

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.480 OF 2023

Mr. Sudesh Kumar Waingade, ... Petitioner
Aged 58 years,
son of Mr. Hanumant Rao Waingade
Residing at Flat No.C5/8,
Dhanlaxmi Colony, Bhatlem, Panaji – Goa.

V/s.

- 1 State of Goa
Through Chief Secretary,
Having office at Secretariat,
Porvorim- Goa.
2. The Director of FDA,
Directorate of FDA,
Dhanwantari, Opp. Shrine of Holly Cross,
Bambolim- Goa.
3. State Commissioner for Persons with
Disabilities, Sanjay Centre for Special
Education, Pundaliknagar, Porvorim- Goa. ...Respondents.

Mr. Shivraj Gaonkar and Mr. P. Sirvoicar, Advocate for the petitioner.
Mr. Deep Shirodkar, Additional Government Advocate for
respondent Nos.1 and 2.
Ms. Maria Correia, Additional Government Advocate for respondent
No.3.

CORAM: BHARAT P. DESHPANDE, J

DATED: 31st January, 2024

ORAL JUDGMENT:

1. Rule. Rule is made returnable forthwith.
2. Heard with consent for final disposal.

3. The present petition challenges the order passed by the State Commissioner for persons with disabilities dated 09/05/2023 thereby rejecting the representation filed by the petitioner to consider his case in connection with mental disability.

4. Mr. Gaonkar appearing for the petitioner submits that the petitioner during his employment with the Government of Goa and Director of FDA i.e. respondent No.2 suffered disability and accordingly the certificate to that effect has been issued by the Institute of Psychiatry and Human Behaviour (IPHB). He submits that this Certificate is dated 09/02/2001 when the petitioner was in service with respondent No.2.

5. Mr. Gaonkar would further submit that the petitioner then approached the State Commissioner for issuing disability certificate to be issued under Section 80(b).

6. Mr. Gaonkar would submit that learned Commissioner has failed to consider the difference between physical and mental disability and more specifically the definition under Section 2(r) and Section 2(s). He further submits that the case of the petitioner is not in accordance with Chapter VI for Special Provisions for Persons with Benchmark Disabilities. He submits that the application filed by the petitioner was under Section 80(b) wherein there is no concept that the benchmark to be considered.

7. Mr. Gaonkar would then submit that since the petitioner was in employment, the employer is restrained from any discrimination as provided in Section 20 of the present Act which is pari materia to provisions of Section 47 of the old Act.

8. Mr. Shirodkar appearing for respondent Nos.1 and 2 though claimed that the powers of the Commissioner are limited and since the Commissioner is not expert, he has to fallback on the certificate issued by the competent authority, admit that there is no such discussion in the impugned order as to whether the case of the petitioner falls under Section 2(s) r/w. Section 80(b) of the Act of 2016.

9. Rival contention fall for determination.

10. Admittedly, the petitioner was in service with respondent No.2 and while in service, he suffered with some mental ailment. The petitioner was treated at IPHB, Bambolim and a certificate is also issued stating that the petitioner is suffering from schizophrenia.

11. Mr. Gaonkar is right in pointing out that the case of the petitioner should be considered under Section 2(s) of the Act of 2016 which deals with persons with disability which include physical, mental, intellectual or sensory impairment. There is no provision which could consider about a specific benchmark to counter such disability except physical disability.

12. The application filed under Section 80(b) of the Act of 2016 also required to be considered on the ground that such legislation is beneficial piece of legislation for the persons with disability. The purpose of the said Act is in tune with United Nations Convention on the Right of Persons with disabilities. The object of the said Act is to protect the rights of persons with disabilities at their employment places or otherwise. Such person should not suffer discrimination at any level only because they are suffering with such disabilities. Keeping in view the above object of the Act, it is necessary for the Commissioner to decide whether the application filed by the petitioner requires any benchmark to be considered or whether it come under Section 2(s) r/w Section 80(b) of the Act of 2016.

13. The impugned order clearly goes to show that all the above aspects are not been considered at all and the learned Commissioner refused to entertain his powers under the Act to adjudicate the application filed by the petitioner.

14. Having said so, it is the fit case to quash and set aside the impugned order and remand it to the learned Commissioner to decide such application afresh and by considering the provisions of the said Act. Similarly, the Commissioner, if necessary, should afford an opportunity to

the petitioner either to appear in person or through his representative or to file written synopsis/submissions in support of his case.

15. It is needless to state that this Court has not gone into the other aspects of the matter and therefore the Commissioner is entitled to look into all the relevant provisions for the purpose of deciding such application afresh.

16. It is also made clear that the application of the petitioner shall be decided as early as possible and within a period of one month from today. The petitioner is at liberty to file his submissions, if any, within a period of one week.

17. With these observations, Rule is made absolute on the above terms.

18. Parties shall act on an authenticated copy of this order.

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VISHAL
BHOIR

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BHOIR
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BHARAT P. DESHPANDE, J