

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
10.09.2020	21.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.10078 OF 2013

Uday Singh Meena

.. Petitioner

- Vs -

1. Chief Security Commissioner
Railway Protection Force
Southern Railway
6th Floor, Moore Market Complex
Park Town, Chennai 600 003.

2. Addl. Chief Security Commissioner
Railway Protection Force
Southern Railway
6th Floor, Moore Market Complex
Park Town, Chennai 600 003.

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records of the 2nd respondent bearing reference No.X/P.579/IPF/2012 dated 10.10.2012 and the 1st respondent order bearing reference No.x/p.597/50th Batch dated 8.3.13 and quash the same and consequently direct the 2nd respondent to reinstate the petitioner with backwages, continuity of service and all other consequential benefits in any suitable post.

For Petitioner : Mr. N.G.R.Prasad, for
M/s. Row & Reddy

For Respondents: Mr. P.T.Ramkumar

ORDER

The petitioner assails the impugned order passed by the 2nd respondent dated 10.12.12 terminating the services of the petitioner and also the order of the appellate authority confirming the said termination without affording him alternative employment as per the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full

Participation) Act, 1995 (for short the 'Act, 1995').

2. It is the case of the petitioner that he partook in the selection process conducted by the Railway Board for the post of Sub Inspector in Railway Protection Force (for short 'RPF') and came out successful in the physical test, written test and interview and he was also cleared in the medical test on 9.4.09. It is further averred by the petitioner that he was sent for training for the post of Sub Inspector in RPF on 20.4.09 and on completion of training, he was appointed as Temporary Sub Inspector at RPF, Tricity with effect from 22.4.10 and was put on probation for two years. It is the further averment of the petitioner that he was directed to undergo training in weapon and tactics on 29.7.11, whereupon, he was directed to report for medical examination. After examination on 10.2.12, the Medical Board, found the petitioner not fit for the post of Sub Inspector in RPF in BEE One category as glasses were not permitted. However, it is further averred that the petitioner was found fit for Bee One Level and below and a recommendation in this regard was also made by the Medical Board for alternative employment.

3. It is the further case of the petitioner that brushing aside the recommendation of the Medical Board for alternative employment, a show cause notice was issued by the 2nd respondent on 18.4.12 calling upon the petitioner as to why his probation should not be terminated. Explanation was submitted by the petitioner along with the copy of the certificate given by the Government Eye Hospital to the effect that the vision of the petitioner is normal. In the above backdrop, the probation of the petitioner was extended by another six months and the petitioner was accommodated in a supernumerary post and once again, the petitioner was sent for examination on 30.7.12 by the Medical Board, which confirmed its earlier report dated 10.2.2012, which resulted in the termination of the petitioner on 10.10.12 by the 2nd respondent against which the petitioner filed appeal before the 1st respondent on 29.10.12 and the said appeal was dismissed on 19.2.13 aggrieved by which the present writ petition has been filed.

4. Learned counsel appearing for the petitioner submits that the Act, 1995, was enacted for the specific purpose of accommodating persons, who had acquired disability during their employment, in any other suitable post and drew the attention of this Court to Section 47 of Act, 1995, wherein it has been mandated that an employee, who acquires a disability during his service be shifted to some other post with the same pay scale and service benefits and even if a similar post is not available, supernumerary post need to be created to accommodate the said person. It is the further submission of the learned

counsel for the petitioner that at the time of entering into service, the Medical Officer of the respondents has certified the petitioner to be physically fit for appointment to the post and in such a backdrop, the defective vision should be deemed to have been acquired by the petitioner during his service, which necessitates invocation of the provisions of Act, 1995. It is the further submission of the learned counsel that though the Medical Board has given its opinion as to the fitness of the petitioner and also recommending alternative employment to the petitioner, however, without considering the said recommendation, the respondents have terminated the petitioner from service, which is wholly illegal and against the framework of Act, 1995 and, therefore, the same requires interference at the hands of this Court.

