude persons with certain disabilities from being engaged in certain specified posts, a case in point being a visually challenged person applying for the post of

Driver. That is why under Section 32 the employer is required to identify the posts in the establishments, which can be reserved for the persons with disability. The exclusion, of course, is to be based on discernible differentia. Under Section 33 of the Act, reservations are required to be provided to the persons only with three categories of disabilities. The underlining theme is that not all persons are eligible to hold the posts of every description even when the spirit of equality and non-discrimination permeates the policy. Thus, the definitions as provided under Section 2 of the Act have absolute bearing while interpreting Chapter VI of the Act. Proceeding further, we may have to examine whether the same holds good for interpreting the provisions under Chapter VIII, especially Section 47.

31. In **Anil Kumar Mahajan v. Union of India**⁶, the Hon'ble Supreme Court has considered the issue of a person acquiring disability after joining service. In that

⁶ (2013) 7 SCC 243

case, a civil servant, after thirty years of service, became insane. Since it is one of the disabilities under Section 2(i) of the 1995 Act, the Court has declared that Section 47 of the Act applies. There was no occasion to consider the converse proposition; namely, what should be the position if the disability has not been enumerated or not in the defined category?

32. Once we accept that all forms of disability cannot have the same protective treatment, that the reservation could be applied only to certain disabilities, and that there can be total exclusion of certain disabilities vis-à-vis particular posts, what follows is whether the same yardstick is to be applied in the case of Section 47 of the Act as well. In other words, what is the impact of the expression 'unless the context otherwise requires, a legislative gloss to the drafter's delight, on the interpretation clause of an Act.

33. Before proceeding further, we may, at this stage, parenthetically observe that a person with a disability

seeking employment stands on an entirely different footing from a person suffering or acquiring a disability after his securing employment. If one is to contend that only those persons who suffer only specified categories of disability are entitled to statutory protection and that those acquiring other un-enumerated disabilities have to suffer, in my opinion, it offends the principle of fairness, being invidiously discriminatory. Concerning a person with disability, the employer, at the threshold, while recruiting personnel, has an option of assessing his suitability to any particular post; on the contrary, if a person who was able-bodied or sound-minded at the time of recruitment is to suffer a disability of whatever nature, he cannot be shown the door. It can be likened to shooting a race horse on its becoming lame. A lame horse can be nurtured based on its suitability, but it cannot be butchered in the name of efficiency of system.

Legislative Gloss:

34. Veering back to the interpretative importance of

the legislative gloss, the expression 'unless the context otherwise requires', we can see that Section 2 of the Act, apart from enumerating specific disabilities, defines the expressions 'disability' and 'person with disability' by employing the all encompassing legislative linguistic device 'means'. Section 47, on the other hand, refers to 'an employee who acquires a disability' during his service.

35. Now, we may examine the impact of the qualifying words 'unless the context otherwise requires' on Section 47 in relation to 'disability'. The phrase “Unless the context otherwise requires” is meant to prevent a person from falling into the whirlpool of “definitions” and not to look to other provisions of the Act which, necessarily, has to be done as the meaning ascribed to a “definition” can be adopted only if the context does not otherwise require. (vide **Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1**). The legislature, which fixed contours for different expressions through the definition clauses, has also

provided sufficient play at the joints for contextual adaptations. In other words, contextual variations are not impermissible under the Act, if such variations are necessary to achieve the object of the enactment. (vide **Ashok Kapil v. Sana Ullah, (1996) 6 SCC 342**).

36. If we proceed further in the precedential path, we can find that in **K.V. Muthu v. Angamuthu Ammal**⁷ the Hon'ble Supreme Court has observed thus:

“10. [S]ection 2 of the Act in which various terms have been defined, opens with the words “in this Act, unless the context otherwise requires” which indicates that the definitions, as for example, that of “family”, which are indicated to be conclusive may not be treated to be conclusive if it was otherwise required by the context. This implies that a definition, like any other word in a statute, has to be read in the light of the context and scheme of the Act as also the object for which the Act was made by the legislature.

11. While interpreting a definition, it has to be borne in mind that the interpretation placed on it should not only be not repugnant to the context, it should also be such as would aid the achievement of the purpose which is sought to be served by the Act. A construction which would defeat or was likely

to defeat the purpose of the Act has to be ignored and not accepted.”

37. While arriving at the above conclusion, their Lordships have quoted with approval its earlier observations in **K.Balakrishna Rao v. Haji Abdulla Sait**⁸, wherein it is observed thus:

“24. A definition clause does not necessarily in any statute apply in all possible contexts in which the word which is defined may be found therein. The opening clause of Section 2 of the principal Act itself suggests that any expression defined in that section should be given the meaning assigned to it therein unless the context otherwise requires.”

38. To sign off our discussion on this issue, we may sum up the judicial interpretation of the legislative devise of contextual connotation of any definition, by referring to the observations of the Hon'ble Supreme Court in **Ramesh Mehta v. Sanwal Chand Singhvi**⁹, wherein it is held that a definition is not to be read in isolation. It must be read in the context of the phrase which would define it. It should not be vague or ambiguous. The definition of words must be

⁸ (1980) 1 SCC 321

⁹ (2004) 5 SCC 409

given a meaningful application; where the context makes the definition given in the interpretation clause inapplicable, the same meaning cannot be assigned.

