

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15202 of 2015

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Bibi Naima W/o Md. Shoukat Ansari resident of Village- Chhota Naki P.S.
Sanhaura District- Bhagalpur

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Director Primary Education, Bihar, Patna.
3. The Regional Deputy Director Primary Education, Bhagalpur.
4. The District Education Officer, Bhagalpur.
5. The District Programme Officer, Establishment Bihar Patna.
6. The Block Education Officer, Sanhaura, District Bhagalpur.
7. The Headmaster Middle School Chhotinaki, Block Sanhaura, District Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Dhananjay Kumar Pandey, Advocate
For the State	:	Md. Hasun Quareshi, AC to SC 01

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

- 2 22-02-2023 This writ application has been filed by the wife of an Assistant Teacher of Middle School, Chooti Naki stating that her husband was appointed as a Shiksha Mitra and thereafter he continued to perform his duty. While in service, he had undergone treatment for Psychological disease from 10.08.2014 to 19.08.2014 and was not in the fit mental condition, the Headmaster of the School wrongly got his sign on the resignation letter on 08th July 2015 and on the said basis, the District Education Officer relieved the petitioner's husband from duty. The petitioner filed a representation before the District



Education Officer on 28th August, 2015, whereafter she filed the present writ petition. She has placed on record the documents, which reflect that the petitioner's husband was suffering from mental diseases and was undergoing medical treatment. The last medical prescription of Neuro Psychiatrist of JNU Medial College and Hospital, Bhagalpur dated 19.08.2014 has been placed on record, the tests for disorders conducted on the petitioner has also been placed on record, which reflect about the unstable mental condition of the petitioner's husband.

2. In light of the aforesaid facts, the Court finds that the resignation letter dated 08.07.2015, which has been written in a different hand-writing from the person, who has signed it, can not be said to be voluntary resignation of the concerned person, the same is forced and not a voluntary resignation and its acceptance amounts to removal of a mentally challenged employee.

3. The provisions of **The Rights of persons with Disabilities Act, 2016** (hereinafter to be referred as the “**Act of 2016**”) provides for method and manner in which rights of a mentally ill person has to be protected. It would be relevant to quote Section **2(s), 3, 6 & 20 of the Act of 2016** reads as under:

“2(s). “Person with disability” means a person with long term physical, mental, intellectual



or sensory impairment which, in inter-action with barriers, hinders his full and effective participation in society equally with others;

3.(1) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.

(2) The appropriate Government shall taken steps to utilise the capacity of persons with disabilities by providing appropriate environment.

(3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.

(4) No person shall be deprived of his or her personal liberty only on the ground of disability.

(5) The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.”

“6. (1) The appropriate Government shall take measures to protect persons with disabilities from being subjected to torture, cruel, inhuman, or degrading treatment.

(2) No person with disability shall be a subject of any research without.-

(i) his or her free and informed consent obtained through accessible modes, means and formats of communication; and

(ii) prior permission of a Committee for Research on Disability constituted in the prescribed manner for the purpose by the appropriate Government in which not less than half of the members shall themselves be either persons with disabilities or Members of the registered organization as defined under clause (z) of section 2.”

“20. (1) No Government establishment shall discriminate against any person with disability in any manner 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.”

4. Thus, as per Section 20(4) of the Act of 2016 and the proviso thereto, a person, acquiring disability during his service, cannot be dispensed with from his job. The Disability Act of 2016 was introduced by the Parliament which has been notified on 28.12.2016 superseding the erstwhile **Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995**. The earlier act also provided under section 47 that a person suffering from any kind of disability during the course of employment would be entitled for protection and would not be removed from his post on account of such disability. Section 47 of the act of 1995 reads as under:



“47. (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.”