5. Learned counsel for the petitioner, to substantiate his contentions, relied on the following decisions :-

i) Kunal Singh - Vs - Union of India & Anr. (2003 (4) SCC 524);

ii) Union of India & Ors. - Vs - Pramod Sadashiv Thakre (W.P. No.3620 of 2011 - (Bombay)); and

iii) Pawan Kumar - Vs - Delhi Transport Corporation (W.P. (C) No.4261 of 2013 (Del.)).

6. Per contra, learned standing counsel appearing for the respondents submit that Act, 1995, does not stand attracted to the case of the petitioner. It is the submission of the learned counsel that the defect in the vision suffered by the petitioner could not be termed to be a disability falling within the definition of 'disability' u/s 2 (i) of Act, 1995. It is the further submission of the learned counsel for the respondents that without admitting that the petitioner is suffering from disability, the defective vision of the petitioner could not be termed to be a disability acquired by the petitioner during his service, which would in turn entitle him to the benefit of Section 47 of Act, 1995.

7. It is the further submission of the learned counsel for the respondents that Rule 57.3 of the RPF Rules, clothes power on the appointing authority to terminate a member of the Force if not found fit for permanent appointment. Learned counsel further submitted that Rule 67 further empowers the appointing authority to discharge a member of the force at any point of time for reasons to be recorded in writing, till such time he is not formally appointed to the Force. The petitioner not having fulfilled the eligibility criteria for the post occupied by him, and after obtaining the opinion of the Medical Board, certifying him unfit for the said post, in exercise of powers conferred under the RPF Rules, the appointing authority has discharged the

petitioner from service, that too after affording due opportunity, though the petitioner was not formally appointed to the Force. It is the further submission of the learned counsel for the respondents that the petitioner, being a probationer and not a person formally appointed to the Force, even the Rules does not mandate affording an opportunity, however, the respondents have afforded him reasonable opportunity, by even extending his probation and keeping him in a supernumerary post till such time the second opinion was given by the Medical Board once again reiterating its earlier view that the petitioner was unfit for the said post and, therefore, even the principles of natural justice has not been violated by the respondents and, therefore, the case of the petitioner that he is a formally appointed member of the Force and is entitled to the benevolent provisions of Act, 1995, cannot be pressed into operation.

8. It is the further submission of the learned counsel for the respondents that even at the time of admitting the petition, this Court had not granted any interim order protecting the interests of the petitioner. The petitioner having not taken any steps to protect his interests by obtaining any favourable orders continuing him in service and more than seven years have passed since the termination of the petitioner from service, this Court shall not interfere with the impugned order after such a long period of time.

9. It is the further submission of the learned counsel for the respondents that Rule 67.2 of the RPF Rules vests power on the Chief Security Commissioner to discharge such of the members, who are not formally appointed to the force, by recording reasons in writing, in the interest of the Force. Therefore, the order passed by the Chief Security Commissioner, being a reasoned order, does not call for any interference.

10. Learned counsel appearing for the respondents submitted that the decisions relied on by the petitioner would not stand attracted to the case of the petitioner, as in all those decisions, the persons to whom the benefit of Act, 1995 was passed, were all persons, who were confirmed employees and not probationers and, therefore, equating the confirmed employees with the petitioner herein would not be justified. Further, it is the submission of the learned counsel for the respondents that in the decisions referred by the petitioner, disability was suffered by the persons therein in the course of employment, but in the present case, the defect in the vision of the petitioner would not fall within the category of disability and further the said defect in vision could not be said to have been suffered by the petitioner in the course of employment. Therefore, the said decisions would not in any way stand attracted to the case of the petitioner and, accordingly, prays for dismissal of the writ

petition.

11. This Court paid its undivided attention to the contentions advanced by the learned counsel appearing on either side and also perused the materials available on record relating to the medical records, which are vital for consideration of the case and also adverted to the decisions relied on by the learned counsel for the petitioner to impress upon the court that the petitioner is a person with disability within the meaning of Act, 1995.

