

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) No. 5094/2013

% **11th February, 2015**

NORTHERN COALFIELDS LIMITED Petitioner

Through: Mr. Anirudh Singh with Mr. Anupam
Lal Das, Advocates.

versus

D.B. GOSWAMI & ANR. Respondents

Through: Mr. Roshan Lal Goel, Advocate for
R-2.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The petitioner/employer seeks quashing of the order dated 02.5.2013 passed by the Chief Commissioner for Persons with Disabilities, and by which order the Chief Commissioner gave service benefits to the respondent no.1 along with all consequential monetary benefits by ordering as under:-

“ 24. In the light of the above the respondent is directed as under:-

- (i) While the provisions of Section 47, treat the complainant as if he was in service till the date he attained the age of superannuation

and grant him all benefits and ensure that the money goes to his personal account.

- (ii) This court also observed that there is no clarity about the Dependents including his son, wife and children, so the court is directing the complainant to submit authenticated proof to the respondent about the dependents and also their age proof. But the benefits which are required to be given to the complainant as per para 24(i) above do not depend on submission of these informations by complainant to the respondent.
- (iii) 60 days time is given to the respondent for compliance from the date of receipt of this order and the complainant should furnish authenticated proof to the respondent within 45 days of the receipt of this order”

2. At the time when notice was issued in this petition on 14.8.2013, the following order was passed:-

C.M. No.11481/2013 (exemption)

Exemption allowed subject to just exceptions.

C.M. stands disposed of.

+ W.P.(C) No.5094/2013 and C.M. No.11482/2013 (stay)

1. Learned counsel for the petitioner argues with respect to illegality of the order of the Chief Commissioner dated 2.5.2013 on the following grounds:-

- (i) The respondent No.1 was terminated from services on account of being medically unfit by the order dated 19.6.2007 of the petitioner,

however, respondent No.1 challenged this order much later in the year 2010 before the Chief Commissioner for Persons with Disabilities, and it is argued to be so because respondent No.1 unsuccessfully sought for compassionate appointment with respect to his son-in-law, and which relief was declined by the petitioner.

(ii) The Chief Commissioner for Persons with Disabilities has overlooked the fact that the respondent No.1's services were terminated in the year 2007 and the respondent No.1 relied upon the medical certificate of disability which was in fact of the year 2009 i.e no such certificate was given till the time the respondent No.1's services were terminated by the petitioner.

(iii) It is very strenuously urged that the Chief Commissioner for Persons with Disabilities did not have the power under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as 'the Act') to pass an order holding that the termination order dated 19.6.2007 is bad and the respondent No.1 continues in service till superannuation. The only power, it is urged, which lies with the Chief Commissioner is under Section 59 of the Act and the same does not authorize re-instatement of a dismissed employee. Reliance is placed upon the judgment of the Supreme Court in the case of *State Bank of Patiala and Ors. Vs. Vinesh Kumar Bhasin (2010) 4 SCC 368* to argue that the Chief Commissioner under the Act did not have the power to set aside the order of termination and holding that the respondent No.1 continues in service till superannuation.

2. In view of the arguments urged on behalf of the petitioner, the operation of the impugned order dated 2.5.2013 is stayed till further orders unless varied by the Court.

3. Notice be issued to the respondents, on filing of process fee, both in the ordinary method as well as by registered post AD, returnable before the Registrar on 7th October, 2013. The Registrar, after completion of service and pleadings, will list the matter in Court.