5. A look at **The Mental Health Act, 1987** and **The Mental Healthcare Act, 2017** reflects various provisions provided for protection to be provided to a person who is mentally sick. These acts incorporate every scope of protection of human rights and other natural rights of a mentally ill person. The Hon'ble Apex Court in a recent judgment in the case of **Ravinder Kumar Dhariwal & Anr. Vs. Union of India & Ors.** As reported in **2023 (2) SCC 209** has as under :

“134. The South African jurisprudence in assessing claims of misconduct relating to disability presents a middle path where an enquiry is to be conducted to assess whether the mental disability is incapacitating, which would then nullify the charge of misconduct. In the event, it is not incapacitating, the mental disability would still serve as a



mitigating factor in the imposition of sanctions. However, this approach also has a limitation where it focuses too much on the nature of impairment than the disadvantage. It has the possibility of making disability rights adjudication more complex and less accessible since it would require reliance on medical experts to assess how debilitating the mental disability is. [Lesli Bisgould, “Human Rights Code v. Charter : Implications of Tranchemontagne Twists and Turns and Seventeen Volumes of Evidence, or How Procedural Developments Might Have Influenced Substantive Human Rights Law”, 9 JL & Equality 33 (2012).] This also makes the disability regime vulnerable to being relegated to a medical model of disability rather than a social model. Thus, in the Indian context, a person with a mental disability is entitled to the protection of the rights under the RPwD Act as long they meet the definitional criteria of what constitutes a “person with a disability” under Section 2(s).

135. Having regard to the complex nature of mental health disorders, any residual control that persons with mental disabilities have over their conduct merely diminishes the extent to which the disability contributed to the conduct, it does not eliminate it as a factor. The appellant has been undergoing treatment for mental health disorders for a long time, since 2009. He has been diagnosed with 40 to 70% of permanent disability by a government hospital. While all CRPF personnel may be subject to disciplinary proceedings on charges of misconduct, the appellant is more vulnerable to engage in behaviour that can be classified as misconduct because of his mental disability. He is at a disproportionate disadvantage of being subjected to such proceedings in comparison to his able-bodied counterparts. The concept of indirect discrimination has been recognized by this Court in *Nitisha v. Union of India* [*Nitisha v. Union of India*, (2021) 15 SCC 125 : 2021 SCC On Line SC 261] , which is closely tied with the conception of substantive equality that pervades the international and Indian disability-rights regime. Thus, the



disciplinary proceeding against the appellant is discriminatory and must be set aside.

141. In light of Section 20(4) and the general guarantee of reasonable accommodation that accrues to persons with disabilities, the appellant is entitled to be reassigned to a suitable post having the same pay scale and benefits. The CRPF may choose to assign him a post taking into consideration his current mental health condition. The suitability of the post is to be examined based on an individualised assessment of the reasonable accommodation that the appellant needs. The authorities can ensure that the post to which the appellant is accommodated does not entail handling or control over firearms or equipment which can pose a danger to himself or to others in or around the workplace.”

6. In view of the aforesaid judgment, where the facts are almost similar, the action of the respondents in treating petitioner’s husband to have resigned is held to be bad in law. The resignation letter is found to have been written under force and the same is quashed and set aside. The petitioner’s husband shall be deemed to be reinstated in service and the respondents shall assign him a post taking into consideration his current mental health condition. The suitability of the post shall be examined as per assessment of a medical expert. All benefits as required to be provided under the Mental Health Act 2017 shall be extended to the petitioner’s husband and the medical expenses shall be reimbursed without insisting upon formalities. The bills shall



be submitted by the petitioner who is wife of the government employee. The government employee shall be entitled to all consequential benefits of period of service and pay fixation. The arrears shall also be released in favour of the petitioner's husband. The accounts of the petitioner's husband shall be allowed to be operated by his wife/petitioner in view of his unstable mental condition and if there is no post available for adjusting the petitioner's husband, he will be treated to be continued in job in terms of Section 20 of the Act 2016 and other allowance shall also be paid to him through his wife.

7.The writ petition is accordingly allowed. No cost.

(Sanjeev Prakash Sharma, J)

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