12. Before proceeding to analyse the case on its merits, it is but useful to refer to the various Sections of the Act, 1995, which are necessary and have a crucial bearing on the issue on hand so as to enable this Court to come to a substantive decision in the lis before this Court.

13. Section 2 (i) of Act, 1995, defines "disability" and the same is extracted hereunder :-

- "2.
(i) "disability" means -
(i) blindness;
(ii) low vision;
(iii) leprosy-cured;
(iv) hearing impairment;
(v) locomotor disability;
(vi) mental retardation;
(vii) mental illness;"

14. Section 2 (t) of Act, 1995, defines "person with disability" and the same is extracted hereunder :-

"(t) "person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority;"

(Emphasis Supplied)

15. Section 2 (u) of Act, 1995, defines "person with low vision" and the same is extracted hereunder :-

"(u) "person with low vision" means a person with impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device;"

(Emphasis Supplied)

16. Section 47 of Act, 1995, deals with non-discrimination in government employment and the same is extracted hereunder :-

"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."

(Emphasis Supplied)

17. The necessity for enacting Act, 1995 and the scope of Section 47 has been dealt with by the Hon'ble Supreme Court in Kunal Singh - Vs - Union of India, (2003 (4) SCC 524) wherein, it was held as under :-

"8. The need for a comprehensive legislation for safeguarding the rights of persons with disabilities and enabling them to enjoy equal opportunities and to help them to fully participate in national life was felt for a long time. To realize the objective that people with disabilities should have equal opportunities and keeping their hopes and aspirations in view a meeting called the "Meet to Launch the Asian and Pacific Decades of Disabled Persons" was held in Beijing in the first week of December 1992 by the Asian and Pacific countries to ensure "full participation and equality of people with disabilities in the Asian and Pacific regions". This meeting was held by the Economic and Social Commission for Asia and Pacific. A proclamation was adopted in the said meeting. India was a signatory to the said proclamation and agreed to give effect to the same. Pursuant thereto this Act was enacted, which came into force on 1-1-1996. The Act provides some sort of succour to the disabled persons.

9. Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that a person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The 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.

18. Section 47 of the Act clearly expresses the proposition that the Parliament had in mind, which has been spoken out through the above Section. The Parliament, in its wisdom, had intended to clothe the disabled persons with security by enacting the above law. The intention of the Parliament is clear, which unequivocally speaks that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. Therefore, the crucial condition that flows out from Section 47 is that the employee should be disabled and that such disability should have been acquired during the service. Therefore, twin tests need to be satisfied to invoke the provision of Section 47 of Act, 1995. In that the person should be certified disabled and that the disability should have been acquired during the service.

19. In the above backdrop of Section 47, it is but necessary to look at Section 2 (t), which defines "person with disability" as a person suffering from not less than forty per cent of any disability as certified by a medical authority. The types of disability that are brought within the ambit of the Act, 1995, are spoken out in Section 2 (i). Therefore, from Section 2 (t) it is unambiguously clear that the disability suffered by a person should be not less than forty percent to treat the individual to be a person with disability and that it should be such of those disability, as codified in Section 2 (i). Further, Section 2 (u) defines a "person with low vision" as a person with impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device.

20. From a conjoint reading of sub-sections (i), (t) and (u) of Section 2 makes it abundantly clear that the person, who wishes to invoke the provisions of Act, 1995, to derive a substantive benefit, should be a person, who suffers disability as is codified in the above sub-sections of Section 2.

