

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9762 OF 2019

Vikas S/o. Khanderao Keng,)
Age : 44 years, Occupation : Nil,)
R/o. Warwandi Post Dhakambe,)
Tq. Dindori, Dist. Nashik.) ... **Petitioner**

Versus

1. The State of Maharashtra,)
Through its Principal Secretary,)
Maharashtra State Transport Department,)
Mantralaya, Mumbai – 400 032)

2. The State of Maharashtra,)
Road and Transport Corporation,)
Maharashtra Wahatuk Bhavan,)
Dr.Anandrao Nair Marg, Mumbai – 440008)

3. The Divisional Controller,)
State Transport Corporation,)
Nashik, Tq. & Dist. Nashik.)

4.The Depot Manager,)
State Transport Corporation,)
Pimpalgaon (Basmat), Tq. Nashik,)
Dist. Nashik.)... **Respondents**

ALONG WITH**WRIT PETITION NO. 9763 OF 2019**

Samadhan S/o. Babaji Pawar,) ... **Petitioner**

Versus

1. The State of Maharashtra & Ors.) ... **Respondents**

WITH**WRIT PETITION NO. 9764 OF 2019**

Sanjay S/o. Ragho Dukale,) ... **Petitioner**

Versus

1. The State of Maharashtra & Ors.) ... **Respondents**

WITH**WRIT PETITION NO. 9765 OF 2019**

Ramchandra S/o. Savaliram Chavan,) ... **Petitioner**

Versus

1. The State of Maharashtra & Ors.) ... **Respondents**

WITH**WRIT PETITION NO. 9767 OF 2019**

Ashok S/o. Buwaji Pagar,) ... **Petitioner**

Versus

1. The State of Maharashtra & Ors.) ... **Respondents**

WITH**WRIT PETITION NO. 10192 OF 2019**

Ashok S/o. Barku Sanap,) ... **Petitioner**

Versus

1. The State of Maharashtra & Ors.) ... **Respondents**

WITH**WRIT PETITION (L) NO. 23126 OF 2019**

Daga S/o. Bhaurao Bhadane,) ... **Petitioner**

Versus

1. The State of Maharashtra & Ors.) ... **Respondents**

WITH**WRIT PETITION (L) NO. 23128 OF 2019**

Rajesh S/o. Vitthal Pawar,) ... **Petitioner**

Versus

1. The State of Maharashtra & Ors.) ... **Respondents**

WITH**WRIT PETITION (L) NO. 23131 OF 2019**

Harichandra S/o. Mahadu Desale) ... **Petitioner**

Versus

1. The State of Maharashtra & Ors.) ... **Respondents**

WITH**WRIT PETITION (L) NO. 23132 OF 2019**

Narayan Dattu Liddad) ... **Petitioner**

Versus

1. The State of Maharashtra & Ors.) ... **Respondents**

WITH**WRIT PETITION (L) NO. 23225 OF 2019**

Kailas S/o. Sudam Kale) ... **Petitioner**

Versus

1. The State of Maharashtra & Ors.) ... **Respondents**

WITH

WRIT PETITION (L) NO. 26405 OF 2019

Gangaram S/o. Nanaji Chavan) ... Petitioner

Versus

1. The State of Maharashtra & Ors.) ... Respondents

WITH

WRIT PETITION (L) NO. 30670 OF 2019

Sanjay S/o. Rambhau Fase) ... Petitioner

Versus

1. The State of Maharashtra & Ors.) ... Respondents

WITH

WRIT PETITION NO. 703 OF 2020

Adinath S/o. Anand Kumbhar) ... Petitioner

Versus

1. The State of Maharashtra & Ors.) ... Respondents

APPEARANCES :

Mr.K.N.Shermale, for Petitioners

Mrs.A.A.Purav, AGP for Respondent No. 1

Mr.Nitesh Vishwanath Bhutekar, for Respondent No. 3

Dr. Milind Sathe, Sr.Adv. (Amicus Curiae)

CORAM: S.J. KATHAWALLA &

R.I.CHAGLA, JJ.

JUDGMENT RESERVED ON : 18TH MARCH, 2020

JUDGMENT PRONOUNCED ON : 16th JULY, 2020

JUDGMENT : (PER S.J. KATHAWALLA, J.) :

1. These 14 Writ Petitions have been filed by 14 drivers of the Maharashtra State Road Transport Corporation (“MSRTC”) whose services were discontinued by MSRTC on the ground that they had been diagnosed with ‘*colour blindness*’. It is the Petitioners’ grievance that subsequent to their discontinuance, they have neither been provided with alternative jobs nor have they received any salaries for the last more than 02 years, i.e. since 26th April, 2018.

2. The facts leading to the filing of the Petitions, are as under :

2.1. The Petitioners were appointed as drivers with MSRTC.

2.2. On 21st December, 2017, Respondent No.3 issued a letter to Bapaye Hospital directing a routine check-up of the Petitioners.

2.3. Pursuant to the aforesaid check-up, Bapaye Hospital issued reports recording that the Petitioners are diagnosed with Colour Vision Defect.

2.4. Following the above Reports issued by Bapaye Hospital, Respondent No.4 issued letters in 2018 to the Petitioners directing them to appear before J.J. Hospital for a further eye examination.

2.5. Thereafter, tests were conducted at J.J. Hospital and reports came to be issued.

2.6. In the Reports issued by J.J. Hospital, the Petitioners were once again stated to be diagnosed with Colour Vision Defect along with a further statement that the Petitioners’ are unfit to perform services with MSRTC as drivers.

2.7. All of the above led to various letters being issued by the Respondents to the Petitioners terminating their services as a result of the Petitioners having been diagnosed with colour blindness.

2.8. Following their termination, various letters were addressed by the Petitioners to the Respondents requesting that they be provided with alternative employment within MSRTC. The Petitioners pleaded that they have carried out their services until date with an unblemished record and that their families depend upon the Petitioners for their livelihood. The Petitioners further recorded that they have no other source of income barring their employment by MSRTC.

2.9. The aforesaid requests for alternative service / employment came to be rejected by MSRTC, which placed reliance upon a Circular dated 29th July, 2016 issued by MSRTC ("**2016 Impugned Circular**"). Under the 2016 Impugned Circular, once a driver has been declared unfit by reason of colour blindness, such driver is not entitled to an alternative service or job with MSRTC.

2.10. The 2016 Impugned Circular was therefore assailed by the Petitioners in the Writ Petitions. It was the Petitioners' case that the 2016 Impugned Circular was unconstitutional and violated the Petitioners' rights under the Constitution of India, whilst also being *ultra vires* the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("**1995 Act**") and the Rights of Persons with Disabilities Act, 2016 ("**2016 Act**").

2.11. During the pendency of these Writ Petitions, recognizing the defect in the 2016 Impugned Circular, MSRTC, by an Office Order dated 7th October, 2019, constituted a Committee to submit a report and prescribe guidelines for compliance with the provisions of Section 47 of the 1995 Act.

2.12. During the pendency of the Writ Petitions, on 25th November, 2019, whilst noting that MSRTC had taken sufficient time in formulating its new guidelines, this Court passed the following Order :

“1. The above 13 Writ Petitions are filed by the drivers of the Maharashtra State Road Transport Corporation (for short “MSRTC”) whose services have been discontinued by the MSRTC on the ground that they are suffering from colour blindness and are neither given any alternate jobs nor any payment towards salary since 26th April, 2018. It appears that MSRTC is taking its own time in forming guidelines with regard to offering alternate jobs to these drivers. In view thereof, these employee's have no income since 26th April, 2018 because of which they are unable to take care of themselves as well as the members of their respective families.

