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

+ LPA 359/2016

CENTRAL COUNCIL OF HOMEOPATHY Appellant
Through: Mr. Awnish Kumar, proxy for Mr.
Kundan Kumar Mishra, Advocate.

versus

MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT & ORS
..... Respondents
Through: Mr. Mukesh Kumar, Advocate for
respondent no.4 along with respondent no.4 in
person.
Mr. Arun Bhardwaj, CGSC for UOI with Mr.
Mimansak Bhardwaj, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

% **ORDER**
30.05.2016

Issue notice. Mr. Arun Bhardwaj, Advocate accepts notice for Union of India and Mr. Mukesh Kumar, Advocate accepts notice on behalf of fourth respondent.

The writ petitioner/appellant approached the Court seeking directions that the appellant's move to pre-maturely retire the respondent no.4 before the normal age of superannuation was legal.

It is contended by the respondent no.4 that he was a person with disability and entitled to continue as such by virtue of Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of

Rights and Full Participation) Act, 1995 - hereafter called the Disability Act.

The appellant, i.e., fourth respondent's employer had contended that even though a certificate was produced by him, to the effect that he had 45% disability on account of chronic schizophrenia, that did not entitle him to continue in service or have the benefit of Section 47 of the Disability Act.

The petitioner had approached the Chief Commissioner for Persons with Disabilities contending that the certificate relied upon by the fourth respondent, i.e., dated 17.12.2008 by the Medical Board of the Dr. RML Hospital could not be considered as the one issued under the Disability Act as it was not notified to issue any such document in terms of the Notification under the Disability Act, dated 6.6.2004.

The respondent contended - contrarily - though successfully that even though the 2004 Notification issued by the Central Government was silent as to the Institution entitled to evaluate and certify mental illness, the fact remains that by an earlier Notification of 18.2.2002 issued by the Central Government through the Ministry of Social Justice and Empowerment, all medical boards in various institutions subject to the Disability Act could certify any individual as suffering from mental illness under Section 2 (i) provided they were composed of specified nominees including a psychiatrist Member.

The learned Single Judge accepted the submissions of the fourth respondent. The grounds urged by the appellant - employer is that having regard to the express terms of the Notification of 2004, the

earlier Notification to the extent it was unspecific with regard to the Institutions authorised to issue disability certificate were of no avail. It was submitted that the five Institutions or Hospitals authorised by the Act and notified in terms of it, to issue certificates could do so with regard to all categories of illness but not mental illness.

We are of the opinion that the appellant's contentions are unmerited. Mental illness is a specified category of disability under Section 2 (i). The mental illness itself has been defined in Section 2 (q) as disorder other than mental retardation. Under Section 2 (d), a person with disability means one suffered with not less than 40% with any disability "as certified by medical authority". The definition of medical authority under Section 2 (p) includes a hospital or institution "specified for the purposes of this Act by Notification by the appropriate Government". The guidelines of 18.02.2002 issued are of a wide nature. They stipulate *inter alia* as follows: -

"3. After having considered the report of the Committee, the undersigned is directed to convey the approval of the President to notify the guidelines for evaluation and assessment of mental illness and procedure for certification. Copy of the Report is enclosed herewith as annexed.

4. The minimum degree of disability should be 40% in order to be eligible for any concessions/benefits.

5. According to the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996 notified by the Central Government in exercise of the powers conferred by sub-section (1) and (2) of section 73 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), authorities to give disability Certificate will be a Medical

Board duly constituted by the Central and the State Government. The Committee has recommended that certification of disability for the purposes of the Act may be carried out by a medical board comprising of the following members: a. The Medical Superintendent / Principal / Director /Head of the Institution or his nominee -Chairperson b. Psychiatrist -Member c. Physician - Member

6. At least two of the members, including Chairperson of the board must be present and sign the disability certificate.

7. The State Governments are, therefore, requested to constitute Medical Board as indicated above immediately.

8. Specified test as indicated in annexed should be conducted by the medical board and recorded before a certificate is given.

9. The certificate would be valid for a period of five years for those whose disability is temporary and are below the age 18 years. For those who acquire permanent disability, the validity can be shown as 'Permanent' in the certificate.

10. The Director General of Health Services, Ministry of Health and Family Welfare shall be the final authority, should there arise any controversy/doubt regarding the interpretation of the definitions/classifications/evaluation tests etc."

The argument of the appellant that the five heads as specified in the Notification dated 06.06.2004 excluded authorities from issuing certificates with respect to mental disability is unfounded. The definition of medical disability is wide and encompasses no less than eight categories - some of which are overlapping. Nevertheless there are seven broad heads which include mental illness, mental retardation and leprosy cured. The said two categories do not find

mention in the 06.06.2004 Notification. Moreover it cannot be argued in any reasonable manner that for nine years no certificate could have been issued - given that the Disability Act came into force in 1996. The effect of this, therefore, quite naturally is that guidelines of 6.6.2004 - which only deal with only one category of disability - i.e., mental retardation covers the full range of disabilities.

In view of these factual details, we find no infirmity with the reasoning and judgment of the learned Single Judge. The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

MAY 30, 2016
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