21. In the case on hand, it is the case of the petitioner that he has been terminated from service on account of the fact that he developed defective vision, requiring the aid of glasses, as the rules of RPF prescribe that an employee would stand terminated if he develops defective vision, which necessitates wearing of glasses, within six years of entering into service. It is the further case of the petitioner that though the Medical Board had twice certified him to have defective vision requiring glasses and, therefore, unfit for the post he was holding, however, the Government Eye Hospital,

Chennai, had certified him that he does not have any defect in his eyes. It is the further case of the petitioner that the medical certificate issued to him by the Medical Officer of the respondent at the time of joining the post had not found any deficiency in his eyes and, therefore, the defective vision had been acquired by him during his service and, therefore, he is entitled to the benefit u/s 47 of Act, 1995.

22. However, the above contention of the petitioner is countered by the respondents stating that the rules mandate a requisite physical fitness and the force in which the petitioner is employed being a disciplined and law enforcing force, the rules have to be scrupulously adhered to and that deviation is not only impermissible but it will have disastrous and adverse consequences. Further, the rules of RPF cannot stand diluted by the provisions of Act, 1995, in view of the nature of employment. It is the further contention of the respondents that without admitting that the Act, 1995, would stand attracted to the petitioner, the petitioner, being a probationer, his termination is in consonance with Rule 57 and he cannot equate himself to that of a confirmed employee to derive the benefit of Act, 1995.

23. In the backdrop of the above contentions, this Court is entrusted with the task of browsing through the materials in the typed set to find out as to the sustainability of the submissions advanced on either side.

24. A perusal of the materials available on record reveals that pursuant to putting the petitioner on weapons training, for the purpose of undergoing the said training, initially the petitioner was referred to the Medical Board for its opinion as to the medical fitness of the petitioner, more particularly his vision. The Medical Board, on examination, found defectiveness in the vision of the petitioner and, thereby, the petitioner was examined at various levels. Even at the initial examination, the distance vision of the petitioner was found to be defective and it was opined that the same could be corrected only with glasses. The petitioner was thereafter referred for ophthalmic examination and the Senior Divisional Medical Officer diagnosed the condition of the petitioner as 'Defective Distance Vision' and, accordingly, communication was addressed by the Medical Superintendent in which the following observation has been made :-

"The above named employee who was placed on sick list at RH/GOC from 29.7.2011 has been examined by Medical Board held at RH/PER on 09.12.2011 and found him Unfit in as SI in RPF in Bee One Category but is Fit in Bee One and below for other jobs as glasses are not permitted for

RPF 09-12-2011.

Necessary certificate of recommendation for alternative employment dated 09.02.2012, Physical Fitness Certificate No.F235/543976 dated 06.02.2012/09.02.2012 and discharge medical certificate No.1666/980966 dated 09.02.2012 issued in his favour are enclosed."

25. The whole crux of the petitioner's case lies on the above communication of the Medical Superintendent, in which the petitioner, while has been declared unfit for holding the BEE One Category post in RPF, however is found fit for lesser posts, as glasses are not permitted for BEE One Category posts. Further, the Medical Superintendent has placed necessary certificate of recommendation for alternative employment and, in this backdrop, it is the contention of the petitioner that he is entitled to the benevolent provisions of the Act, 1995 and, he should be provided with alternative employment.

26. In the above backdrop of the certificate issued by the Medical Superintendent, it is but necessary to look into the actual medical deficiency suffered by the petitioner and whether the same would attract the provisions of the Act, 1995.

27. To appreciate the above, the notings in the medical records are of much importance. The notings of the medical examination reveal that on 1.8.11, when the petitioner was examined, he was found to have defective vision and, therefore, he was advised to attend the eye specialist for opinion. In pursuance to the same, on 2.8.11, the petitioner has been examined and the notings in the file reveal that his near vision was N/6 in both the eyes without glasses, while the distance vision was found to be 6/18 and 6/36. Further notings reveal that to get clear vision, correction of +1.00 in the right eye and +1.25 in the left eye was prescribed. Further markings reveal that since glasses are not permitted in RPF (upto 6 years of continuous service) he needs 2nd opthal opinion at RH/PER.

