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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 8th October, 2024*

\+ W.P.(C) 12359/2021 and CM APPL. 38870/2021

RAJ KUMAR WADHERA .....Petitioner

Through: Mr. Shashank Shekhar, Advocate.

versus

CANARA BANK & ORS. .....Respondents

Through: Mr. Puneet Taneja, Mr. Amit Yadav, Mr. Manmohan Singh Narula and Mr. Anil Kumar, Advocates for Respondent No. 1 to 4.
Mr. Ruchir Mishra, Mr. Mukesh Kr. Tiwari and Ms. Reba Jena Mishra, Advocates for UOI.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

JYOTI SINGH, J. (ORAL)

1. This writ petition has been preferred by the Petitioner laying a challenge to the order dated 30.07.2021 passed by the learned Chief Commissioner for Persons with Disabilities (Divyangjan) (hereinafter referred to as 'Commissioner Disability') and for a declaration that the Petitioner be treated as a person with disability. Direction is also sought to Respondents No. 1 to 4 to restore an amount of Rs.9,01,327/- in the salary account of the Petitioner along with interest as also credit 220 days of leave in the leave account.

2. Factual matrix to the extent necessary is that Petitioner joined Syndicate Bank in the year 1984 as a Clerk and was posted at Regional Office, Asaf Ali Road. In 1994, Petitioner was admitted twice in AIIMS,

Delhi for nose bleeding and Congenital Heart Disease ('CHD'). He was again hospitalized on 29.05.1996. Petitioner also underwent treatment in 2007 in Safdarjung Hospital for Atrioventricular Septal Defect ('AVSD') and was advised to undertake light duties and avoid exertion. Between 2012 and 2013, Petitioner was again treated at AIIMS and over a period of time, his medical condition is stated to have further deteriorated and he is on Oxygen Concentrator during nights.

3. It is averred in the writ petition that Petitioner was promoted in 2016 to the post of Assistant Manager and further on 01.04.2019 to the post of Manager in a fast-track promotion after clearing written examination and interview. On 22.02.2017, a disability certificate was issued by AIIMS, which was submitted to the Syndicate Bank on 06.03.2017. In May, 2019, Petitioner was transferred to Hiranakudna, Syndicate Bank Branch. Petitioner thereafter underwent treatment at various hospitals and on 31.10.2019, AIIMS issued the second disability certificate. Syndicate Bank merged with Canara Bank/Respondent No. 1 on 01.04.2020 and Petitioner continued as an employee of Canara Bank.

4. The grievance of the Petitioner is that despite his medical record and disability certificates, Bank is not treating the Petitioner as a disabled person under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('1995 Act') or The Rights of Persons with Disabilities Act, 2016 ('2016 Act'). It is argued by learned counsel for the Petitioner that even the Commissioner Disability, Department of Empowerment, Government of India rejected the plea of the Petitioner erroneously, holding that Petitioner's disability i.e. AVSD with severe pulmonary hypertension is not classified under specified disability

categories under the 2016 Act. Section 2(t) of 1995 Act defines a person with disability as a person suffering from not less than 40% of any disability as certified by a medical authority which is defined as a hospital or institution specified for the purposes of the Act by notification and AIIMS is one such medical authority. The Commissioner Disability has passed the impugned order oblivious of the provisions of 1995 Act and 2016 Act as well as the Guidelines issued by Ministry of Social Justice and Empowerment by Notification dated 18.02.2002, which were formulated to evaluate and assess mental illness and procedure for certification.

5. It is next contended that on the onset of Pandemic COVID-19, Petitioner applied for special leave under COVID guidelines which was granted by the Bank from 24.03.2020 to 31.03.2020. Petitioner sent repeated applications for extension of leave from 16.04.2020 to 30.09.2021 but there was no response and salary was credited to his account. On 28.10.2020, Petitioner made an attempt for updation of leave but was unable to do that. On 26.02.2021, Petitioner re-joined but on 31.03.2021 while on duty he was infected with the virus and again applied for leave. On 08.06.2021, Petitioner learnt that his 100 days earned leave and 120 days medical leave, credited to his leave account, was debited by the Bank without any opportunity of hearing or a show cause notice. On 09.06.2021, Petitioner learnt that a sum of Rs.9,01,327/- had been debited from his salary account again without a show cause notice or hearing, which was completely illegal and arbitrary looking at the fact that Petitioner suffers from co-morbidities and had taken leave as he was infected by the virus and protected by the COVID Guidelines.

