

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 21828 of 2014(O&M)

Date of Decision : 31.03.2015

Dr.Anil Kumar Kundu

..... Petitioner

versus

Kurukshetra University and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Dinesh Kumar, Advocate for the petitioner.

Mr.A.S.Virk, Advocate for respondents No. 1 and 2.

Mr.Ashok Singh Chaudhary, Addl.AG, Haryana.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

By this petition the petitioner has challenged the order Annexure P-18.

The petitioner was appointed as a Lecturer in the Department of Management in Kurukshetra University-respondent No.1 after being regularly selected. It is submitted that on 30.06.2006 he met with an accident which has left him paralysed and the prayer made is that he should be given all the benefits of Section 47 of the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995(hereinafter referred to as 'the Act' for short). The petitioner had earlier filed CWP No. 4302 of 2014 which was disposed of on 07.03.2014 directing respondent No.2-Vice Chancellor to pass a speaking order. It is this speaking order which has been challenged. Section 47 of the Act is in the following terms:-

“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.”

The impugned order has held the petitioner disentitled on the ground that firstly, no intimation about the accident was given for 1½ years and secondly, that the University granted him extraordinary leave on the asking of his wife which is still continuing.

In my considered opinion the arguments set forward are misconceived. It is not disputed that the petitioner had become 100% disabled and, is in fact, even till date, unconscious. In the circumstances the argument that he did not inform the University for 1½ years is neither here nor there. The second argument also that it was the wife of the petitioner who had applied for extraordinary leave would not hold water simply for the reason that the petitioner himself is not in a position to even assert his right. The mere fact that his wife applied for extraordinary leave would not absolve the University from considering his claim under Section 47 of the Act once it was brought to its notice that the petitioner was suffering from a disability. As regards the State - respondents No. 3 and 4, their stand is that this is a decision for the University to take.

It cannot be disputed that the Act was a beneficial legislation meant to ameliorate the condition of persons who are suffering from a disability. In my opinion the cases cited have been

wrongly distinguished. In **Kunal Singh v. Union of India and another**, reported as 2003(2) RSJ 199 SC, the Hon'ble Supreme Court held as follows:-

“8. The need for a comprehensive legislation for safeguarding the rights of persons with disabilities and enabling them to enjoy equal opportunities and to help them to fully participate in national life was felt for a long time. To realize objective that people with disabilities should have equal opportunities and keeping their hopes and aspirations in view a meeting called the 'Meet to Launch the Asian and Pacific Decades of Disabled Persons' was held in Beijing in the first week of December, 1992 by the Asian and Pacific countries to ensure 'full participation and equality of people with disabilities in the Asian and Pacific Regions'. This Meeting was held by the Economic and Social Commission for Asia and Pacific. A Proclamation was adopted in the said meeting. India was a signatory to the said Proclamation and they agreed to give effect to the same. Pursuant thereto this Act was enacted, which came into force on 1st January, 1996. The Act provides some sort of succor to the disabled persons.

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 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 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.

11. We have to notice one more aspect in relation to the appellant getting invalidity pension as per Rule 38 of the CCS Pensions Rules. The Act is a special Legislation dealing with persons with disabilities to provide equal opportunities, protection of rights and full participation to them. It being a special enactment, doctrine of generalia specialibus nonderogant would apply. Hence Rule 38 of the Central Civil Services (Pension) Rules cannot override Section 47 of the Act. Further Section 72 of the Act also supports the case of the appellant, which reads: -

"72. Act to be in addition to and not in derogation of any other law. - The provisions of this Act, or the rules made thereunder shall be in addition to, and not in derogation of any other law for the time being in force or any rules, order or any instructions issued thereunder, enacted or issued for the benefits of persons with disabilities."

12. Merely because under Rule 38 of CCS Pension Rules, 1972, the appellant got invalidity pension is no ground to deny the protection, mandatorily made available to the appellant under Section 47 of the Act. Once it is held that the appellant has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay-scale and service benefits; if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation, whichever is earlier. It appears no such efforts were made by the respondents. They have proceeded to hold that he was permanently incapacitated to continue

in service without considering the effect of other provisions of Section 47 of the Act.”

Learned counsel has further relied upon a decision of this Court in **CWP No. 8641 of 2012 Malkit Singh Sidhu v. State of Punjab and others** decided on 26.08.2014. In that case also an employee had suffered an accident and had become disabled. This Court held as follows:-

“ The provisions of the Act as extracted above would obligate the State to ensure that the service of an employee visited with disability during his service is neither dispensed with nor his status reduced in rank. Rather efforts are to be made to accommodate such an employee in other areas if he is unable to meet the rigors of duties which he was performing prior to acquiring a disability. It further contemplates the creation of supernumerary post in the eventuality of a suitable post not being available till the time he attains the age of superannuation.

Implicit in the clear language of the statute is an obligation cast upon the respondents to rehabilitate the employee who has suffered a disability during his service. The laudable objective behind all this is to ensure that an employee does not fall on bad times and his family not reduced to a state of penury. Unfortunately due to the act and conduct of the respondents these are the very consequences which have been visited upon the petitioner. Despite the attempt made by this court to show sufficient light to the respondents to remedy the situation the needful has not been done.

The court would like to elaborate on the provisions of Section 47(1) of the Act. Section 47 though it mentions an acquisition of a disability by an employee does not envisage the extent thereof. Evidently bare reading of the provisions would indicate that a person who suffers a disability but is still able to perform some functions even though not the ones to which he was assigned would be accommodated in a different assignment. But what happens to an employee who is reduced to a vegetative state with 90

per cent or 100 per cent disability unable to perform the rigors of the assignment which he was holding or even a lesser assignment. In such a situation would the employer be able to write off the employee altogether. A person with this kind of disability as the one suffered by the petitioner reducing him to a vegetative state on account of severe damage to functionality of the brain, metaphorically may have joined the league of dead but continues to live thereby adding to the constraints of the family who would now be struggling to hold on to him without any financial support. It is these very contingencies which the Act seeks to redress.

The employer would have no right to deny benefits under Section 47(1) of the Act to an employee placed in such unfortunate circumstances.”

In my opinion this judgment completely covers the case of the petitioner.

Resultantly the petition is allowed and the respondent-University is directed to consider the petitioner to be on duty till such time as he attains the age of superannuation and to grant him all consequential benefits. It is made clear that in case the amount/s falling due to the petitioner are not paid within three months, the petitioner would be entitled to claim the same with interest at the rate of 8% p.a. from the date/s the amount/s is due to the petitioner.

Since the main case has been decided, the Civil Misc. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

March 31, 2015
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