28. Pursuant to the same, the petitioner was referred for 2nd ophthalmic opinion on 4.8.11, where his vision was found to be 6/24 in both the eyes and correction of 0.75 and 1.25 in right and left eye were noted to obtain clear vision. It has been further observed in the noting that with glasses, his vision is 6/9 in both the eyes. Pursuant to the above medical observation, opinion has been rendered as noted above and communication has been addressed, which has been extracted supra.

29. Though a medical certificate has been produced by the petitioner before the respondents from the Government Eye Hospital, Chennai, certifying that he has no defect in his

vision, however, a perusal of the said report does not give any indication as to the quality of the vision of the petitioner. The report given by the Government Eye Hospital merely says that the vision of the petitioner is without defect, but no qualitative analysis seem to have been made as is reflected from the report. Though the petitioner places reliance on the said report to canvass his plea that the final authority on vision is the Government Eye Hospital and the report given by them should form the basis of any opinion, however, for the reasons aforesaid, the report being devoid of any clear qualitative analysis, this Court is not inclined to take into consideration the same.

30. In the above circumstances, this Court is left with the report of the Medical Officer of the Railway Hospital, which requires to be considered by this Court to arrive at a decision one way or the other.

31. As stated supra, the Medical Officer at the Railway Hospital has opined that the petitioner is suffering from distance vision. It is also further opined by the Medical Officer that the petitioner is not fit for the post of BEE One, for which glasses is not permitted, but is eligible for being appointed in the post of Bee One, which is a grade below and, accordingly, has suggested for alternative employment.

32. In the above context, while the petitioner claims alternative employment under the Act, 1995, however, it is the stand of the respondents that the Act, 1995 would not apply as the rules governing the service has to be applied and that the medical condition of the petitioner would not fall under any of the provisions of the Act, 1995. In this backdrop, this Court has to consider whether the medical condition of the petitioner would attract the provisions of Act, 1995. It is the further case of the respondents that the petitioner, being a probationer, cannot be construed to be an employee to entail him the benefit of the Act, 1995 as probationer is not a regular employee but only a temporary employee and does not get all the benefits of a regular employee.

33. The stand of the respondents insofar as the petitioner being a probationer and not an employee to derive the benefits of the Act, 1995, even at the very outset, does not merit any acceptance for the simple reason that Section 47 of the Act, 1995 does not make any distinction between the nature of services it protects. Section 47 does not make any distinction between a permanent employee and a probationer. In fact, nowhere in the Act, 1995, a distinction is cast between a permanent employee and a probationer, which clearly reveals the intention of the Parliament was only to accommodate an employee

in an alternative employment, subject to his acquiring physical disability during his service. It nowhere makes a distinction as to the nature of the service of the employee, viz., whether a confirmed employee or a probationer. Therefore, the contention of the respondents that the petitioner is a probationer and is not entitled to the protection of the Act, 1995, deserves to be rejected.

34. Coming to the issue proper, viz., as to the applicability of Act, 1995, to the petitioner, Section 2 (i) (supra), defines 'disability' which takes within its fold 'blindness' and 'low vision'. Even a cursory glance makes it clear that 'blindness' is not attracted to the case of the petitioner. However, whether 'low vision' codified in clause (ii) of Section 2 (i), would stand attracted to the medical condition of the petitioner is the crucial question that needs to be considered.

35. Section 2 (u) defines a 'person with low vision' as one with impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device. The above definition makes it clear that a person is said to suffer low vision in the event the impairment of visual functioning persists even after treatment or standard refractive correction and that assistive device enables the person in planning and execution of the task.

36. Similarly, Section 2 (t) defines 'person with disability' and it stipulates that any person suffering from not less than forty percent of any disability as certified by a medical authority. Therefore, to bring a person within the ambit of Section 2 (t), the disability suffered by the said individual should be not less than forty percent and the same should be certified by a medical authority. From the above definition, two limbs are evident in the said definition, firstly, that a person should suffer from not less than forty percent of any disability and secondly such disability should be certified by a medical authority as not less than forty percent. Only on satisfaction of both the limbs in the said section, it could be said that the person could be said to be a person with disability.

