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

+ **Date of Decision: 22.08.2017**

% **W.P.(C) 11470/2015**

DELHI TRANSPORT CORPORATION

..... Petitioner

Through: Ms. Avnish Ahlawat and Ms. Palak
Rohmetra, Advocates.

versus

OMBIR SINGH & ANR.

..... Respondents

Through: Mr. Ravindra S. Garia, Advocate for
R-1

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

1. The petitioner has preferred the present writ petition to assail the order dated 09.03.2015 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (CAT/ Tribunal) in O.A. No. 1985/2014. The respondent/ applicant had preferred the said O.A. raising a grievance, inter alia, with regard to breach of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (herein after referred to as the “Disabilities Act”).

2. The respondent sought a direction to the petitioner DTC to provide a suitable light duty to him, as mandated by Section 47 of the Disabilities Act. He also sought a direction to the respondent ESIC to continue his treatment and grant the accident claim to the respondent, and reimburse his medical expenses, which had been discontinued by the ESIC Hospital. He also sought a direction to the petitioner to continue to pay all his dues towards contribution of ESIC benefits.

3. The tribunal has allowed the said O.A. directing the petitioner to give full protection to the respondent – as admissible under Section 47 of the Disabilities Act. Consequently, it has been directed that the petitioner should pay to the respondent the upto date full salary and allowances at the rate at which he was drawing, when he met with the accident on 11.04.2012. The petitioner was also directed to deposit the upto date contribution towards ESIC benefits with the ESI Corporation. The ESIC was directed to grant full treatment to the respondent till his proper recovery, and it was directed to reimburse to the respondent the entire amount paid by him during the period he was not having the ESIC card. Interest @ 9% was granted to the respondent– both on the arrears of pay and allowances, as well on the reimbursement of the medical expenses. Costs of Rs.10,000/- towards litigation expenses were also awarded in favour of the respondent.

4. The relevant facts of the case are that the respondent was employed as a contract driver by the petitioner DTC with effect from 12.05.2006. His contract was renewed year after year with minor breaks. Unfortunately for the respondent, on 11.04.2012, he met with an accident while going to attend his duty in front of his place of work, namely, the gate of Millennium

Park Depot-3, DTC and as a result thereof, his leg got fractured. An information was given to the police about the accident. The accident report i.e. DD No.18 dated 11.04.2012 recorded at Police Post Sarai Kale Khan by ASI, PS Sunlight Colony, New Delhi has been placed on record, which was recorded at 3:25 hours. As per the said DD entry, a wireless message was received in the Hazarat Nizammudin flyover that an accident had taken place.

5. The case of the respondent was that he was admitted to the trauma centre of ESI Hospital and he was treated thereat. A rod and plate was inserted in the right leg of the respondent. The treatment of the respondent continued at ESI Hospital from 11.04.2013 to 28.04.2013. Thereafter, the ESI Hospital refused treatment to the respondent, on the ground that the validity of his ESI card had lapsed. The respondent then approached the petitioner DTC to renew the ESI card so that he could continue to receive the treatment at ESI Hospital.

6. The respondent further stated that upon his recovery, from April 2013 to August 2013, he continuously visited the petitioner DTC requesting them to assign him suitable duties, but no action was taken in the matter. He was informed that his license had to be got verified again. He further stated that on 14.08.2013, the petitioner had sent his license for verification to the licensing authority at Agra, and the petitioner asked the respondent to wait till the verification report is received from the said authority. The respondent further stated that from August 2013 to February 2014, he kept on enquiring from the petitioner DTC about the verification process so that he could resume his duties. However, he was kept waiting since it was

claimed that the verification report had not been received from the licensing authority. The respondent stated that he himself went to Agra in February 2014 and visited the licensing authority to enquire as to why the verification report had not been sent. He was then informed that the requisite information had already been sent to the petitioner on 08.01.2014, which had been received by the petitioner on 10.01.2014. Despite that being the position, the petitioner did not give any duty to the respondent. The respondent also produced before the tribunal a copy of the report sent by the transport authority at Agra to the DTC, as well as the postal receipt and tracking report to show that the same had been delivered to the petitioner on 10.01.2014. It is in this background that the respondent approached the tribunal to seek the aforesaid reliefs.

7. The stand of the petitioner before the tribunal was that the respondent was initially appointed as a contract driver w.e.f. 12.05.2006, and his services were being continued after giving a one day break in between the service. On 11.04.2012, the respondent had met with an accident with a private vehicle. His period of contract was valid only uptill 06.11.2012. The said contract was not continued thereafter. He was treated at the ESI Hospital during the currency of his ESI card, and not thereafter. The contribution of the respondent was not deposited after 07.11.2012 by the DTC.

