



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P.No.23389 of 2021

V.Shanmughasundharam

.. Petitioner

Vs

1.Government of Puducherry
Judicial Department
Rep. by the Honble Chief Judge
Puducherry.

2.The Presiding Officer
Industrial Tribunal-Cum-Labour Court
Puducherry.

3.The Secretary
Judicial Department
Government of Puducherry
Puducherry.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records of the order of the 1st respondent vide No.1586/JD/A/2021, dated 29.09.2021 and the Office Order of the 2nd respondent vide No.250/ JUD/IT-Cum- LC/Estt./2021 dated 30.09.2021, quash the same and direct the respondents to reinstate the petitioner in a suitable post or in a supernumerary post as mandated under Section 20(4) of the Rights of Persons with Disability Act 2016 and consequently direct the respondents to declare the probation of the petitioner as completed and remit back the leave debited from the petitioner's leave account from 10.09.2020 to 23.01.2021 and disburse the salary for loss of pay incurred from 24.01.2021 with increment and grant all consequential service and attendant benefits.



WEB COPY

For the Petitioner : Mr.L.P.Maurya

For the Respondents : Mrs.N.Mala
Government Pleader (Pondy)
for respondents 1 and 3

ORDER

(Order of the Court was made by
the Hon'ble Acting Chief Justice)

By this writ petition a challenge has been made to the orders dated 29.9.2021 and 30.09.2021 issued by respondents 1 and 2, respectively, with a prayer to direct the respondents to reinstate the petitioner in a suitable post or in a supernumerary post as mandated under Section 20(4) of the Rights of Persons with Disability Act, 2016 and also direct the respondents to declare the probation of the petitioner as completed and remit back the leave debited from the petitioner's leave account from 10.09.2020 to 23.01.2021 and disperse the salary for loss of pay incurred from 24.01.2021 with increment and grant all consequential service and attendant benefits.

2. By the impugned orders, respondent 1 and 2, admitted the petitioner into retirement on invalid pension provided under Rule 38 of the Central Civil Service (Pension) Rules, 1972.

3. The facts of the case show that pursuant to the advertisement issued by the respondents, the petitioner applied for the post of Senior Clerk in Industrial Tribunal-cum-Labour Court and after selection, he was appointed as Senior Clerk, by the order dated 01.09.2016. The appointment of the petitioner was made against the post called for visually disabled category and the petitioner at the time of appointment was 75% visually disabled. After the appointment of the petitioner, he was asked to pass required tests. The petitioner has made a request to exempt him from typewriting test. A copy of the request was sent to the appropriate authority and after consulting the Director of Health and Family Welfare Services, the Medical Board exempted the petitioner from appearing for typewriting examination and sent the exemption approval letter dated 21.04.2021 to the Judicial Department. During September, 2020, the petitioner had health issues due to Shunt Dysfunction and was admitted in the hospital three times and underwent three surgeries for Shunt replacement during the period between 10.9.2020 and 12.12.2020. His visual disability was increased from 75% to 100%. After taking leave for that reason, he applied for extraordinary leave of 180 days based on the

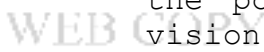


Doctor's advice. While the petitioner was under medication and in bed rest, respondents 1 and 2 passed the impugned orders in violation of Section 20 of the Rights of Persons with Disability Act, 2016 (for short, "Act of 2016"). The respondent authorities could not have admitted the petitioner into retirement on invalid pension, rather could have adjusted him on any other post or in the absence of it, they ought to have created a supernumerary post. The impugned orders passed by respondents 1 and 2 are hit by Section 20 of the Act of 2016. Thus, a prayer is made to declare the said orders as invalid and, accordingly, to set aside the same with consequential benefits to the petitioner.

4. The writ petition has been contested by learned Government Pleader (Puducherry), who submitted that the petitioner was appointed only on temporary basis against the post reserved for disabled category. He was suffering from visual disability to the extent of 75%. After the appointment, he prayed for exemption from appearing in the typewriting test and was granted on the advice of the Director of Health and Family Welfare Services. The petitioner, however, remained on leave from time to time and ultimately, it was found that the petitioner has completely lost his vision and, therefore, finding no other post available for a blind person, he was ordered to be admitted into retirement on invalid pension. In passing the order aforesaid, the respondents have not offended Section 20 of the Act of 2016.

5. Learned Government Pleader (Puducherry) further submitted that Section 20(4) of the Act of 2016 applies only to cases where an employee acquires disability during his service and not otherwise. In the instant case, the petitioner was appointed with disability itself and, thus, his case is not covered by Section 20(4) of the Act of 2016 because it is not applicable to the cases where the appointment is given to a disabled person in reference to Sections 33 and 34 of the Act of 2016. The petitioner was otherwise a temporary employee, thus, the prayer is not to cause interference in the impugned order and the writ petition is liable to be dismissed.