37. In the above context of Section 2 (t), a careful perusal of Section 47, on which much stress is laid on to claim alternative employment under Act, 1995, it is evident that Section 47 clearly speaks that no establishment shall dispense with or reduce in rank, an employee who acquires a disability during his service. From a plain reading of Section 47, it is clear that the disability should be suffered by the employee

during his service.

38. On a conjoint reading of Section 2 (t) and Section 47, what transpires is that the person, claiming the benefit under the Act, 1995, should have suffered the disability during his service and that the disability suffered should be not less than forty percent as certified by the medical authority. Only if the above ingredients are satisfied, then the person would be said to be entitled to claim the benefit of alternative employment under the Act, 1995.

39. In the above backdrop of the provisions the case of the petitioner needs to be looked into to find out whether the medical condition of the petitioner could be termed to be a disability falling under the ambit of Act, 1995.

40. Before proceeding to analyse the issue in the context of the Act, 1995, this Court would like to turn to the decisions referred by the learned counsel for the petitioner to find out the applicability of the said decisions to the present facts.

41. The decision of the Hon'ble Supreme Court in Kunal Singh's case (supra) has already been referred to and this Court is in respectful agreement with the said decision, wherein the Supreme Court has categorically held that 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.

42. The decision of the Bombay High Court in Union of India - Vs - Pramod Sadashiv Thakre (W.P. No.3620/2011 - Dated 19.10.2011) has been relied on, wherein the Division Bench of the Bombay High Court, in a case relating to a person suffering from 'Colour Blindness' held as under :-

"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."

43. Following the decision in Pramod Sadashiv Thakre's case (supra), a Division Bench of the High Court of Delhi, in the case of Pawan Kumar - Vs - Delhi Transport Corporation (W.P. (C) No.4261/2013 - Dated 16.1.2015) has taken a similar view that the benevolent provisions of the Act, 1995 has to be read in favour of the employee for his survival and not otherwise. In the said case, the petitioner suffered loss of vision in his eye to an extent of 30% and his employment was as a driver.

44. In the above backdrop, this Court is entrusted with the task of finding out whether the medical condition of the petitioner could be said to be a disability falling under the ambit of the Act, 1995.

45. As evident from the records, the Medical Officer has merely certified that the petitioner suffers from 'Distance Vision'. The power required to correct the distance vision has been tabulated in the report of the Medical Officer. However, the moot question that falls for consideration is "Whether distance vision could be said to be a form of disability as envisaged under the Act, 1995." Distance vision is not a form of disability prescribed under the Act, 1995. Only low vision

is a form of disability prescribed under the Act, 1995. Further, even for low vision, the percentage of low vision suffered by the individual is the prime consideration for putting the individual under the category of a person suffering with disability. In the absence of 'distance vision' being prescribed as a disability under the Act, 1995, whether the vision of the petitioner, be it 'distance vision' could be labelled to be 'low vision', thereby attracting the provisions of the Act is to be decided.

46. As stated supra, a conjoint reading of Section 2 (t) and 2 (u) makes it explicitly clear that a 'person with low vision' could be termed to be a 'person with disability' only if the person suffers impairment of visual functioning even after treatment or standard refractive correction and that such impairment should not be less than forty percent of any disability certified by a medical authority.