8. The tribunal allowed the O.A. by observing that the respondent had met with the accident on 11.04.2012 right in front of his place of work i.e. Millennium Park Depot-3, while on his way to attend to his duty. Section 47 of the Disabilities Act was invoked by the tribunal, by observing that he

had met with the accident on 11.04.2012 while in employment of the petitioner and suffered disability. The tribunal observed that just because the respondent had been working as a contract driver with the petitioner for nearly five years, the petitioner could not disown him in view of the provisions of the Disabilities Act. In these circumstances, the tribunal allowed the O.A.

9. The submission of Ms. Ahlawat, learned counsel for the petitioner is that the respondent was merely a contractual employee since 12.05.2006. His contract was renewed from time to time with regular breaks. His contract was valid only till 06.11.2012. The respondent stopped reporting for duty from 08.04.2012. He met with the accident after three days thereof i.e. on 11.04.2012.

10. Learned counsel for the petitioner submits that the respondent was not entitled to benefit under Section 47 of the Disabilities Act, for the reason that he was not holding a 'post' in the petitioner corporation. Section 47 of the Disabilities Act provides that the employee who suffers a disability, should be holding a 'post' in the employer organisation.

11. Learned counsel further submits that the respondent did not give any information about the accident, and did not report for duty at all, at any point of time during the currency of contract – which expired on 06.11.2012. She submits that had the respondent rejoined his duties prior to the expiry of his contract, his contract could have been continued. She further submits that the respondent could not be better off, merely because he suffered the accident in question, and he cannot be regularised on that account.

12. On the other hand, learned counsel for the respondent supports the impugned order. Learned counsel submits that the accident took place which is outside the gate of the Millennium Park Depot-3 of the DTC while the respondent was going to the depot to join his duty. The respondent was admitted to the ESI Hospital for treatment on the ESI card issued by the DTC as its employee. He received treatment at the ESI Hospital and when the said treatment was denied to the respondent, he even wrote to the petitioner on repeated occasions. In this regard, he has referred to, inter alia, the communication issued to the Depot Manager of the DTC placed at page 133 as Annexure A-6 of the record, apart from the communication dated 27.02.2014. The respondent in both these communications referred to the fact that he had suffered the accident while crossing the road during reporting for duty outside the Millennium Depot. In the communication dated 27.02.2014, the respondent, inter alia, stated in relation to the accident, that *“the information of which was immediately recorded in Duty Officer Register, but the Depot has given such information to the ESIC after one year, because of which ESIC has refused to give me my accident claim”*.

13. Learned counsel for the respondent has also drawn the attention of the Court to the averments made in the O.A. filed by the respondent and the response of the DTC thereto. In the O.A., in para 4.3, the respondent stated that he suffered the accident while going for duty in front of Millennium Park Depot when his leg was injured and fractured. In para 4.5 of the O.A., the respondent stated that he approached the petitioner DTC about the lapse of ESI card, and he was told by the petitioner that it had stopped paying his contribution to the ESIC, as he had not reported for duty and he had refused

to take any measures to continue the subscription to the ESIC. He also placed on record as Annexure A-6 (to the O.A.) his letter given to the Depot Manager in April 2013, which is placed at page 133 of the present writ petition. He also stated in para 4.6 of the O.A. that from April 2013 to August 2013, he time and again visited the petitioner seeking assignment of duties, but was told that his license has to be verified again. In para 4.7, he stated that on 14.08.2013, the driving license of the respondent was sent for verification to the licensing authority at Agra, and he was informed that pending verification he should wait and only thereafter he could be assigned duties. He further annexed with the O.A. a copy of the letter dated 14.08.2013 written by the petitioner DTC to the licensing authority under the Motor Vehicles Act, Agra for verification of the driving license of the respondent, and the letter of verification sent to the petitioner DTC along with postal receipt and delivery report as Annexure A-7 (Colly). He has also placed on record the communication dated 27.02.2014 given to the Depot Manager, requesting him that his claim for ESI be processed as Annexure A-8. He averred that in February 2014, he went to Agra to enquire about the verification process, and he was informed that the required verification report of the driving license had been sent to the petitioner on 08.01.2014, and received by them on 10.01.2014.