2. The Respondent MSRTC needs to be sensitive towards the problems faced by these drivers and their dependents by offering alternate jobs to them and start paying them their monthly salary to enable them to take care of their family members including old parents and their children who are still attending schools/colleges. The Managing Director of the MSRTC shall himself file his affidavit on 2nd December, 2019 and inform the Court as to what

steps MSRTC has decided to take in the matter and as to when these drivers shall get alternate jobs / their monthly salary. The Divisional Controller shall remain present in this Court on 2nd December, 2019 so that an amicable arrangement can be worked out.

3. Stand over to 2nd December, 2019, High on Board.”.

2.13. On 2nd December, 2019, the following Order came to be passed :

“1. The learned Advocate appearing for the MSRTC states that he has spoken to Mr. Ranjit Singh Deol, Vice Chairman and Managing Director of MSRTC and Mr. Deol has asked him to convey his undertaking to this Court that the report will be finalized by the Committee and placed before the Board of Directors of MSRTC within a period of four weeks from today and no further extension will be sought on any ground whatsoever. The undertaking is accepted.

2. The learned Advocate appearing for the Petitioners states that Mr. Kailas Sudam Kale – Petitioner in Writ Petition (L) No.23225 of 2019 has made an application to MSRTC to allow him to withdraw 50% of his provident fund amount since the marriage of his daughter is fixed on 11th December, 2019. The said application shall be sympathetically considered by the MSRTC and the decision shall be conveyed to Mr. Kailas S. Kale on or before 5th December, 2019. If the Application of Mr. Kale is allowed, the amount shall be forthwith paid to him i.e. by 6th December, 2019.

3. Stand over to 3rd January, 2020.”

2.14. Again on 10th January 2020, the following Order was passed :

“xxx

2. Thereafter, on 2nd December, 2019 an Undertaking was given to the Court on behalf of the MSRTC that the Committee, which is formed to look into the issues pertaining to problems faced by the employee of the MSRTC will be placed before the Board of Directors within a period of four weeks. The Report was filed with the Managing Director of MSRTC on 19th December, 2019. The Transport Minister is the Chairman of the Board of the MSRTC. It is submitted that since the Government is recently formed in the State, the Board shall now take a call on the report submitted to the Board. We therefore direct the Board of Directors of the MSRTC to consider the report and convey its decision to this Court within a period of four weeks from today.

3. A copy of this order shall be forthwith served to the Minister of Transport who is the Chairman of the Board of MSRTC.

4. Stand over to 31st January, 2020”.

2.15. As recorded hereinabove, the Committee constituted by MSRTC submitted / filed its Report with the Managing Director of MSRTC on 19th December, 2019 (**“MSRTC Report”**). Based upon the said Report, MSRTC issued a Circular on 23rd January 2020 (**“Impugned Circular”**) superseding the 2016 Impugned Circular.

2.16. The Impugned Circular broadly provides as under :

- a. Disabilities are of two categories, *viz.* (i) colour blindness and; (ii) being medically unfit.
- b. The Impugned Circular provides for the procedure for conducting tests to identify the category of colour blindness. The Impugned Circular additionally provides whether or not the person diagnosed with a particular category of colour blindness is fit to continue and carry out his task as a driver with MSRTC.
- c. The guidelines further provide that after such examination, a person who can continue and a person who is not eligible to continue to work as a driver, would be accommodated by MSRTC in another position *viz.* a labourer, peon, guest-house attendant, cook etc.
- d. Clause 11 of the Impugned Circular and the one which is germane to these Writ Petitions, provides that after an employee is diagnosed with a disability, the matter would be examined and until such examination is complete and a decision is taken about the fitness of the employee or his alternate employment, the intervening period would be treated as leave without pay and the earned leave on the earlier job would be carried forward to the new job.

2.17. Considering that the scope of the Writ Petitions had expanded as a result of the Impugned Circular, at the hearing of the Petitions on 31st January, 2020, this Court passed the following Order :

“The Learned Advocate appearing for the Petitioners states that he has instructions to impugn only clause 11 of the new Circular dated 23rd January, 2020. He is therefore allowed to amend the above Writ Petitions to that extent within a period of two weeks from today. The tests of all the fourteen Petitioners shall be carried out within a period of two weeks from today, as per the Circular dated 23rd January, 2020. Stand over to 14th February, 2020.”

2.18. Pursuant to the aforesaid liberty granted by this Court, the Writ Petitions came to be amended to incorporate a challenge to Clause 11 of the Impugned Circular, *inter alia* on the ground that Clause 11 of the Impugned Circular is *ultra vires* Section 20 of the 2016 Act.

3. Appearing for the Petitioners, Ld. Advocate Mr. K.N. Shermale submitted that the Impugned Circular is (i) unconstitutional and violative of Articles 14, 15 and 21 of the Constitution of India; and (ii) *ultra vires* the provisions of the 2016 Act and particularly Section 20 thereof (Section 47 of the 1995 Act). Therefore, according to Mr. Shermale, the Petitioners are entitled to a writ ordering and declaring that Clause 11 of the Impugned Circular is arbitrary and illegal. Further, that MSRTC ought to be ordered and directed to pay back wages to the Petitioners from the date their services were terminated until such time that the Petitioners are provided with alternative jobs by MSRTC in compliance with the 2016 Act.

4. Appearing for MSRTC, Mr. Nitesh Bhutekar submitted that under Clause No.4 of the 2016 Impugned Circular, once a driver has been declared unfit by reason of colour blindness, such driver is not entitled to an alternative service or job with MSRTC. Therefore, the Petitioners' services were terminated by MSRTC. He further submitted that in or around 2019, it became necessary for MSRTC to frame a policy which is without ambiguity and vagueness, on the basis of which policy, MSRTC can take decisions with respect to the disabled employees whilst safeguarding the interests of MSRTC. That on 7th October, 2019, a committee was constituted to suggest a proper procedure to be followed by MSRTC in respect of the disabled employees mainly to implement Section 47 of the 1995 Act (Section 20 of the 2016 Act). During the pendency of the Writ Petitions, MSRTC came out with the Impugned Circular, pursuant to which the Writ Petitions were amended to assail Clause 11 of the Impugned Circular.

5. It is noted that MSRTC has not filed an additional Affidavit in Reply to the amended Writ Petitions to deal with the challenge to Clause 11 of the Impugned Circular.

6. Dr. Milind Sathe, the Learned Senior Advocate appearing as *amicus-curiae* took this Court through the 1995 Act and the 2016 Act. He also took us through various decisions of the Supreme Court of India, this Court, the Delhi High Court, the Madras High Court and the Allahabad High Court, which Courts have had the occasion to consider the aforesaid legislations. On the basis of the law laid down in

these decisions and in the facts of the present matter, Dr. Sathe put forth the following submissions :

6.1. Clause 11 of the Impugned Circular is *ultra vires* the 2016 Act as well as violative of Articles 14, 15 and 21 of the Constitution of India.

6.2. The orders of termination of services of the Petitioners are liable to be set aside.

6.3. MSRTC ought to be directed to reinstate the Petitioners in service with alternate jobs, as indicated in the Disability Certificates issued to the Petitioners, within a period of 4 weeks.

6.4. MSRTC ought to be directed to pay back wages from the date of discontinuation of services of the Petitioners as drivers, till they resume as employees of MSRTC on the new / alternate jobs.

7. Prior to dealing with the legality and/or validity of the Impugned Circular, we propose to first deal with the legal framework relevant to the present matter. This would be the 2016 Act and the 1995 Act. Firstly, it is pertinent to note that prior to the enactment of the 2016 Act, the issue of providing equal opportunities and protection of rights to persons with disabilities was covered under the 1995 Act. Section 47 of the 1995 Act under Chapter VII with the heading “non-discrimination”, provided that there shall be no discrimination in Government employment. Section 47 reads thus :

"47. Non-discrimination in Government

employment.- (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."

