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

+ **W.P.(C) 5321/2003**

SYNDICATE BANK

..... Petitioner

Through Mr. Mukesh Kumar, Adv.

versus

**CHIEF COMMISSIONER FOR PERSONS WITH
DISABILITIES & ANR**

..... Respondents

Through None.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT(ORAL)

9th March, 2018

C.HARI SHANKAR, J.

1. This writ petition, at the instance of the Syndicate Bank, is directed against an order, dated 5th June 2003, passed by the Chief Commissioner of Persons with Disabilities, apparently as a sequel to an earlier order dated 17th December, 2002, passed by her.

2. As the issue in controversy is brief, no detailed narration of facts is required. Suffice it to state that Respondent No.2, who was working as a Clerk in the petitioner-Bank, and claims to be physically handicapped, moved the Chief Commissioner of Persons with Disabilities (hereinafter referred to as "CCPWD"), challenging his transfer from Delhi to Dombivli, Mumbai, alleging that, given his

physical condition, the said transfer was arbitrary, especially as there was a vacancy in Delhi, where he could have been accommodated.

3. Notice was issued, by the CCPWD, to the petitioner-Bank, which responded *vide* letter dated 18th September, 2001, relying on directives issued by the Ministry of Finance, clarifying that it was neither possible nor desirable to lay down, as an inexorable guideline, that physically handicapped Group A and Group B employees in all public sector banks, who were subject to all India transfer liability, be always posted near their native place. Even so, the petitioner submitted, in his abovementioned response, that Respondent No.2 had been directed to appear before the Medical Board at Mumbai, to ascertain the extent of his physical handicap, so that a suitable decision could be taken thereon. Respondent No.2 refused to abide by the said request and, instead wrote, on 06th July, 2001, to the Branch Manager, Dombivli-Mumbai Branch of the petitioner-Bank, stating that he would neither resume duty nor apply for leave.

4. Consequently, it appears that Respondent No.2 worked, at the Dombivli branch of the petitioner-Bank, only from 18th June, 2001 to 30th June, 2001.

5. Disciplinary proceedings were initiated, against Respondent No.2, by the petitioner-Bank, at which stage Respondent No.2 approached the CCPWD. By an order dated 20th November, 2001, the

CCPWD stayed the disciplinary proceedings, which were otherwise to commence on 27th November, 2001.

6. Proceedings were conducted, thereafter, before the CCPWD, wherein the respondent sought to submit, *inter alia*, that certain other physically handicapped persons had been accommodated in Delhi. *Per contra*, the petitioner-Bank, submitted that the physical disability suffered by Respondent No.2 was only to the extent of 7%, and that preference in the matter for posting of physically handicapped employees was available only to Group 'C' and Group 'D' employees.

7. During the pendency of the said proceedings, Respondent No.2 was transferred back to New Delhi in April, 2002. The only issue that remained for consideration, before the CCPWD, was, therefore, with respect to the disciplinary proceedings which had been initiated against the said respondent, and which had been kept in abeyance by the CCPWD.

8. The CCPWD ultimately disposed of the petitioner's complaint/application *vide* judgment and order dated 17th December, 2002. While criticizing the petitioner-Bank for having unnecessarily transferred Respondent No.2 to Dombivli, it held, nonetheless, that the said respondent was not justified in refusing to join at Dombivli, thereby choosing to take law in his own hands. The CCPWD observed that, in any case, this was an issue which had to be decided in the disciplinary proceedings initiated against Respondent No.2, which

were pending as on that date. Accordingly, the complaint of Respondent No.2 was disposed of in the following terms:

“Considering the overall facts and circumstances of the case, the stay imposed by the Court on the disciplinary proceedings vide interim order dated 20.11.2001 is vacated. It is not appropriate for this Court to assume the role of the inquiring authority. The respondent is, therefore, directed to conduct the disciplinary proceedings strictly under the extant rules of the Bank within three months from the date of receipt of this Judgment taking into consideration the overall circumstances. The respondent is further directed to ascertain authenticity of the disability certificates based on which some of the employees have allegedly been given the benefits and take action as required under Section 69 of the PWD Act, 1995. Action taken report be submitted to this Court within three months from the date of receipt of this Judgement. ”

9. Apparently, in compliance of the aforementioned directions issued by the CCPWD, the disciplinary authority, in the proceedings initiated against Respondent No.2, passed a final order, on 24th May, 2003, imposing, on him, the penalty of reduction of his basic pay by two stages, for a period of two years, with cumulative effect. It is not known whether Respondent No.2 chose to carry the matter any further by seeking any judicial redress thereagainst.

10. The impugned order was passed, by the CCPWD, on a “review petition” filed by Respondent No.2, whereby the said respondent sought review of the order dated 17th December, 2002 (*supra*). The said “review petition” came to be decided, by the impugned order dated 05th June, 2003, of the CCPWD, which reads as under:

“ The learned counsel for the complainant reiterated that the respondent has not submitted the information as directed by this Court relating to the authenticity of the disability certificates in respect of certain employees. The bank has also not apprised this Court about the date since when a vacancy in Delhi existed against which the complainant could be posted. There was no response regarding the vacancy in Punjabi Bagh branch of the Bank. According to the complainant there is still a vacancy at Punjabi Bagh branch where he has not been posted. He also submitted that the Enquiring Authority in his report dated 16.4.2003 has clearly admitted that he has not gone into the reasons for the complainant's absence and that he was required only to ascertain/confirm and not to enquire whether the allegations are substantiated or not. Therefore, the enquiry report is not unbiased.