14. The response of the petitioner DTC to the said averments are also referred to by learned counsel for the respondent. He points out that the petitioner DTC did not deny most of these averments. In response to para 4.3, all that was stated was that the respondent was not on duty at the time of accident, and that he met with the accident with a private vehicle outside the

depot, and not with the DTC vehicle. In para 4.4, it was stated that since the contract of the respondent was valid till 06.11.2012, and he had not reported to the office for duty after the said date, he could not be treated as a DTC employee and was, therefore, not entitled to deposit of ESI contribution by the petitioner DTC. In para 4.5 of the reply, there was no denial to the letter of April 2013 issued by the respondent and placed on record along with O.A. as Annexure A-6. Pertinently, in para 4.5 of the reply, the DTC stated that it had issued a letter *“to the Regional Manager ESIC on 10.07.2013 by the Corporation with the request to cancel two old registration nos. and allow to get further treatment of the employee”*. Thus, it appears that the DTC called upon ESIC to continue the treatment of the respondent employee. In para 4.6 of the reply, the petitioner did not deny the specific averment of the respondent that from April 2013 to August 2013, the respondent time and again visited the petitioner seeking assignment of duties, but was told that his license had to be got verified again. The contents of para 4.7 were admitted to the effect that the driving license of the respondent was sent for verification to the licensing authority at Agra and that pending verification the respondent was asked to wait, and only thereafter he could be assigned duties.

15. Learned counsel for the respondent submits that in the face of the admissions made by the petitioner in its counter-affidavit before the tribunal, it does not lie in the mouth of the petitioner to now claim – to the contrary, that the respondent had not reported for duty after recovering from the serious injury suffered by him.

16. At this stage, we may take note of the medical record of the

respondent placed on record. From the same, it appears that the doctors at the ESI Hospital repeatedly certified that the respondent was likely to need abstention from employment on medical grounds. The last of the certificates placed on record is at page 126 dated 02.02.2013, as per which the abstention of the respondent upto 15.02.2013 was certified. Pertinently, the averment of the respondent that he reported for work thereafter has not been denied by the petitioner. Thus, it appears to us that the stand taken by the petitioner that the respondent did not resume duties prior to expiry of his contractual employment on 06.11.2012 is most unreasonable and clearly ignores the position that the respondent was in no condition to report for duty till 06.11.2012 or even thereafter on account of his hospitalisation due to the accident.

17. Learned counsel for the respondent submits that the fact that the petitioner had sent the driving license of the respondent for verification as late as on 14.08.2013 – when his so-called contractual employment had ended (according to the Petitioner) on 06.11.2012, shows that the petitioner did not consider the expiry of the contractual employment on 06.11.2012 as a decisive factor. Else, there was no purpose of sending the respondents license for verification to the licensing authority at Agra on 14.08.2013.

18. Learned counsel also submits that merely because the respondent was treated as a contractual employee, did not disentitle him from receiving the benefits under Section 47 of the Disabilities Act. In this regard, he has placed reliance on the judgment of the Supreme Court in ***Sudarshan Rajpoot v. UP State Road Transport Corporation***, C.A. Nos.10353-54/2014 decided on 18.11.2014, (2015) 2 SCC 317. In this case, the appellant before

the Supreme Court was a contractual driver with the UP State Road Corporation. When he had rendered about 2 years service, he met with an accident while driving the vehicle of the UP State Road Corporation. His services were terminated. He approached the Industrial Tribunal, which held the termination to be illegal. The tribunal also held that the employment of the appellant was of a permanent nature. The Supreme Court rejected the submission of the State Road Transport Corporation that on account of the appellant being a contractual employee, was not entitled to protection under the Disabilities Act.

19. The findings returned by the Supreme Court in para 26 reads as follows:

*“26. In view of the aforesaid statement of law laid down by this Court after adverting to the powers of the Industrial Tribunal and the Labour Court as interpreted by this Court in the earlier decisions referred to supra, the said principle is aptly applicable to the fact situation of the case on hand, for the reason that the Labour Court recorded a finding of fact in favour of the workman that the termination of services of the appellant herein is not legal and valid and further reaffirmed the said finding and also clearly held that the plea taken in the order of termination that he was appointed on contract basis as a driver is not proved by producing cogent evidence. **Further, we hold that even if the plea of the employer is accepted, extracting work though of permanent nature continuously for more than three years, the alleged employment on contract basis is wholly impermissible. Therefore, we have held that it amounts to an unfair labour practice as defined under 2(ra) of the ID Act, 1947 read with Sections 25-T which is prohibited under Section 25-U, Chapter V-C of the ID Act, 1947. We have to hold that the judgment of the High Court in reversing the award is not legal and the same is set aside by***

us”. (emphasis supplied)

20. The Supreme Court further held in para 33 to 36 as follows:

*“33. Since the order of termination is set aside, having regard to the finding of fact recorded by the Workmen’s Compensation Commissioner while determining the claim under the Workmen’s Compensation Act, **the appellant workman sustained grievous injuries to his legs which is an employment injury suffered during the course of employment in the respondent Corporation.** In the matter of the rights and protection of the appellant workman we refer to the decision of this Court in the case of Bhagwan Dass & Anr v. Punjab State Electricity Board, (2008) 1 SCC 579:-*

“4. HereIt may further be noted that the import of Section 47 of the Act was considered by this court in Kunal Singh vs. Union of India & Anr. [2003 (4) SCC 524] and in para 9 of the decision it was observed and held as follows :

“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 a 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 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 employee shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of a 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.”