8. On 13th December, 2006, the United Nations General Assembly adopted a Convention on "Rights of Persons with Disabilities". India is a signatory to this Convention which it ratified on 1st October 2007. Realizing the requirement to protect the rights of the persons with disabilities and India's commitment to the Convention

of the United Nations General Assembly, the Legislature repealed the 1995 Act and brought in the 2016 Act to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto.

9. Considering the scope of these Writ Petitions, we deem it appropriate to reproduce the Preamble of the 2016 Act, which reads thus :

“An Act to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto.

Whereas the United Nations General Assembly adopted its Convention on the Rights of Persons with Disabilities on the 13th day of December, 2006;

And whereas the aforesaid Convention lays down the following principles for empowerment of persons with disabilities,

(a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;

(b) non-discrimination;

(c) full and effective participation and inclusion in society;

(d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;

(e) equality of opportunity;

(f) accessibility;

(g) equality between men and women;

(h) respect for the evolving capacities of children with

disabilities and respect for the right of children with disabilities to preserve their identities;

And whereas India is a signatory to the said Convention;

And whereas India ratified the said Convention on the 1st day of October, 2007;

And whereas it is considered necessary to implement the Convention aforesaid.

Be it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:”

As can be discerned from the aforesaid Preamble, the 2016 Act is a beneficial Legislation that prioritizes and recognizes the benefits provided for under the 2016 Act. As compared to the 1995 Act, the 2016 Act confers higher benefits and provides for additional categories of disability that it seeks to protect. In addition, it emphasises the right to equality of opportunity, access to justice and various other rights such as free education, etc. In our opinion, the interpretation and construction of any provisions of the 2016 Act would therefore have to be in aid of and in furtherance of this legislative intent.

10. In order to assess the scope and intent of the 2016 Act, it would also be necessary to reproduce the following definitions and provisions from the 2016 Act :

"2(k) 'Government establishment' means a corporation established by or under a Central Act or State Act or an authority or a body owned or controlled

or aided by the Government or a local authority or a Government company as defined in section 2 of the Companies Act, 2013 and includes a Department of the Government."

*"2(r) '**Person with benchmark disability**' means a person with not less than forty per cent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority."*

*"2(s) '**Person with disability**' means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others."*

*"2(t) '**Person with disability having high support needs**' means a person with benchmark disability certified under clause (a) of sub-section (2) of section 58 who needs high support"*

*"2(y) '**Reasonable accommodation**' means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others."*

*"2(za) '**Rehabilitation**' refers to a process aimed at enabling persons with disabilities to attain and maintain optimal, physical, sensory, intellectual,*

psychological environmental or social function levels."

"20. Non-discrimination in employment.- (1) No Government establishment shall discriminate against any person with disability in any matter relating to employment:

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, exempt any establishment from the provisions of this section.

(2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

(3) No promotion shall be denied to a person merely on the ground of disability.

(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:

Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall 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.

(5) The appropriate Government may frame policies for posting and transfer of employees with disabilities. "
(emphasis supplied)

As can be seen from the aforesaid provisions, a person diagnosed with a disability cannot be subjected to discrimination, if such disability was acquired during the course of employment. If a person suffers from disability acquired during the course of employment, the Government establishment is required to provide reasonable accommodation and also an appropriate barrier free and conducive environment to the employee. The person diagnosed with a disability shall not be denied any promotion merely on the ground of such disability, nor shall the services of such a person be dispensed with, or he be reduced in rank on account of such disability. On acquiring such disability, if the person is considered to be unsuitable for the job he was employed for, such person is to be employed/absorbed in any other post and if no such post is available, he is to be kept on supernumerary post, until a suitable post is made available or until he attains the age of superannuation, whichever is earlier.

11. The 1995 Act as well as the 2016 Act have been discussed and analysed in a series of decisions of the Hon'ble Supreme Court of India, as well as in the decisions of the various High Courts.

i. In the case of *Nandkumar Narayanrao Godhmare V/s. State of*

Maharashtra & Ors.¹, the Appellant was handicapped because of colour blindness. Though he was selected by the Public Service Commission his appointment was not made on account of his handicap. He approached the Maharashtra Administrative Tribunal ('MAT') by filing Original Application No. 884 of 1993, which was disposed off against him by a Judgment and Order dated 20th February, 1994. In the Civil Appeal filed by him, the Hon'ble Supreme Court granted him relief by directing the Respondents to provide him with an alternative post. The Order of the Hon'ble Supreme Court is reproduced hereunder :

"1. Leave granted.

2. Admittedly, the appellant is handicapped because of colour-blindness. He was admittedly selected by the Public Service Commission but appointment could not be made on account of his handicap. When the matter came up on 27-3-1995, this Court, while issuing notice, passed order as follows :

"Petitioner should also give the nature of the duties he has to perform and whether his colour-blindness would interfere with the discharge of his duties. Respondents also would state in this behalf of their stand. If it is needed, they can also send the petitioner for medical examination by an expert Government Ophthalmologist or Board."

Despite the order, the Government took no action in that behalf. On the other hand, the appellant had filed on 2-5-1995 an affidavit detailing that as per the information he had secured, there were 35 posts in the Department and only five posts

¹ (1995) 6 Supreme Court Cases 720

required perfect vision without colour-blindness. Those five posts are mentioned in the affidavit. In other posts, colour-blindness was not an impediment for him to be appointed.

3. Under these circumstances, we deem it just and proper that the Government should consider the case of the appellant to be appointed to any of the posts of Agricultural Officer of Class II Service other than the 5 posts mentioned by him in his affidavit. The appellant should enclose a copy of this affidavit filed before us to the Department concerned for considering his case. Appointment should be made within two months from the date of the receipt of this order.

4. The appeal is allowed. No costs.”

ii. In the case of ***Kunal Singh V/s. Union of India & Anr.***², the Appellant was recruited as a constable in the Special Service Bureau ('SSB'). When he was on duty, he suffered an injury in his left leg which had to be amputated on account of gangrene, which had developed from the injury. By an Order dated 20th November, 1998, he was invalidated from service by the Respondents on the basis of the report of the Medical Board, Kullu, under which he was declared permanently incapacitated for further service. He therefore filed the Writ Petition before the High Court of H.P. at Shimla, challenging the validity and correctness of the said Order. The said Writ Petition was dismissed by the High Court by its Judgment and Order dated 21st April, 1999, holding that he had been permanently invalidated on the basis of the medical

² (2003) 4 Supreme Court Cases 524

opinion and as such there was no scope for him to continue any further in service of any kind in SSB. The Appellant impugned the Judgment and Order of the High Court by filing Civil Appeal No. 1789 of 2000 before the Hon'ble Supreme Court. The said Civil Appeal was allowed by the Hon'ble Supreme Court on 13th February, 2003 with a direction to the Respondent employer to give reliefs to the Appellant in terms of Section 47 of the 1995 Act. The relevant extracts of paragraphs 9 and 12 of the Judgment and Order dated 13th February, 2003 are reproduced hereunder :

“9.....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 very opening part of the section reads “no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service”. 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

employer 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.