The learned counsel for the respondent handed over the written preliminary objections primarily on the ground that the PWD Act does not provide for review of the Order passed by the Chief Commissioner, Disabilities. The respondent also wishes to file a detailed reply to the review petition apparently if the said review petition is not dismissed. He also produced the order dated 24.5.2003 passed by the Disciplinary Authority in the disciplinary case against the complainant. The order imposes a penalty of reduction of basic pay of the complainant in two stages in the time scale of his pay with immediate effect for a period of two years and that the complainant will not earn increments during the period of such a reduction and on the expiry of the period the reduction will have the effect of postponing the future increments. The order also indicates that the complainant can prefer an appeal against the said order to the Appellate Authority i.e. the General Manager, Syndicate Bank, Head Office: Manipal within 45 days of receipt of the order.

It is not clear from perusal of the Inquiry Report and the Order of Disciplinary Authority dated 24.5.2003 whether the Disciplinary Authority while awarding the penalty took into consideration the observation of this Court at para 4(b) of the Order dated 17.12.20002. If the said observation was specifically not brought to the notice of the Disciplinary

Authority then the Disciplinary Authority is advised to consider the said observation of this Court and then take a view. This Court be informed of the decision within a period of one week.

The respondent is also directed to submit the action taken report on the directions contained in para 15 of the Order dated 17.12.2002 and the status of vacancy in Punjabi Bagh branch of the Bank. The Respondent shall also indicate whether the complainant can be transferred to that branch against a vacancy or not. ”

11. There has been no appearance on behalf of the Respondent No.1, who, in my opinion, was not a necessary or proper party to these proceedings, and Respondent No.2 has remained unrepresented since long. I have, therefore, heard Mr. Mukesh Kumar, learned counsel appearing for the petitioner-Bank, and with his assistance, perused the available record.

12. Mr. Mukesh Kumar, learned counsel appearing before me on behalf of the petitioner, submits that the impugned order was totally bereft of jurisdiction, as there was no power of review, vested in the CCPWD, under the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation Act, 1995 (hereinafter referred to as “The PWD Act”).

13. Clearly, there is substance in his submission.

14. Sections 58 and 59 of the PWD Act may, for this purpose, usefully be reproduced, thus:.

“58. Functions of the Chief Commissioner - The Chief Commissioner shall -

- (a) coordinate the work of the Commissioners;
- (b) monitor the utilization 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.

59. Chief Commissioner to look into complaints with respect to deprivation of rights of persons with disabilities

- Without prejudice to the provisions of section 58 the Chief Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to -

- (a) deprivation of rights of persons with disabilities;
- (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, and take up the matter with the appropriate authorities.”

15. It is obvious that the PWD act did not confer the CCPWD with any jurisdiction or power to review the order earlier passed by her. The position, in law, that the power of review is not inherent and has necessarily to be conferred by statute, is trite. If at all authority is required for this purpose, it is to be found in the following passage from the decision, oft-quoted for this purpose, of K.S.Hegde, J., in *Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji*, (1971) 3 SCC 844;

“4. The first question that we have to consider is whether Mr Mankodi had competence to quash the order made by the

Saurashtra Government on October 22, 1956. It must be remembered that Mr Mankodi was functioning as the delegate of the State Government. The order passed by Mr Mankodi, in law amounted to a review of the order made by Saurashtra Government. *It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication.* No provision in the Act was brought to notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order. The question whether the Government's order is correct or valid in law does not arise for consideration in these proceedings so long as that order is not set aside or declared void by a competent authority. Hence the same cannot be ignored. The Subordinate Tribunals have to carry out that order.” For this reason alone the order of Mr Mankodi was liable to be set aside.”

(Emphasis supplied)

16. Section 63 of the PWD Act is also relevant in this context, and reads thus:

“ 63. Authorities and officers to have certain powers of civil court. –

(1) 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, 1908 while trying a suit, in respect of the following matters, namely:-

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

(2) Every proceeding before the Chief Commissioner and Commissioners shall be a judicial proceeding within the meaning directions 193 and 228 of the Indian Penal Code and the Chief Commissioner, the Commissioner, the competent authority, shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).”

Clearly, therefore, the PWD Act, while vesting the CCPWD with certain powers of a Civil court, as contained in the CPC, has stopped short of conferring the power of review. The arrogation, by the CCPWD, of review jurisdiction, therefore, partakes of the character of quasi-judicial trespass.

17. Interestingly, the said point appears to have been specifically taken before the CCPWD, as is noted in the body of the impugned order dated 30th May, 2001. However, no finding has been returned thereon. Instead, the CCPWD apparently further assumed, to herself, appellate powers over the decision of the disciplinary authority, by directing that, if the disciplinary authority had failed to consider the observations contained in para 4(b) of the order dated 17th December, 2002 (*supra*), passed by her, he was advised to consider the said observations and take a view, and thereafter, inform the CCPWD of the decision thereon, within one week.

18. Apart from the fact that the CCPWD could not have reviewed her earlier decision, I am further of the clear opinion that the CCPWD seriously exceeded the jurisdiction vested in her, under the PWD Act,

by issuing the above direction, as the said Act did not vest her with any appellate powers over the decision of the disciplinary authority.

19. In view of the fact that there is nothing, on record, to indicate that the respondent took any further steps after the decision, dated 24th May 2003, of the disciplinary authority, whereby he was penalized, no further observations are required to be made in that regard.

20. In view of the discussion hereinabove, the impugned order, dated 05th June, 2003, of the Chief Commissioner of Persons with Disabilities, is hereby quashed and set aside. The writ petition filed by the petitioner-Bank is allowed.

21. There shall be no order as to costs.

C.HARI SHANKAR, J

MARCH 09, 2018/gb