

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO.11246 OF 2015
WITH
CIVIL APPLICATION NO.2755 OF 2016**

Kiran s/o Dadarao Sable,
Age 24 years, Occu: Service,

Through his next friend
Dadarao s/o Narayan Sable,
R/o. Jayakwadi Colony, Yantriki Vibhag,
Nagar Road, Beed, Taluka &
District Beed.

...PETITIONER

VERSUS

1. The State of Maharashtra
Through Chief Secretary,
Mantralaya, Mumbai 400 032
2. Maharashtra State Electricity
Distribution Company Limited,
Through its Chief Engineer,
Prakashgad Bandra (E), Mumbai.
3. Executive Engineer,
O & M Division, MSEDCL,
33 KV Sub-Station Area,
Opp. Yeshwantrao Chavan College,
Beed Road, Ambajogai,
Taluka Ambajogai, District Beed.
4. Assistant Engineer,
MSEDCL, Sub-Station, Majalgaon,
District Beed.

...RESPONDENTS

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Mr. S.G.Chapalgaonkar, Adv., for the petitioner.
Mr. S.B.Pulkundwar, AGP for respondent no.1.
Mr. Uday S.Malte, Adv., for respondent nos.3 & 4.

**CORAM: R.M.BORDE
AND
P.R.BORA, JJ.**

Date: March 8th, 2016

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JUDGMENT: (Per P.R.Bora, J.)

1. Heard. Rule. Rule made returnable and heard forthwith with the consent of learned Counsel for the parties.

2. By filing the present petition, the petitioner has challenged order dated 10th November, 2015, passed by respondent no.3, whereby services of the petitioner have been terminated retrospectively w.e.f. 4th March, 2015, on the ground that, petitioner has been permanently held invalid on medical grounds to serve with respondent no.3.

3. Initially, the petition was filed seeking directions against the respondents to continue the services of the petitioner in view of provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. According to the petitioner, till the date of filing of the present petition, the order dated 10th November, 2015, was not served upon him. The petitioner

has alleged that, after issuance of the notice in the present petition, a back-dated order has been passed by respondent no.3, terminating the services of the petitioner as mentioned here-in-above.

4. As averred in the petition, the petitioner was appointed by respondent no.3 on the post of Assistant Technician (VIDYUT SAHAYYAK) vide appointment order dated 18.5.2013. In pursuance of the aforesaid order, the petitioner was posted in the Sub Division at Majalgaon, at village Talkhed vide Office order dated 5th of June, 2013, and on the same day the petitioner resumed the duty at the said place. Petitioner was allotted the work of repairing faults in the electricity supply. On 27.11.2013, when petitioner was removing fault occurred at 11 KV at village Shahpur in the field of one Shri Sandipan Chalak, the petitioner sustained heavy shock, causing injuries to his both the hands as well as to the legs and other parts of the body. In spite of timely medical help provided to the petitioner, he lost his both the hands from shoulder and also suffered severe injury to his legs. Petitioner was required to be hospitalized from 27.11.2013 to 21.1.2014. Even thereafter, till 23rd January, 2015, the petitioner was under constant medical treatment and, therefore, could not

resume to the work. After 23rd January, 2015, the petitioner attempted to resume his duties, however, he was not allowed to join the duties. Petitioner was referred to the Civil Surgeon at Beed for medical examination and for certification whether he was fit to resume the duties or otherwise. Vide medical certificate dated 4th March, 2015, the Civil Surgeon, Beed, certified the petitioner to be fit for the work which can be carried by lower limbs and by verbal communications. However, neither work was provided to the petitioner by respondent nos.3 and 4 nor he was paid his salary of the said period.

5. As stated in the petition, the petitioner was constantly making correspondence with the respondents for his continuation in service and for providing him the work which may be performed by him and also to pay the salary of the relevant period. Since the request so made by the petitioner and the representations so made by him were not considered by the respondents, the petitioner filed the present petition. As stated here-in-above, during the pendency of the present petition, the order of terminating the services of the petitioner came to be served upon him. Petitioner, therefore, brought on record the said subsequent event by amending the petition

with leave of the Court and also made an additional prayer to hold and declare the communication dated 10.11.2015 as illegal and ineffective.

6. Shri Shrikrishna s/o Ramchandra Kulkarni, Executive Engineer, MSEDCL, O & M Division, Ambejogai, District Beed, has filed affidavit in reply on behalf of respondent nos.3 and 4. It is the contention of respondent nos. 3 and 4 that since the appointment of the petitioner was on temporary basis, he cannot claim the benefits available for permanent employees. It is further contended that the petitioner has already been awarded compensation of Rs.7,96,932/-. It is further contended that having regard to the fact that the petitioner has been declared as permanently unfit, he has been terminated as per Regulation 17, Note No.1 (2). Respondent nos. 3 and 4 have, therefore, prayed for dismissal of the petition.