12. Merely because under Rule 38 of the CCS (Pension) Rules, 1972, the appellant got invalidity pension is no ground to deny the protection mandatorily made available to the appellant under Section 47 of the Act. Once it is held that the appellant has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay scale and service benefits; if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation, whichever is earlier. It appears no such efforts were made by the respondents. They have proceeded to hold that he was permanently incapacitated to continue in service without considering the effect of other provisions of Section 47 of the Act.”

iii. In the case of **Anil Kumar Mahajan V/s. Union of India & Ors.**³, the Appellant, an IAS Officer, was appointed in the service of Government of Bihar on 12th

³ (2013) 7 Supreme Court Cases 243

July, 1977. From 17th February, 1988 to 20th February, 1988, whilst he was posted as Additional Secretary – cum – Editor of the State Gazetteer, Bihar at Patna, he was placed under suspension and thereafter by an Order dated 24th February, 1988, his suspension was continued till further orders. The Order of suspension was revoked only on 24th February, 1990. He had moved the Central Administrative Tribunal, Patna Bench in Original Application No. 288 of 1991 and Original Application No. 238 of 1991, seeking various reliefs, which were granted in his favour, by orders dated 22nd June, 1992 and 10th October, 1992 respectively. He was again placed under suspension on 20th May, 1993 and subjected to departmental enquiry by the Member, Board of Revenue and Enquiry Officer, who framed charges against him. In the departmental enquiry, an allegation was made that the Appellant was mentally sick. Allegations of indiscipline, being irresponsible and misbehaviour were also made against him. The finding given in the enquiry which went on for about 11 years, was that the Appellant was insane and an Order of compulsory retirement was passed on 15th October, 2007. The Appellant filed a Writ Petition before the Delhi High Court, which was dismissed as withdrawn by his Advocate. The Appellant had also preferred an application being OA No. 2784 of 2008 before the Central Administrative Tribunal, Principal Bench, New Delhi, wherein he challenged the departmental proceedings. No reliefs were granted therein in favour of the Appellant. In the SLP filed by the Appellant before the Hon'ble Supreme Court, the Supreme Court whilst analyzing the various provisions of the 1995 Act, more particularly Section 47, interalia held that there is

prohibition imposed under Section 47 to dispense with, or reduce in rank, an employee who acquires a disability during his service. The Hon'ble Supreme Court also held that even if it is presumed that the Appellant had become insane, as held by the Enquiry Officer, mental illness being one of the disabilities under Section 2(i) of the 1995 Act, under Section 47 it was not open to the Respondents to dispense with, or reduce in rank, the Appellant who acquired a disability during his service. Since at the time of hearing the matter before the Hon'ble Supreme Court in the year 2013, the Appellant was superannuated from service (i.e. on 31st July, 2012), the Hon'ble Supreme Court observed that there was no question of reinstatement of the Appellant. However, the Hon'ble Supreme Court proceeded to set aside the Order of compulsory retirement of the Appellant dated 15th October, 2007, passed by the Respondent; the Order dated 22nd December, 2008 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 2784 of 2008 and the Order dated 20th April, 2010 passed by the High Court of Delhi, and remitted the case to the Respondents, with a direction to treat the Appellant as continued in service till the date of his superannuation and to pay him his full salary minus the subsistence allowance already received for the period from the date of initiation of departmental proceedings till the date of compulsory retirement. Further, the Respondents were directed to pay to the Appellant his full salary from the date of compulsory retirement till the date of superannuation in view of the first and second provisos to Section 47 of the 1995 Act. Paragraphs 20, 21 and 22 of the said decision are relevant and reproduced hereunder :

“20. The appellant was appointed in the service of the respondents as an IAS Officer and joined in the year 1977. He served for 30 years till the order of his compulsory retirement was issued on 15-10-2007. It is not the case of the respondents that the appellant was insane and in spite of that he was appointed as an IAS Officer in 1977. Therefore, even if it is presumed that the appellant became insane, as held by the enquiry officer, mental illness being one of the disabilities under Section 2(i) of the 1995 Act, under Section 47 it was not open to the respondents to dispense with, or reduce in rank of the appellant, who acquired a disability during his service. If the appellant, after acquiring disability was not suitable for the post he was holding, should have been shifted to some other post with the same pay scale and service benefits. Further, if it was not possible to adjust the appellant against any post, the respondents ought to have kept the appellant on a supernumerary post until a suitable post is available or, until the appellant attained the age of superannuation whichever was earlier.

21. In view of the aforesaid finding, we are of the view that it was not open to the authorities to dispense with the service of the appellant or to compulsorily retire him from service. The High Court also failed to notice the relevant facts and without going into the merits allowed the counsel to withdraw the writ petition merely on the basis of the finding of the enquiry officer. In fact the High Court ought to have referred the matter to a Medical Board to find out whether the appellant was insane and if so found, in that case instead of dismissing the case as withdrawn, the matter should have been decided on merits by appointing an

advocate as amicus curiae.

22. It is informed at the Bar that in normal course the appellant would have superannuated from service on 31-7-2012. In that view of the matter, now there is no question of reinstatement of the appellant though he may be entitled for consequential benefits including arrears of pay. Having regard to the facts and finding given above, we have no other option but to set aside the order of compulsory retirement of the appellant dated 15-10-2007 passed by the respondents; the order dated 22-12-2008 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 2784 of 2008 and the impugned order dated 20-4-2010 passed by the High Court of Delhi in Anil Kumar Mahajan v. Union of India [Anil Kumar Mahajan v. Union of India, WP (C) No. 2622 of 2010, decided on 20-4-2010 (Del)] and the case is remitted to the respondents with a direction to treat the appellant as continued in the service till the date of his superannuation. The appellant shall be paid full salary minus the subsistence allowance already received for the period from the date of initiation of departmental proceeding on the ground that he was suffering from mental illness till the date of compulsory retirement. The appellant shall also be provided with full salary from the date of compulsory retirement till the date of superannuation in view of the first and second provisos to Section 47 of the 1995 Act. If the appellant has already been superannuated, he will also be entitled to full retiral benefits counting the total period in service. The benefits shall be paid to the appellant within three months, else the respondents will be liable to pay interest at the rate of 6% per

annum from the date the amount was due, till the actual payment.”

iv. In the case of *Vishnu s/o. Shahurao Bangar V/s. The Divisional Controller & Ors.*⁴ the Petitioner, a Bus Conductor, was on duty when he met with an accident and lost both his legs. By communication dated 24th January, 2008, the MSRTC Management concluded that the Petitioner was unfit to perform his duties and his service was terminated. Thereafter, the MSRTC issued a letter dated 2nd February, 2009 stating that the Petitioner would be considered to be on leave without pay from 25th January, 2008 to 13th January, 2009 and he would be re-employed by the said Order to work as a Peon. The Petitioner was considered to be in employment only with effect from 14th February, 2009. The Petitioner approached the Labour Court interalia contending that he was not paid his wages from 24th January, 2008 till 13th January, 2009, on the ground that the said period was treated as leave without pay. The Labour Court by its Judgment dated 26th December, 2018 held that the claim of the Petitioner was not maintainable, as there was no pre-existing right and there was no pre-adjudication. The Petitioner impugned the Judgment passed by the Labour Court before this Court at its Aurangabad Bench, when the Advocate for the MSTRC strenuously submitted on instructions that the MSTRC had issued a Circular dated 10th September, 2008, clause (3) of which provides that an employee who had suffered disability would be deemed to be on leave without wages for the period during which

⁴ Writ Petition No. 3772 of 2019

he was out of employment. The Learned Single Judge whilst recording the insensitive conduct of the MSRTC towards its employee and his anguish qua the Circular of MSRTC dated 10th September, 2008, interalia directed the MSRTC to pay to the Petitioner wages due to him for the period 24th January, 2008 to 13th January, 2009.

Paragraphs 3, 7, 11, 12, 13, 14 and 15 are relevant and reproduced hereunder :

“3. This case is an example of the MSRTC showing insensitivity and apathy towards an employee, who has suffered an accident while on duty, arising out of and in the course of his employment, squarely covered by the Employee's Compensation Act, 1923, the Rights of Persons with Disabilities Act, 2016 and the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996).

7. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996) defines a disability u/s 2(t), by which a person, who is suffering from a disability not less than 40% shall be considered eligible for an alternate employment. The provisions of the said Act clearly indicate that an employee, as like this petitioner, should have been immediately granted alternate employment, the date on which he had reported for duties after being discharged from the hospital and declared to be fit to undertake an alternate suitable employment. This being the law and an obligation on the part of the MSRTC, could have been considered by the Labour Court purely for calculating the non-payment of wages.

11. It is, therefore, obvious that the Management has refused to

give work to the petitioner for the period 24/01/2008 till 13/01/2009 and he was deemed to have been reinstated on 14/01/2009. He would be entitled for his last drawn wage as would have been payable to him as a Bus Conductor, had he been in employment in January 2008. Under the 1996 Act, his last pay has to be protected. This also was lost sight of by the Labour Court.

12. In view of the above, this petition is partly allowed. Application (IDA) No.2/2012 is partly allowed. The respondent/Corporation is liable to pay an amount of Rs.2,74,534/- by way of compensation for the period 11/11/2002 up to 24/01/2008, by adjusting the amounts which have already been paid to the petitioner. This amount shall be paid within 8 (eight) weeks from today.

13. In so far as his termination from 24/01/2008 and subsequent re-employment is concerned, it would presume that there is continuity of service and he is entitled to his salary as was payable to him in January 2008. The respondent/Corporation shall therefore calculate his salary from 24/01/2008 till 13/01/2009 and shall pay the said amount within 8 weeks from today, failing which, the Vice Chairman and Managing Director, Mumbai/respondent No.2 shall pay interest @ 6% from January 2009 till the amount is paid, from his own salary account, since he is the sanctioning authority.

14. Before I part with this matter, I am recording my anguish about the Corporation having relied upon a circular dated 10/9/2008. The policy devised by the Corporation, concerning the unfortunate employees who have suffered disabilities on

account of the act of nature or by way of an accident and for which they cannot be held personally liable, demonstrates insensitivity on the part of the Corporation. I can understand a case wherein an employee is a drunkard or is addicted to vices and on account of his own conduct, has invited illness. He can be treated differently without showing any sympathy. However, the employees who have suffered disabilities for no fault on their part or have suffered an accident leading to disabilities, will have to be treated with more sensitivity and a human touch.

15. Considering the above, the learned Registrar (Judicial) of this Court is directed to place a copy of this judgment before the Hon'ble Cabinet Minister for Transport in the State of Maharashtra, who is ex-officio Chairman of the MSRTC, to adopt steps to ensure that the said policy is properly devised in order to take care of such employees, who have suffered accidents and disabilities, more so, keeping in view the Rights of Persons with Disabilities Act, 2016.”

v. In the case of ***Union of India and Ors. V/s. Pramod Sadashiv Thakre***⁵, the Respondent was appointed as Civil Mechanical Transport Driver by the Petitioner – employer, after being found fit by the Authority on the basis of a medical certificate issued by the Civil Surgeon. On 29th August, 2005, his services were terminated on the ground that he was found to be suffering from colour blindness. Aggrieved by the said Order, the Respondent approached the Central Administrative Tribunal. The Tribunal vide its Order dated 24th February, 2011, held that the

⁵ 2012 (1) Mh. L.J.) 738

impugned order of termination passed by the Petitioner – employer is in violation of the provisions of the Section 47 of the 1995 Act. The Petitioners impugned the Order of the Tribunal before this Court at its Nagpur Bench. It was argued before the Court by the Learned Advocate appearing for the Petitioners, that the services of the Respondent cannot be said to be protected by Section 47 of the 1995 Act, since that Section protects only a person who has acquired disability during the course of his employment. It was submitted that the Respondent's colour blindness is congenital, as colour blindness is, and must have been there even when the Respondent was initially appointed. This Court rejected the aforesaid contention of the Advocate appearing for the Petitioners and held that the Respondent incurred disability during the course of his employment and his services are liable to be protected and dismissed the Writ Petition. Paragraphs 5 and 6 of the Judgment dated 19th October, 2011 are relevant and reproduced hereunder :

“5. We have no doubt that if the respondent was Colour Blind from birth and continued to be so when he was employed, he could not have been said to be a person who acquired any disability in the course of his employment. However, in the present case, there is no evidence to that effect. In the first place, no medical evidence is placed on record to establish that colour blindness can only be congenital and cannot be acquired. Secondly, there is no evidence that the respondent was Colour Blind when he was employed. On the other hand, the petitioners accepted the respondent's fitness by relying on the certificate

granted to him by Civil Surgeon, Nagpur who certified him as normal. The certificate that he was normal must be taken to refer to every functional aspect of the respondent including his eyesight. We are informed that the petitioners do not and in any case did not insist for a proforma in which medical fitness entries to be recorded and do not appear to have referred back the respondent's case for considering whether his vision was normal or he is Colour Blind neither did the petitioners administer any test to the respondent for determining whether he is Colour Blind. The petitioners can hardly claim to have established that the respondent was Colour Blind from birth and, therefore, also Colour Blind on the date of employment. We are, therefore, of the view that respondent is entitled to protection by the Act. It was, however, urged by Mr. Sundaram, learned counsel for the petitioners, that the respondent's services cannot be protected by section 47 of the Act since the respondent was a temporary employee on probation. Section 47 of the Act, reproduced above, protects the services of an employee and makes no distinction between the nature of the services it protects. The purpose and intention of the provisions is to protect an employee from unemployment on the ground that he has incurred disability. Parliament has in its wisdom accommodated the possibility that an employee may not be able to discharge the duties of office prescribed for him and to that effect a provision has been made that an employee shall be employed in some other post with same benefits.

6. In the circumstances, we are of the view that the respondent incurred disability during the course of his employment and his

services are liable to be protected. The order of termination, which is made only on the ground that the respondent has been found to be Colour Blind is rightly quashed and set aside by the Central Administrative Tribunal.

We Find no merit in the petition. The same is, therefore, dismissed.”

vi. In the case of ***Arvind S/o. Shankarrao Khodke V/s. The Regional Director of Municipal Administration, Nagpur Division, Nagpur***⁶, the Petitioner was qualified for appointment to the post of Assistant Teacher and was appointed as such by the Respondent Municipal Council on 2nd August, 1985. The Petitioner had a fall on 19th October, 2002 and suffered brain injury. He resumed service on 2nd May, 2003, after he was declared ‘fit’ by the Medical Board. Thereafter, on two occasions he was declared ‘medically fit’ to perform his duties. The Petitioner was thereafter suspended from service by an Order dated 19th - 25th April, 2005 and was again referred to the Medical Board. The Medical Board in October-November, 2005 certified that the Petitioner was not fit to carry out his duties as Assistant Teacher but was fit to carry out duties of a clerical nature. Thereupon the Petitioner was compulsorily retired from service by an Order dated 2nd December, 2005. After his suspension and before he was compulsorily retired, the Petitioner had filed a revision Application before the Regional Director of the Municipal Administration. The Revision filed by the Petitioner was dismissed. The Petitioner challenged the order of dismissal passed by the Regional Director of the Municipal Administration and the

⁶ Judgment dated 10th January, 2017 passed in Writ Petition No. 3496 of 2007

Order dated 2nd December, 2005, whereby he was compulsorily retired before this Court at its Nagpur Bench. This Court after referring to the provisions of Section 47 of the 1995 Act, set aside the Order of compulsory retirement and directed the Municipal Council to reinstate the Petitioner in service and grant him an alternate job which he could effectively attend. This Court also made it clear that if the Respondent Municipal Council had no vacancy, the Petitioner shall be adjusted against a post which may be supernumerary, until a suitable post is available or till he attains the age of superannuation, in terms of the second proviso to Section 47 (1) of the 1995 Act. However, the Court declined to accept the submission made on behalf of the Petitioner that the Petitioner would be entitled to the entire arrears of salary and other monetary benefits for the period during which he was out of service, on the ground that the Petitioner had at no point of time requested any of the authorities to permit him to perform a clerical job and to protect the pay / wages of the Petitioner. The following are the relevant extracts from the said Judgment :