Does the Context of Section 47 otherwise requires ascribing a different meaning to disability Independent of Section 2 of the Act:

39. The Act, in essence, aims at empowering the disabled or differently abled. As has already been adverted to, under Chapter VI of the Act, the employer is given the necessary leverage to identify the posts for which reservation can be provided in favour of persons with specific disabilities. Ipso facto, there can be certain posts involving exacting physical or cognitive standards for which no reservation can be provided. Owing to the discernible differentia it cannot be stated that there is any element of discrimination; on the other hand, the employees who later acquire a disability stand entirely on a different footing. In such an event, permitting to continue or rehabilitating only employees with a certain class of disabilities as defined or

enumerated under Section 2, and terminating others who do not fall within the protective purview of Section 2 is per se discriminatory falling foul of constitutionally sanctified principle of non-arbitrariness in State action.

Devendra Kumar Pant's Case:

40. The learned Standing Counsel for the Corporation has placed heavy reliance on Devendra Kumar Pant (supra), in which the employee, suffering from vision deficiency, was denied promotion on the ground of disability. In that context, the Hon'ble Supreme Court has held that a person who is otherwise eligible for promotion shall not be denied promotion merely or only on the ground that he suffers from a disability. If the disability, however, affects the discharge of functions or performance in a higher post or if the disability poses a threat to the safety of the co-employees, members of the public or the employee himself, or to the assets and equipment of the employer, denial of promotion does not offend Section 47. Indeed, the

issue of providing alternative employment and then considering the issue of promotion in that changed cadre has not fallen for consideration. In any event, either on the question of fact or on the question of law, this case has no parity with Devendra Kumar Pant (supra).

Section 47 - Context Otherwise Requires:

41. A learned Division Bench of the Hon'ble High Court of Madras has considered an identical issue in G. Muthu (supra). After a thorough analysis of the issue, their Lordships have held that the two categories, namely a person 'with a disability' and a person 'acquiring disability' are always distinguishable from each other, that the expression 'disability' used in Section 47 of the Act can, by no stretch of imagination, be equated with a case of a person 'with the disability'. It is further held that when such a 'disability' is acquired by an employee during his service, the Parliament thought it fit to ensure that his service is not in any way affected because of acquisition of such a

'disability' and, with that view, directed that he should be shifted to some other post with the same pay scale and service benefits; in the event of such alternative post not being available, to create a supernumerary post until a suitable post is available, or till he attains the age of superannuation. It has thus concluded to the effect:

“15. [I]n other words, we are of the firm view that the opening set of expressions contained in the definition clause, namely Section 2, which denotes "unless the context otherwise requires" squarely gets attracted to Section 47 and therefore the definition of 'disability' as defined under Section 2(i) cannot be blindly applied to the term 'disability' which has been used in Section 47 of the Act. In other words, the term 'disability' used in Section 47 can draw support not only in respect of the defined 'disabilities' as contained in Section 2(i) of the Act but will also encompass such other 'disabilities' which would disable a person from performing the work which he held immediately prior to acquisition of such 'disability' and thereby entitle him to avail the benefits conferred under the said provision for having acquired such a 'disability'.

42. Without further cogitation, I hold that the

ration of G. Muthu (*supra*) squarely accords with the legislative intent discernible from the scheme of the Act; accordingly, I am in respectful agreement with the finding in the said judgment on the issue of functional difference between 'persons with disability' and 'persons acquiring disability' while in service. It can be seen that the very Section VIII is captioned 'Non-discrimination', though the heading of a chapter or section may not be a definite indicator of legislative intent.

43. Before parting with the matter, it is pertinent to address certain contentions raised by the respondent Corporation that the petitioner has been given 'the privilege' of light duty. It is to be made clear that accommodating a person acquiring disability in service is no privilege. It may be true that ticket issuer is a promotion post; it cannot be, and indeed, is not, the contention of the petitioner that she has to be accommodated in the post of ticket issuer alone. It is, at best, one of the posts she can be

considered for. Even in terms of Section 47 of the Act, the requirement is that she has to be provided alternative appointment, if she has medically been incapacitated.

44. It may also have to be stated that it is not the question of entertaining all and sundry requests for light duty; it is, in fact, a statutory obligation of the Corporation, and it cannot be negated. True that the Medical Board in Exhibit P5 Medical Certificate has not specified the percentage of disability, but has placed on record, loud and clear, that the petitioner is not suitable for strenuous job. Even otherwise, the Corporation could as well seek necessary clarification from the Medical Board, if it desires.

45. In fact, Exhibit P11, the Order of the Corporation impugned presently, presents a doomsday picture about accepting the petitioner's request for light duty—that the Corporation has to shut down its operations in such an eventuality accepting all the requests for light duty. Light duty is, without doubt, an interim measure before

permanent remedial steps are taken under Section 47 of the Act. Instead of letting the petitioner continue with light duty from 2006, the Corporation could have taken appropriate steps to address or redress the grievance of the petitioner at the earliest. Once law is clear, it is required to be applied in all its vigour and vitality to the issue on hand, unmindful of the consequences, if that be the legislative intent. The Corporation cannot negate the solemn constitutional and statutory obligations.

Conclusion:

46. In the facts and circumstances, it is declared that the petitioner is entitled to the benefit of Section 47 of the Act; consequently, Exhibits P11 and P11(a) are set aside. It is further directed that the first respondent shall consider the case of the petitioner under Section 47 of the Act, keeping in view the undertaking given by the Corporation in Exhibit P3 judgment, the directions in Exhibit P9 judgment and Exhibit P5 medical certificate, if necessary, after taking

appropriate clarifications from the Medical Board. Needless to observe that the petitioner, in the meanwhile, shall be continued with light duty, as has been done till now.

With the above observations, the writ petition stands allowed. No order as to costs.

Dama Seshadri Naidu, Judge

tkv