3. In my opinion, the judgment of the Supreme Court in the case of ***State Bank of Patiala & Ors. Vs. Vinesh Kumar Bhasin (2010) 4 SCC 368*** fully covers the issue in favour of the petitioner, and which judgment follows the earlier judgment of the Supreme Court in the case of ***All India Indian Overseas Bank SC and ST Employees' Welfare Association Vs. Union of India (1996) 6 SCC 606***, and in both the judgments it is held that the commissioners who are appointed under the respective statutes do not have powers except the powers which are given under the specified Acts and such authorities do not have powers to pass judgments like a court of law and thereby issue directions or injunctions etc etc. The relevant paras of the judgment in the case of ***Vinesh Kumar Bhasin (supra)***, and which is also a judgment with respect to the Chief Commissioner acting under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996 are para nos. 13 to 18 and which read as under:-

“13. Prima facie neither Section 47 nor any other provision of the Disabilities Act was attracted. But, the Chief Commissioner chose to issue a show cause notice on the complaint and also issued an ex parte direction not to give effect to the order of retirement. He overlooked and ignored the fact that the retirement from service was on completion of the prescribed period of service as per the service regulations, which was clearly mentioned in the letter of retirement dated 17-11-2006; and that when an employee was retired in accordance with the Regulations,

no interim order can be issued to continue him in service beyond the age of retirement.

14. The Chief Commissioner also overlooked and ignored the fact that as an authority functioning under the Disabilities Act, he has no power or jurisdiction to issue a direction to the employer not to retire an employee. In fact, under the Scheme of the Disabilities Act, the Chief Commissioner (or the Commissioner) has no power to grant any interim direction.

15. The functions of the Chief Commissioner are set out in Sections 58 and 59 of the Act. Section 58 provides that the Chief Commissioner shall have the following functions:

“58.(a) coordinate the work of the Commissioners;

(b) monitor the utilisation of funds disbursed by the Central Government;

(c) take steps to safeguard the rights and facilities made available to persons with disabilities;

(d) submit: reports to the Central Government on the implementation of the Act at such intervals as the Government may prescribe.”

16. Section 59 provides that without prejudice to the provisions of Section 58, the Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints and take up the matter with the appropriate authorities, any matters relating to (a) deprivation of rights of persons with disabilities; and (b) 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. The Commissioners appointed by the State Governments also have similar powers under Section 61 and 62.

17. Section 63 provides that the Chief Commissioner and the Commissioners shall, for the purpose of discharging their functions under this Act, have the same powers as are vested in a court under the Code of Civil Procedure while trying a suit, in regard to the following matters:

- “63.(a) summoning and enforcing the attendance for witnesses;
- (b) requiring the discovery and production of any document;
- (c) requisitioning any public record or copy thereof from any court or officer;
- (d) receiving evidence on affidavits; and
- (e) issuing commissions for the examination of witnesses or documents.”

Rule 42 of the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Rules, 1996 lays down the procedure to be followed by the Chief Commissioner.

18. It is evident from the said provisions, that neither the Chief Commissioner nor any Commissioner functioning under the Disabilities Act has power to issue any mandatory or prohibitory injunction or other interim directions. The fact that the Disabilities Act clothes them with certain powers of a civil court for discharge of their functions (which include power to look into complaints), does not enable them to assume the other powers of a civil court which are not vested in them by the provisions of the Disabilities Act. In *All India Indian Overseas Bank SC and ST Employees' Welfare Association v. Union of India*:(1996) 6 SCC 606, this Court dealing with Article 338(8) of the Constitution of India (similar to Section 63 of the Disabilities Act), observed as follows: (SCC pp.609 & 611, paras 5 & 10)

“5. It can be seen from a plain reading of Clause (8) that the Commission has the power of the civil court for the purpose of conducting an investigation contemplated in Sub-clause (a) and

an inquiry into a complaint referred to in Sub-clause (b) of Clause (5) of Article 338 of the Constitution.

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10.All the procedural powers of a civil court are given to the Commission for the purpose of investigating and inquiring into these matters and that too for that limited purpose only. The powers of a civil court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be inferred or derived from a reading of Clause (8) of Article 338 of the Constitution.”

4. In view of the above, the writ petition is allowed and the impugned order of the Chief Commissioner for Persons with Disabilities dated 02.5.2013 is set aside. No costs.

FEBRUARY 11, 2015
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VALMIKI J. MEHTA, J