“5.....Though the petitioner was not 'fit' for doing the job of Assistant Teacher, according to the opinion of the Medical Board, the petitioner was 'fit' to perform the duties of clerical nature. The Municipal Council was obliged, in view of the provisions of Section 47 of the Act to give an alternate job to the petitioner and protect his pay scale. Instead of complying with the provisions of section 47 of the Act, the Municipal Council illegally dispensed with the services of the petitioner solely on the ground that the petitioner was not 'fit' for performing his duties as an Assistant

Teacher. It is rightly submitted on behalf of the petitioner that the services of an employee cannot be dispensed with, and if an employee is not suitable for performance of the duties of the post that he is holding after acquiring the disability, he should be shifted to some other post with the same pay scale and service benefits. Instead of asking the petitioner to perform the duties of a clerk or any other job which the petitioner could have performed, the Chief Officer of the Municipal Council illegally terminated the services of the petitioner by passing the order of compulsory retirement. Unfortunately, the petitioner did not canvass before the Regional Director of Municipal Administration that he was entitled to remain in service, if not as an Assistant Teacher on some other post, in view of the provisions of section 47 of the Act. The provisions of the Act were not brought to the notice of the authority and hence without considering the provisions of the Act, the authority dismissed the revision filed by the petitioner by considering the other submissions made on behalf of the parties.

6. Though in the circumstances of the case, a direction to the respondent - Municipal Council to reinstate the petitioner on some other post would be necessary, we are not inclined to accept the submission made on behalf of the petitioner that the petitioner would be entitled to the entire arrears of salary and the other monetary benefits for the period during which he was out of service. On a reading of the documents annexed to the petition and the affidavit-in-reply, we find that it was not the case of the petitioner at any point of time before any of the Authorities that the petitioner should be permitted by the Municipal Council to perform a clerical job and the pay of the petitioner should be

protected. This was not the case canvassed by the petitioner even before the Regional Director of Municipal Administration and for the first time in this writ petition, the petitioner has relied on the provisions of section 47 of the Act for protection of his services. Had the petitioner referred to the provisions of section 47 of the Act and had asked the respondent-Municipal Council to absorb the petitioner on some other post or job, which the petitioner could have performed and protect his pay, the Municipal Council may have applied its mind to the said provisions and the submission of the petitioner. However, this was not done. In fact, in some of the communications, it is the case of the petitioner that the petitioner was 'fit' to perform his job as an Assistant Teacher and his services should not be dispensed with. Admittedly the petitioner has not worked for a period of more than ten years and considering the weak financial condition of the Municipal Council, where even the salary of the regular employees is not paid regularly, it would not be proper to direct the Municipal Council to pay the entire arrears of salary to the petitioner. In the circumstances of the case and in the interest of justice, in our view, the Municipal Council could be directed to pay 50% of the arrears of salary and the other monetary benefits to the petitioner for the period during which he was out of service.

7. Hence, for the reasons aforesaid, the writ petition is partly allowed. The impugned orders are quashed and set aside. The Municipal Council is directed to reinstate the petitioner in service within two weeks and grant him an alternate job on which he can effectively work. If the respondent-Municipal Council does not have a vacancy, the respondent-Municipal Council should adjust

the petitioner against a post, which may be supernumerary, until a suitable post is available or till he attains the age of superannuation in terms of the second proviso to section 47 (1) of the Act. It is needless to mention that the petitioner would be entitled to the regular salary on the expiry of period of fifteen days even if he is not reinstated. The petitioner would be entitled to only 50% of the arrears of salary. The Municipal Council is directed to pay the arrears of salary to the petitioner within ten weeks. The pension paid to the petitioner should be adjusted towards the amount payable to the petitioner towards the arrears of salary. Rule is made absolute in the aforesaid terms with no order as to costs. ”

vii. In the case of ***Managing Director, UPSRTC V/s. Suresh Singh***⁷, the Allahabad High Court whilst dealing with the interplay between the 1995 Act and the 2016 Act and the contractual obligations between employers and employees, held as under :

“32. Therefore, according to us, all contracts entered into between the parties, including the present contract, are, in the first place, law governing the rights and obligations between them. However, that law is always subject to any modification or alteration that may be made by the statutory law. Thus, once the legislature stepped in and provided certain protections to all employees of ‘establishment’, that too on fundamental and cherished Constitutional principle of equality irrespective of

their status as permanent or temporary employees or contract employees etc., the private contract between the parties stood modified to that extent, by operation of law. No plea/objection as to re-writing of the contract may be sustained as may result in defeating that statutory law. For that reason, we respectfully disagree with the view taken by the Delhi High Court in the above noted decisions.

33. Thus, for reasons given above, the 'Old Act' and the 'New Act' apply to the benefit of all classes of employees in an 'establishment'. However, while giving effect to the provisions of those enactments, the equality may be enforced and established between two employees - one with physical disability and another without, both belonging to same 'class of service'. The equality sought may never transcend the otherwise pre-existing valid 'class categorization' or 'status' of the employee concerned, neither to his benefit nor to his prejudice.

34. Thus, in the case of the 'petitioner-employee' having suffered physical disability during his engagement by the 'corporation', the non-discrimination clause introduced and enforced, first by 'Old Act' and now by the 'New Act', modified the contractual obligation of the 'corporation' under the contract pre-existing between the parties so as to oblige the latter to continue to engage the 'petitioner-employee' and to not dispense with his services as a contract employee for the surviving contract period. In other words, even as a contract employee, the 'petitioner-employee' continued to be an employee of the 'corporation' and the benefit of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and The

Rights of Persons with Disabilities Act, 2016, enured to him keeping intact his status as a contract employee.

35. Consequently, the present appeal is partly allowed with an observation that the 'corporation' shall pass a fresh order, in accordance with the directions issued by the learned Single Judge, within a period of one month from today treating the petitioner-employee Suresh Singh to be an existing contract employee. He may accordingly be assigned such other job on contract basis, for such period, as may be available with the 'corporation' in view of his 40% permanent physical disability. The 'corporation' would pass a reasoned and speaking order in that regard, within a period of two months from today.

36. Appeal allowed in part.”

viii. In ***G. Muthu V/s. MTNSTC (Madhurai) Limited***⁸, the Appellant had joined the service of the Respondent as a Driver on 26th August, 1993. His services were regularized from 24th July, 1994. Thereafter, he was promoted as Senior Driver. The Respondent by its Order dated 4th February, 2002 directed the Appellant to appear before the Regional Medical Board, Madurai, to ascertain whether he is fit to work as a driver. He appeared before the Medical Board on 19th February, 2002. The Medical Board examined his physical fitness and submitted its report dated 19th February, 2002, wherein it was stated that since he has colour blindness he is unfit to work as a driver. Based upon the report of the Medical Board, the Respondent issued him a show cause notice dated 7th March, 2002 calling upon him to submit his explanation as

to why he should not be discharged from the post of driver on medical ground. He submitted his explanation on 7th March, 2002, wherein he requested the Respondent to provide suitable alternative employment with continuity of service and pay protection. The Respondent by its Order dated 26th March, 2002 discharged him from service on medical grounds. He submitted his representation to the Respondent on 26th March, 2002 requesting the Respondent to sympathetically consider his case for suitable alternative employment. Since there was no response from the Respondent, he once again submitted a representation on 30th August, 2004 stating that his discharge from the service is contrary to the provisions of the 1995 Act. Since the Appellant did not receive any response from the Respondent, the Appellant, in the year 2004, challenged the Order of the Respondent dated 26th March, 2002, before the Single Judge of the Madras High Court, which challenge was rejected by an Order dated 6th January, 2005 on the sole ground of laches. The Appellant filed an Appeal before the Division Bench of the Madras High Court. Before the Appeal Court, the Learned Counsel for the Respondent vehemently argued that the Appellant had not properly explained the delay in the matter. The Learned Counsel for the Respondent also contended that the Parliament has chosen only seven illnesses under the category of disability under Section 2(i) of the Act and hence the intention of the Parliament is that a person with any disability cannot claim benefit under the Disability Act, but only the persons affected with illnesses enumerated in Section 2(i) of the Act can claim disability and protection under the Act. The Division Bench of the Madras High

Court rejected the submissions made by the Respondent and allowed the Appeal.