34. Therefore, the respondent Corporation is statutorily obliged under Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full

Participation) Act, 1995 to provide alternate equivalent job to the appellant workman in place of the post of driver. Therefore, we direct accordingly.

35. In the result, the impugned Judgment and orders are set aside. The appeals are allowed. The respondent Corporation is directed to reinstate the appellant workman with 50% back-wages from the date of termination till the date of the Award of the Labour Court and further award 100% back-wages from the date of Award of the Labour Court till the date of reinstatement with all consequential reliefs and other monetary benefits including the continuity of service in an alternative equal job with the same pay scale as that of a driver.

36. It is needless to state that the back wages shall be calculated as per the provisions of pay scales revised to the employees of the respondent Corporation from time to time. The respondent Corporation is further directed to comply with the order within 4 weeks from the date of receipt of the copy of this Judgment. There shall be no order as to costs". (emphasis supplied)

21. Ms. Ahlawat, in her rejoinder, submits that the decision in **Sudarshan Rajpoot** (surpa) was rendered in a different factual context. She submits that in that case, the tribunal held in favour of the appellant, that his termination was illegal, and also ruled that the employment of the appellant was of a permanent nature, which is not the case in hand. She further submits, in response to the observations made by the Supreme Court in para 25 – wherein the Supreme Court held the practice of continuing contractual employment for years together as an unfair labour practice, that in the DTC there are a limited number of sanctioned posts of drivers. She submits that it is the contractual employees who, on the basis of their seniority, are regularised from time to time as and when the vacancies occur. She also

does not dispute the fact that in case the respondent had continued to report for duty, his contract would have been renewed just like in the past and in the normal course, he also would have been regularised.

22. Having heard the submissions of learned counsel for the parties, perused the impugned order, the record of the case and the decision of the Supreme Court in ***Sudarshan Rajpoot*** (supra), we are of the view there is absolutely no merit in the present petition. To say the least, the stand taken by the petitioner is most unreasonable, and it is unfortunate that the DTC- which is a public corporation, has acted in such a highly unfair manner and has resorted to not only unfair labour practice, but has also treated its employee, namely, the respondent in the most shabby manner.

23. The admitted position is that the respondent – who was appointed as a contractual driver by the petitioner corporation on 12.05.2006, was continued in service from time to time with notional breaks of 1 day for over 8 years, and his last contractual appointment would have ended (if not extended) on 06.11.2012, before which he met with a serious accident just outside his place of duty. It is also undisputed that the respondent, by virtue of his employment with the petitioner–DTC, was entitled to and received medical treatment from the ESIC till 28.04.2013. The treatment was stopped only because the DTC decided not to continue with the services of the respondent. It is also an undisputed position that had the respondent not met with the accident and suffered the injury, he would have – like his contemporaries, been regularised, and in any event, his services would have continued. This is also clear from the fact that in August 2013, the petitioner had sent the respondent’s licence for verification. The situation

which, thus, emerges from the admitted facts is that the petitioner had discontinued with the respondent's services only because of the injury suffered by him, which action of the petitioner is in teeth of the provisions of Section 47 of the Disabilities Act.

24. We find no merit in the plea of Ms. Ahlawat, learned counsel for the petitioner that the provisions of Section 47 of the Disabilities Act would not apply to the respondent as he was only a contract employee even after serving for almost 6 years. In our view, the Disabilities Act was enacted with a social purpose and in construing a provision of a social beneficial enactment, that too dealing with disabled persons, the endeavour of the Court should be to extend the benefit of the same to a maximum number of persons. The facts of the present case leave no manner of doubt in our mind that the respondent was entitled to get benefit of Section 47 of the Disabilities Act and his mere nomenclature as a contract employee would not deprive him of his statutory rights under the Disabilities Act. We are also fortified in our aforesaid conclusions by the decision of the Supreme Court in *Sudarshan Rajpoot* (supra), the relevant paragraphs of which have been already noted above.

25. Learned counsel for the respondent fairly concedes that in view of the decision of the Supreme Court in *Sudarshan Rajpoot* (supra), the respondent gives up the claim for interest and also is agreeable to receive 50% of the wages for the past period till the date of the decision of the tribunal.

26. For the aforesaid reasons, the petition is dismissed with costs of

Rs.25,000/- in addition to the costs already imposed by the tribunal.

VIPIN SANGHI, J

REKHA PALLI, J

AUGUST 22, 2017