6. Learned Government Pleader has made a further reference to a notification issued by the Ministry of Social Justice and Empowerment, Government of India, dated 07.01.2021 under Section 33 of the Act of 2016. The post in question has been identified only for few categories of disability leaving others. In view of the notification dated 07.01.2021 issued by the Government of India now, the petitioner is not otherwise eligible for the post of Senior Clerk in the category of disabled person. Thus, for the aforesaid reason also, the writ petition deserves to be dismissed.



8. It is not in dispute that the petitioner was appointed on the post of Senior Clerk knowing about the disability in the vision to the extent of 75%. After the appointment of the petitioner in the year 2016, he continued to serve the respondent department. In the intervening period he was asked to pass typewriting test. On the prayer made by the petitioner seeking exemption, the respondent authorities granted it on the advice of the Director of Health and Family Welfare Services. The exemption approval letter dated 21.04.2021 was sent to the Judicial Department. In the meanwhile, the petitioner underwent three surgeries and, thus, remained on leave. Subsequently, it was found that the petitioner has lost his sight completely and thereby, he has 100% visual disability. On account of his blindness, respondent 1 and 2 passed the impugned orders as the petitioner could not be accommodated on any other alternate post.

10. For ready reference, Section 20 of the Act of 2016 is quoted hereunder:

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.

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

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]

WEB COPY

11. Sub-section 4 of Section 20 imposes restriction that no Government establishment shall dispense with or reduce in rank an employee who acquires disability during his or her service. The proviso below sub-section 4 allows the employer to shift the employee to another suitable post or in the absence of it, to keep him on a supernumerary post until a suitable post becomes available.

12. Learned Government Pleader (Puducherry) submits that Section 20(4) of the Act of 2016 is not attracted in the instant case for two reasons. Firstly, the petitioner was appointed in the disabled category i.e. the post meant for disabled person, and thereby the provision of Section 20(4) would not apply to him. Secondly, the petitioner has not acquired disability during the course of his service, rather, he was disabled even prior to entering into service.

13. The facts available on record show that at the time of entering into service, the petitioner was having 75% disability in vision and subsequently, the disability became 100%. The increase of disability resulting in passing of the the impugned orders occurred during the course of service. On a specific question to learned Government Pleader (Puducherry) as to whether the petitioner would have continued or not if the vision disability remains the same, learned Government Pleader (Puducherry) fairly admitted that the petitioner would have been continued in service. The impugned orders to dispense the services of the petitioner have been passed on account of the 100% disability he accrued during the course of service. Thus, in our opinion, Section 20(4) of the Act of 2016 is attracted in this matter. It is more so when the proviso aforesaid does not state that if a person enters with disability and such disability increases, an adverse order may be passed dispensing or reducing the rank of the employee. Both the questions raised by learned Government Pleader (Puducherry) are accordingly answered in negative.

14. Learned Government Pleader (Puducherry) has submitted that the appointment of the petitioner was only on temporary basis, thus, he cannot claim continuance of service. The order of termination is not on the ground that the petitioner was appointed on temporary basis and due to non-availability of post, thus, his service is not required. The impugned order was issued in reference to the increase in disability during the



course of employment. Thus, the justification of the order of termination cannot be accepted on a new ground, which otherwise has not been given in the impugned order.

15. The argument of learned Government Pleader (Puducherry) is even examined in reference to the notification dated 07.01.2021 issued by the Government of India under Section 33 of the Act of 2016. The respondents have failed to consider that notification. The aforesaid is to provide the post vis-a-vis the nature of disability for consideration of the appointment against the post reserved for disabled person. It does not justify the termination and otherwise the notification dated 07.01.2021 cannot be applied to the appointment made in the year 2016 or even to the termination effected by the impugned orders dated 20.09.2021 and 30.9.2021 which are not in reference to it. The aforesaid argument of learned Government Pleader (Puducherry) cannot be accepted.

16. The issue raised in the writ petition is otherwise covered by the Apex Court judgments in the cases of Kunal Singh v. Union of India and another, (2003) 4 SCC 524 and Bhagwan Dass and another v. Punjab State Electricity Board, (2008) 1 SCC 579.

17. In view of the above, we find reason to cause interference in the impugned order and, accordingly, the same is set aside with a direction to the respondents to reinstate the petitioner in service. If he cannot be continued on the post previously held by him, then the respondents would be at liberty to take action as per the proviso to Section 20(4) of the Act of 2016. The petitioner would be reinstated in service within a period of one month with consequential benefits from the date of receipt of a copy of this order. The issue of leave would be dealt by the respondents after going through the leave application, if any, and consideration of period on probation would be made. There will be no order as to costs. Consequently, W.M.P.Nos.24668 and 24669 of 2021 are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

bbr



To:

1.The Chief Judge,
Government of Puducherry,
Judicial Department,
Puducherry.

2.The Presiding Officer,
Industrial Tribunal-Cum-Labour Court,
Puducherry.

3.The Secretary,
Judicial Department,
Government of Puducherry,
Puducherry.

+1cc to Mr.L.P.Maurya, Advocate, S.R.No.4453 [28/04/2022]

+1cc to Government Pleader for Puducherry Sr.No.4241

W.P.No.23389 of 2021

PMK (CO)
PR (27/01/2022)