7. Shri S.G.Chapalgaonkar, learned Counsel appearing for the petitioner, invited our attention to the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as 'the Act of 1995'). Learned

Counsel submitted that, in view of the aforesaid provision, the order dated 10th November, 2015, whereby the respondents have terminated the services of the petitioner, cannot be sustained. In order to support his contention, learned Counsel placed his reliance on the judgment of the Honourable Apex Court in the case of **Kunal Singh V. Union of India and another** (AIR 2003 Supreme Court 1623).

8. Shri Uday Malte, learned Counsel appearing for respondent nos. 3 and 4, sought to canvass that the services of the petitioner are governed by the Maharashtra State Electricity Distribution Company Limited Employees Service Regulations, 2005. Learned Counsel submitted that, since the said Regulations are framed in exercise of the power conferred by the Government of Maharashtra vide notification dated 4.6.2005 under Electricity Act, 2003, possess the statutory force. Learned Counsel further submitted that, as contemplated under Regulation 17, Note No.1 (2), the services of the petitioner have been terminated by respondent nos. 3 and 4. Learned Counsel also referred to Regulation No.24 of the said Regulations and relying upon the aforesaid Regulations submitted that, no illegality has been committed by respondent nos. 3 and 4 in terminating the services of the petitioner vide order dated 10th November, 2015.

9. We have carefully considered the submissions advanced on behalf of learned Counsel appearing for the respective parties. We have also perused the documents placed on record by the parties. It is not in dispute that the petitioner acquired the disability during the course of his employment. An employee who acquires disability during his service is entitled to be protected under Section 47 of the Act of 1995. We deem it appropriate to reproduce Section 47 of the Act of 1995, which reads thus:

"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."

10. In the judgment relied upon by the petitioner in the

case of **Kunal Singh V. Union of India and another** (Supra), the Honourable Apex Court has dealt with the entitlement for the benefit of Section 47 of the Act of 1995. Similar objections, as are raised by respondent nos. 3 and 4 in the present petition, were raised in the said petition before the Honourable Apex Court, however, all such objections are turned down by the Honourable Apex Court. In the matter before the Honourable Supreme Court, the provisions of Central Civil Services Pension Rules, 1972 were pressed into service, taking a plea that, the said Rules will prevail, and the provisions of Section 47 of the Act of 1995 may not be applicable. The Honourable Apex Court has, however, held that, as the Act of 1995 is a special Legislation dealing with persons with disabilities to provide equal opportunities, protection of rights and full participation to them, doctrine of generalia specialibus non derogant would apply. The Honourable Apex Court has further held that, Central Civil Services (Pension) Rules cannot override Section 47 of the Act of 1995.

11. In the instant case also, respondent nos. 3 and 4 have raised a plea that the services of the petitioner are governed by the Maharashtra State Electricity Distribution Company Limited Employees Service Regulations, 2005, and

the provisions made under Section 47 of the Act of 1995 would not be applicable.

12. In view of the law laid down by the Honourable Apex Court in the judgment cited supra, the contentions raised as above by respondent nos. 3 and 4 is liable to be rejected. Section 47 of the Act of 1995 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires disability during the service. As held by the Honourable Apex Court in the case of **Kunal Singh V. Union of India and another**, cited supra, 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 advanced 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. The Honourable Apex Court has further observed that, language of Section 47 is plain, and casts certain statutory obligation on the employer to protect an employee acquiring disability during service.

13. Considering the provisions of Section 47 of the Act

of 1995, and the law laid down by the Honourable Apex Court, in the case of **Kunal Singh V. Union of India and another**, cited supra, the order dated 10th November, 2015, impugned in the present petition, cannot be sustained and deserves to be quashed, and is accordingly quashed and set aside.

Respondent nos. 3 and 4 are directed to continue the services of the petitioner with protection of pay and consequential benefits as per the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

Writ Petition is allowed in above terms. Rule made absolute. No order as to costs.

14. Respondent nos. 3 and 4 were permitted to file their affidavit in reply, subject to deposit of costs of Rs.10,000/-. Respondent nos. 3 and 4 have filed Civil Application No.2755/2016 with a prayer to recall the said order. Respondent nos. 3 and 4 have deposited the costs of Rs.10,000/-. Since despite due opportunities, respondent nos. 3 and 4 did not file their affidavit in reply, the Court was constrained to pass the aforesaid order imposing costs of Rs.10,000/- on respondent nos. 3 and 4. In such

circumstances, we do not find any reason to recall the said order. Learned Counsel appearing for respondent nos. 3 and 4, thereupon, graciously submitted that the cost amount so deposited by respondent nos. 3 and 4 may be diverted to the Library of the High Court Bar Association, at Aurangabad. We accept the request so made by the learned Counsel and direct that the cost amount be diverted to the to the Library of the High Court Bar Association at Aurangabad. Civil Application stands disposed of.

(P.R.BORA)
JUDGE

(R.M.BORDE)
JUDGE

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