47. In the case on hand, a perusal of the materials found in the typed set, more particularly, the medical reports relating to the vision of the petitioner reveals that nowhere the medical officer has calculated the percentage of vision of the petitioner. The medical officer has only noted the deficiency in the vision of the petitioner and the power correction required for treating the visual deficiency. The shortfall in the vision of the petitioner in terms of percentage has not been calculated either by the medical officer or called for by the employer/respondents to assess whether the petitioner is a person with disability attracting the provisions of the Act,

48. It is to be pointed out at this juncture that once the medical officer came to the conclusion that the petitioner is a person unfit to hold the post of BEE One, as glasses are not permitted and when certifying that the petitioner is unfit for the said post and at the same time recommending his case for alternative employment, the medical officer ought to have assessed the percentage of deficiency of vision of the petitioner for the purpose of recommending the case of the petitioner for alternative employment. Mere finding the petitioner to be a person with distance vision, without assessing the shortfall in the percentage of the vision, it is to be pointed out that if the said assessment of the medical officer is taken to be a condition of low vision, then such an assessment by the medical officer would place at least a third of the population in the country to be persons suffering from disability attracting the provisions of the Act, 1995. The disability having not been assessed in terms of percentage by the medical officer and more so, when distance vision having not been prescribed as a disability under the Act, 1995, this Court

is of the considered view that the case of the petitioner for attracting the provisions of the Act, 1995, for the purpose of alternative employment would not stand the test of judicial scrutiny and, therefore, the claim made by the petitioner for an alternative employment invoking the provisions of Section 47 of the Act, 1995, does not deserve acceptance.

49. In the above backdrop of the facts as unfolded above, per se, the condition of the petitioner could only be said to be an occupational disability, but would not come within the purview of the Act, 1995. However, would the rejection of the case of the petitioner for alternative employment under the Act, 1995, prevent this Court from considering the case of the petitioner for alternative employment in the facts of the case is the attendant question that falls for consideration of this Court. Therefore, what requires to be seen in the present case is the continuance of the petitioner in employment in view of the attendant circumstances surrounding the whole factual matrix.

50. True it is that Rule 57 of RPF Rules, clothe the appointing authority with power to terminate the services of a probationer. But when the medical opinion is not conclusive on the basis of the Act, 1995, which Act is a special enactment and will have an overriding effect over the RPF Rules, it was incumbent on the part of the appointing authority to have sought for detailed opinion from the medical officer with reference to the Act, 1995, more so when the medical officer has even recommended the case of the petitioner for alternative employment.

51. Further, it is to be pointed out that even the RPF Rules itself mandate that person with vision, which is defective, which requires wearing of glasses, would not be a conducive choice for continuance of employment in BEE One category, which, according to the respondents would affect the discharge of functions and performance of the individual/the petitioner herein in the said post, the only inference that could be drawn from such a stand is that the respondents are of the opinion that the medical condition of such of those individuals would disable them to discharge the duties effectively. Such being the case, without getting a clear opinion as to the medical condition of the petitioner with reference to the Act, 1995, ousting the petitioner from service citing Rule 57 of the RPF Rules does not augur well with this Court.

52. Act, 1995 was enacted only with the clear intention that an employee, who acquires disability during his service, ought to be protected and if left unprotected, would not only suffer for himself, but possibly all those who depend on him

would also suffer. The wisdom with which the Parliament has enacted the very provisions of the Act, 1995, is clear from the very opening part of Section 47, which reads that "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". In the case on hand, as already held that Section 47 does not stand attracted, but Sections 2 (t) and (u) having not been satisfied in its letter and spirit by the appointing authority to find out the medical condition of the petitioner vis-a-vis the Act, 1995, definitely, a burden is cast upon the employer/respondents and in such a scenario, the fallacy of the respondents outweigh the RPF Rules, which in turn should enure to the benefit of the petitioner.