Paragraphs 14, 15, 19, 21, 22, 26 and 27 of the Judgment are relevant and therefore reproduced hereunder :

“14. Having heard the learned counsel for the appellant as well as the respondent on the above referred to contentions, namely, as regards the distinctive application of S. 47 de hors the definition of “disability” as found in S. 2(i), we find force in the submission of the learned counsel for the appellant. As pointed out by the learned counsel for the appellant, the law makers have used a different set of expressions in S. 47, which deals with an employee who “acquires a disability” in contra-distinction to the expression “with disability” which has been used in the various provisions falling under Chaps, IV to VII of the Act. On a close reading of such provisions contained in Chaps. IV to VII, we could discern that the benefits which are conferred under those provisions are to be made available to persons who already suffer a disability. In other words, the two categories, namely, a person “with a disability” is always distinguishable from a person who later on “acquires a disability”. Viewed in that respect, it will have to be held that the expression “disability” used in S. 47 of the Act can, by no stretch of imagination, be equated with a case of a person “with the disability”. Once the said distinction as between S. 47 and the various other provisions of the Act, in particular the provisions falling under Chaps. IV to VII, is understood, then the stand of the appellant can be better appreciated. A close reading of S. 47 of the Act would show that the benefit granted

under the said provision was to be conferred on a serving employee in an establishment who acquires a “disability” during such service. When such “disability” was acquired by him during his service, the Parliament thought it fit to ensure that his service is not in any way affected because of acquisition of such a “disability” and with that view, directed that he should be shifted to some other post with the same pay-scale and service benefits and in the event of such alternate post not being available, to create a supernumerary post until a suitable post is available or till he attains the age of superannuation. Sub-section (2) of S. 47 goes one step further and stipulates that no promotion should also be denied to a person merely on the ground of his disability. A further reading of the last proviso to S. 47 disclose that it is for the appropriate Government to take note of the type of work carried on in any establishment and issue a notification exempting such establishment from the provisions of the said S. 47, subject to such conditions if any. Therefore, unless and otherwise such a specific notification exempting an establishment depending upon the nature and type of work of that establishment is issued, no other establishment covered by the provisions of the Act can take a different stand.

15. Having regard to the special features contained in the said S. 47, providing for such a special benefit to an existing employee in an establishment when he acquires a “disability” as held by us earlier, the application and implementation of the said provision will have to be ensured independent of various other benefits provided under the various other provisions

falling under Chaps. IV to VII of the Act which are meant for persons “with disability”. Having regard to the said distinctive features contained in S. 47 of the Act, as compared to the other provisions, we are of the considered opinion that the context in which the benefit has been conferred under S. 47 stands apart from the context of all other provisions where various other benefits have been conferred. In other words, we are of the firm view that the opening set of expressions contained in the definition clause, namely S. 2, which denotes “unless the context otherwise requires” squarely gets attracted to S. 47 and therefore the definition of “disability” as defined under S. 2(i) cannot be blindly applied to the term “disability” which has been used in S. 47 of the Act. In other words, the term “disability” used in S. 47 can draw support not only in respect of the defined “disabilities” as contained in S. 2(i) of the Act but will also encompass such other “disabilities” which would disable a person from performing the work which he held immediately prior to acquisition of such “disability” and thereby entitle him to avail the benefits conferred under the said provision for having acquired such a “disability.”

19. Therefore, as argued by the learned counsel for the appellant, while the provisions contained in Chaps. IV to VII of the Act deals with “persons with disability” S. 47 alone deals with “an employee who acquires a disability during his service”. The said provision clearly says that no establishment shall dispense with or reduce in rank, an employee who acquires a disability during his service which means that the person who is employed in an establishment when he acquires a disability, his

services cannot be dispensed with or there should be any reduction in rank. Further, the proviso to the said section clearly states that if he is not suitable for the post he could be shifted to some other post with the same scale of pay and benefits. If it is not possible, he could be kept on a supernumerary post until a post is available or he attains the age of superannuation whichever is earlier. The said provision further states that no promotion shall be denied to any person merely on the ground of his disability. Thus, if we apply S. 47 of the said Act, the order of discharge passed by the respondent, dated 26 March, 2002, has no leg to stand.

21. Thus, according to the learned counsel for the appellant, if there is any anomaly or injustice, then the Court has to look into the purpose for which the statute has been brought and should try to give a meaning, which would adhere to the purpose of the statute. We find full force in the submission of the learned counsel for the appellant. The object which S. 47 of the Act purports to achieve is that appropriate provision should be made for the employees employed in the establishments who acquire a disability during their service. While having this in mind, in construing the material provisions of such an Act, if two views are reasonably possible, the Courts should prefer the view which helps the achievement of the object. If the words used in the provisions of the Act are capable of a narrow or broad construction, each construction is being reasonably possible, and it appears that the broad construction would help the furtherance of the object, then it would be necessary to prefer such construction. The other circumstance which has to be borne

in mind in interpreting the provisions of the Act is that the interpretation should not concentrate on the word used therein. In construing the relevant provisions of the Act what the Courts have to ask themselves is, "is the object for which the Act has been introduced, achieved?" Thus, the interpretation shall fit in with the object for which the Act has been introduced and it should be considered in the light of the object intended to be achieved.

22. Welfare legislations are meant to ensure benefits to the needy. They should be interpreted in such a way so that the purpose of the legislation is allowed to be achieved. Even assuming that there is any ambiguity in the provisions of the Act, in view of the object underlying the Act, it requires a reasonable interpretation of S. 2(i) of the said Act so as to make it applicable to the case on hand. The legislative purpose must be noted and the statute must be read as a whole.

26. After analysing the entire provisions of the Act and also various decisions cited above, we feel that the Court cannot shut its eyes if a person knocks at its door claiming relief under the Act. In a welfare State like India, benefits of benevolent legislation cannot be denied on the ground of mere hyper-technicalities. When the law makers have conferred certain privileges on a class of persons, like in this case to a disabled person, the duty is cast upon the judiciary to oversee that the authorities or the persons to whom such a power is conferred, enforce the same in letter and spirit for which such enactment has been made. In the present case on hand, the appellant has been discharged on the ground of "colour blindness" without

providing alternative job as per S. 47 of the Act, which is unjustified and unreasonable. Hence, the order of the respondent dated 26 March, 2002 discharging the appellant on medical grounds has no leg to stand. The appellant is entitled to the protection under S. 47 of the Act. He should have been given a suitable alternative employment with pay protection, instead of discharging him from service on the ground of "colour blindness." Viewed from any angle, the order of the learned Single Judge dismissing the writ petition on the mere ground of laches without considering the claim of the appellant on merits is liable to be set aside.

27. In fine, the writ appeal is allowed setting aside the order of the learned Single Judge in W.P. No. 70 of 2005, dated 6 January, 2005, thereby we set aside the order of the respondent, dated 26 March, 2002, discharging the appellant from service on medical grounds. During the pendency of the writ appeal, by an interim order, dated 29 April, 2005, the appellant was given employment as helper based on G.O. Ms. No. 746, Transport Department, dated 2 July, 1981. Since we have held that the appellant is entitled for the benefit of alternate employment as provided under S. 47 of the Act, we direct the respondent to provide such alternate employment to the appellant from the date of his discharge with pay protection, continuity of service, back-wages and all other attendant benefits for which he is legally entitled to. No costs.