53. Further, one more aspect which weighs more in the mind of this Court is the initial medical report issued by one of the other Medical Officers of the respondents. The medical certificate pertains to medical fitness of the candidate prior to joining duty. A perusal of the said medical certificate issued by the Railway Medical Examiner reveals that the candidate, viz., the petitioner herein, was examined by the said medical officer and found fit for being appointed for BEE One post, the very post in which the petitioner was appointed and from which he is sought to be terminated for his defective vision later in point of time. When once the respondents accepted the petitioner's fitness by relying on the certificate granted to him by their very own medical officer, the said certificate should be deemed to be covering all aspects of the health of the petitioner. The respondents, at the initial point of time, did not make any effort to subject the eye sight of the petitioner to detailed scrutiny as to whether his vision is normal and have accepted the certificate issued by their own medical examiner certifying his fitness. If this medical certificate is to be taken into consideration for the purpose of appointment of the candidate, this Court would be left with no other alternative, but to hold that the defective vision suffered by the petitioner has been acquired during the service of the petitioner. However, for multifarious reasons, this Court is not inclined to hold that the defective vision of the petitioner is a medical condition acquired during the service, for the reasons already discussed earlier.

54. However, in view of the discussions made above, the petitioner alone cannot be put in peril by stripping him of his livelihood by terminating his service, when the respondents have also been equally lethargic in their appointing process and in turn should also bear the burnt. Furthermore, it is to be pointed out that relegating the matter back to the respondents to assess the petitioner's medical condition vis-a-vis the Act, 1995, by subjecting the petitioner to medical examination once

over to have his vision examined to assess the percentage of distance vision, at this distant point of time, would be of no avail, as the petitioner was terminated way back in October, 2012 and almost a period of eight years have flown by and revisiting the medical opinion by putting the petitioner to go through the rigour of the medical process would be an exercise in futility, as it is an accepted fact that vision of individual deteriorates over a period of time and in the past eight years, the vision of the petitioner would have definitely deteriorated and, therefore, directing him to undergo the ophthalmological investigation once again would serve no purpose. In such view of the factual matrix as evolved in the present case, the failure of the respondents to subject the petitioner to proper medical examination, even at the earliest point of time, knowing fully well the necessities for the post to be held by the petitioner, only warrants reinstatement of the petitioner in service. However, it is also to be remembered that the post which the petitioner was holding at that point of time was a post, in which the medical standards of the person/employee should be such that his continuance in the said post would not jeopardise the safety and security of the public, the co-employees and the employee himself. However, even at that point of time when the petitioner was terminated from service on the basis of the RPF Rules, which termination was for the specific reason that the medical standard of the petitioner was not conducive to hold him in the said post, at this distant point of time, reinstating the petitioner in the same post would not be conducive either in the interests of the community, the country or the public at large. Further, in the facts of the case, as discussed above, this Court, not reinstating the petitioner on the basis of the provisions of the Act, 1995, but only in view of the fallacies pointed out above, which could be attributed to both the petitioner as well as the respondents, but in exercise of its inherent powers under Article 226 of the Constitution, deems it fit and proper that the petitioner should be reinstated in a post, which in no way affects the security and safety of the public, co-employees and the employee himself and at the same time also safeguards the interest of the administration.

55. For the reasons aforesaid, this Court, while allowing the writ petition, directs the respondents to reinstate the petitioner in service in an equivalent post, which in no way affects the security and safety of the public, co-employees and the employee himself and further also safeguards the interest of the administration. In case such a post is not available, the respondents shall create a supernumerary post and reinstate the petitioner till such time such a post is available so that the petitioner could be slotted into the said post. It is further directed that the petitioner would be entitled to continuity of service from the date of his termination, but would not be

entitled for backwages invoking the concept of 'No Work - No Pay'. The said exercise of reinstatement shall be completed within a period of four months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

GLN

To

1. Chief Security Commissioner
Railway Protection Force
Southern Railway
6th Floor, Moore Market Complex
Park Town, Chennai 600 003.

2. Addl. Chief Security Commissioner
Railway Protection Force
Southern Railway
6th Floor, Moore Market Complex
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+1cc to Mr.Row and Reddy, Advocate, S.R.No. 30729

+1cc to Mr.P.T.Ramkumar, Advocate, S.R.No. 30780

W.P. NO. 10078 OF 2013

RSV (CO)

GN(15/10/2020)

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