Writ appeal allowed. ”

12. As can be seen from the aforesaid decisions, the provisions of the 1995 Act as well as the 2016 Act have been interpreted and applied in a beneficial manner from time to time in a series of decisions delivered by the Supreme Court of India and the various High Courts.

13. When we apply the aforesaid principles laid down by the various Courts to the present *lis*, we note that the Petitioners have admittedly acquired their disability, *viz.* colour blindness during the course of their employment. As a result, the Petitioners are now entitled to alternate jobs as "*reasonable accommodation*" under Section 20 of the 2016 Act. This position has been accepted by MSRTC whilst issuing the Impugned Circular. Further, the record reflects that the Petitioners' services were terminated between April 2018 to June 2018 and since then neither have the Petitioners been employed elsewhere, nor have they received any wages and/or compensation. We are cognizant of the fact that many of the Petitioners before us have dependants and children who may be going to school, etc. This is in addition to the Petitioners' daily requirement for sustenance. As repeatedly held by the Courts from time to time, whilst construing a provision of a social and beneficial enactment, such as the 2016 Act, that intends to provide disabled persons with equal opportunities, protection of rights and full participation, the Court must adopt a view that advances the intent and object of the legislation and a view which serves its purpose must be preferred as opposed to one which obstructs and paralyses the intent, object and purpose of such Act. In our

view, a socio-economic legislation such as the 2016 Act, ought to be interpreted liberally. Courts ought to adopt different yardsticks and measures for interpreting socio-economic statutes, as compared to penal or taxing statutes.

14. After having considered the provisions of the 1995 Act and the 2016 Act in detail, we are of the considered view that the language of Section 20 is plain and certain, and casts statutory obligations on the employer to protect an employee acquiring disability during service.

15. Keeping in line with this construction of a beneficial legislation and also keeping in mind the unequivocal and express provisions of Section 20 of the 2016 Act, we deem it only legal, humane and just that the Petitioners be granted alternate jobs as also back wages from the date their services were discontinued.

16. In so far as Clause 11 of the Impugned Circular is concerned, as stated hereinabove, Clause 11 provides that after an employee is diagnosed with a disability, the matter would be examined and until such examination is complete and a decision is taken about the fitness of the employee or his alternate employment, the period would be treated as leave without pay and the earned leave on the earlier job would be carried forward to the new job. We find that this imposition is unjust and violates the Petitioners' fundamental rights on various levels. Firstly, it is clearly arbitrary and violative of Article 14 of the Constitution, in as much as the Act mandates the State establishments to shift the employee acquiring the disability during service to another suitable post, if he cannot be

continued in the post originally held by him; the Act does not envisage any time lag for shifting him to such other post ; and in any event, if the employer establishment takes time to decide on such alternative employment, the employee cannot be made to suffer. Clause 11 of the Impugned Circular leaves it to the employer establishment i.e. MSRTC to decide on the alternative employment at its own sweet will and at its own leisure, leaving the employee to suffer deprivation of wages for no fault of his.

17. Further, this arbitrary imposition under Clause 11 is in the teeth of the provisos to Sub Section (4) of Section 20 of the 2016 Act which read as under :

“Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall 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.”

18. The above provisos mandate that the Petitioners ought to be shifted to an alternative post with MSRTC with the same pay scale and service benefits and if it is not possible for MSRTC to adjust the Petitioners against any post immediately, they have to be kept on supernumerary posts until suitable posts are available or they attain the age of superannuation, whichever is earlier. This is a mandate under the 2016 Act and a statutory right granted to the Petitioners. This right cannot be

violated by Clause 11 of the Impugned Circular. MSRTC has no right and is in fact prohibited from treating the intervening period between the medical examination and a decision thereon as leave without pay. The very idea of restoring an employee to a position with the same pay scale and service benefits which he or she held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the action of termination taken by the employer.

19. The financial, emotional and mental injuries suffered by the bus drivers before us today cannot simply be measured in terms of money. As a result of the discontinuance of their services by MSRTC, the Petitioners' lost their source of income with immediate effect. As a result, not only have the Petitioners suffered economically but so have their respective families, who have been deprived of their source of sustenance. This would include deprivation of nutritious food, education as also general advancement in life. These sufferings will continue till the date MSRTC provides the Petitioners with alternative positions. In our opinion, the Petitioners' reinstatement by MSRTC entitles the Petitioners to claim back wages in their entirety. The denial of back wages to the Petitioners who have suffered due to their disability would amount to indirectly punishing the Petitioners concerned and rewarding MSRTC by relieving them of their obligation to pay back wages. This would be wholly inequitable and unjust. This would be in contravention of the 2016 Act, as also in contravention of the Constitution of India. As a result, we are of the

considered opinion that Clause 11 of the Impugned Circular is *ultra vires* the 2016 Act, as also violative of Article 14 of the Constitution of India. Therefore, we hereby quash and set-aside Clause 11 of the Impugned Circular.

20. Keeping in line with the mandate of Section 20 of the 2016 Act, we order and direct MSRTC to provide each one of the Petitioners with alternative posts having the same pay scale and service benefits as their earlier position. This exercise must be completed within a period of 4 weeks from the date of this Order.

21. As a result of the aforesaid decision, we order and direct MSRTC to pay back wages to each of the Petitioners from the date that their respective services were discontinued until the date that they have been provided with an alternative position in compliance with Section 20 of the 2016 Act. These wages must be credited to the Petitioners' accounts within a period of 6 weeks from the date of pronouncement and uploading of this Order. However, whilst computing the amount of back wages to be paid to the Petitioners, we grant liberty to MSRTC to ascertain whether or not any of the Petitioners were otherwise employed during this intervening period and if so, MSRTC would be at liberty to deduct the amount of wages that the Petitioners may have earned from their alternative employment whilst paying out the back wages. In the event MSRTC wishes to undertake this exercise, such exercise should be completed within a period of 4 weeks from the date of pronouncement and uploading of this order.

22. The Writ Petitions are disposed of accordingly. We appreciate the assistance rendered by Dr. Sathe as Amicus Curiae in the matter.

23. Whilst parting, we anticipate that the Impugned Circular *albeit* in the absence of Clause 11 which we have struck down hereinabove, may still give rise to grievances suffered by various other persons employed by MSRTC who may be diagnosed with disabilities in the future. In order to prevent their suffering, we propose the following measures which could be taken into consideration when MSRTC implements the Impugned Circular:

- i. Upon an employee acquiring a disability, the medical examination and disability certification ought to be completed within a period of 4 weeks of such disability coming to the notice of MSRTC;
- ii. Within 4 weeks from the aforesaid medical examination and disability certification, the employee shall be provided with an alternative position with MSRTC in accordance with Section 20 of the 2016 Act;
- iii. The time elapsed in conducting the medical examination, certifying the disability and providing an alternative position shall be treated as part of the persons' employment and the employee shall be paid back wages for this entire period expeditiously;
- iv. MSRTC will be at liberty to test the veracity or otherwise of disability certificates that may be furnished. However, this exercise of ascertaining the truthfulness of these disability certificates must in any event be completed within a

period of 2 weeks from the date of submission of such disability certificates. In the event that MSRTC fails to find any fault with the said disability certificates, the principles enumerated hereinabove ought to apply.

24. MSRTC will have to implement these guidelines in their entirety, keeping in mind the intent, objective and spirit of the 2016 Act.

(R.I.CHAGLA, J.)

(S.J.KATHAWALLA, J.)