6. Mr. Puneet Taneja, learned counsel appearing on behalf of the Bank argues that there is no legal infirmity in the impugned order passed by the Commissioner Disability. Considering all facts and circumstances and examining the provisions of the 2016 Act, it was rightly held that from the documents on record, the disability mentioned in the disability certificate was not covered under the 2016 Act. Section 2(i) of 1995 Act defines 'disability' and the disability of the Petitioner is not covered under the 07 disabilities specified therein. AIIMS had issued a disability certificate which indicated that Petitioner was suffering from AVSD with severe pulmonary hypertension, which does not fall under the specified disabilities and thus the Commissioner Disability rightly held that Petitioner cannot be declared as a person with disability. Petitioner is unable to point out how the illness of the Petitioner is classified under the specified disabilities in the 1995 Act or the 2016 Act. Reliance is placed on the judgment of the Supreme Court in ***Nawal Kishore Sharma v. Union of India and Others, (2021) 4 SCC 487,*** where the Supreme Court held that since Petitioner's heart ailment was not covered in the definition of disability, Courts cannot import words which Legislature chose not to and rejected the prayer of the Petitioner to declare him a person with disabilities under the Disabilities Act.

7. Insofar as deduction from the salary is concerned, Mr. Taneja contends that Petitioner remained absent from duties without any request for leave and despite several notices sent to him. Petitioner repeatedly asserted that he was exempted from attending duties being a person with disability with severe lung infection and other co-morbidities but the Bank informed him that he was not covered under the provisions of 2016 Act and could not be granted any exemption. It was not a matter of right for any employee to

seek leave during the COVID-19 period and Petitioner was bound to follow the proper procedure of applying for leave. Petitioner had remained absent unauthorizedly from duties between July, 2020 to May, 2021 *albeit* the salary was regularly credited to his account in the said period. Subsequently, the unauthorized absence was treated as loss of pay and excess salary credited into his account was recovered and rightly so.

8. Heard learned counsels for the parties and examined their contentions.

9. Insofar as the question whether Petitioner can be declared as a Person with Disability under the 2016 Act is concerned, this Court finds merit in the contention of the Bank. Petitioner calls upon this Court to declare that AVSD with severe pulmonary hypertension be classified and understood as a disability under the Disability Act and Petitioner be declared as a Person with Disability so that he is entitled to the benefit of the said Legislation. Section 2(i) of the 1995 Act takes into account various disabilities such as visual, locomotive, mental retardation, hearing impairment and leprosy. As can be seen AVSD or even pulmonary hypertension with or without AVSD is not covered within the definition of disability. Section 2(s) of the 2016 Act defines the expression 'person with disability' as 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. Section 2(zc) of 2016 Act defines 'specified disability' as those mentioned in the Schedule to the 2016 Act and in the Schedule, physical disability, intellectual disability and mental behaviour are specified. AVSD with severe pulmonary hypertension is neither a specified disability nor relatable to impairments which hinder full participation in the society. There can be no doubt that Commissioner Disability has to act

within the confines of the provisions of the 2016 Act, more particularly, Section 75 thereof and he cannot declare a medical condition/ailment as a disability outside the provisions of the Act. The impugned order shows that the Commissioner Disability has examined the disability certificate rendered by AIIMS and keeping in mind the provisions of the 2016 Act, taken a view that the disability mentioned in the certificate cannot be covered under the said Act and Court finds no infirmity in the impugned order. In ***Nawal Kishore Sharma (supra),*** the Supreme Court declined to accept the plea of the Petitioner that his heart ailment should be understood as a disability under the Disability Act and consequential benefits be accorded. Relevant paragraph is as follows:-

> *"18. Let us now deal with the appellant's argument that his heart ailment should be understood as a disability under the Disability Act and consequential benefits be accorded to him. Section 2(i) of the Act takes into account visual disability, locomotor disability, mental illness, mental retardation, hearing impairment and leprosy. A heart ailment is not covered within the definition of "disability" in the Act and we would hesitate to import words, which the legislature chose not to, in their definition of "disability". When the 1995 Act was replaced by the Rights of Persons with Disabilities Act, 2016, "a person with disabilities" was defined under Section 2(s) as a person with long term physical, mental, intellectual, or sensory impairment which prevent his full and effective participation in society. Section 2(zc) defines, "specified disability" as those mentioned in the Schedule to the 2016 Act. In the said Schedule, "physical disability", "intellectual disability", "mental behaviour", are specified. The Dilated Cardiomyopathy condition of the appellant is neither a specified disability nor is the same relatable to the broad spectrum of impairments, which hinders his full and effective participation in society. Therefore, we are of the considered opinion that Dilated Cardiomyopathy condition of the appellant does not bring his case within the ambit of either the 1995 Act or of the 2016 Act. The High Court, therefore, was correct in concluding that Dilated Cardiomyopathy condition would not facilitate any benefit to the appellant under Section 47 of the Disability Act."*

10. Insofar as the second issue of restoration of amount of Rs.9,01,327/-

in the salary account of the Petitioner is concerned, it is an admitted position that the Bank neither issued any show cause notice nor granted any opportunity of hearing to the Petitioner to defend his case against the alleged unauthorized absence during Pandemic COVID-19 and straightaway the aforesaid amount was debited from his salary account. There is no material on record which even remotely suggests that Petitioner was called upon to explain if the alleged unauthorized absence was willful. There can be no quarrel with the proposition that an employee cannot proceed on leave without authorization, but considering that the alleged unauthorized leave was during Pandemic COVID-19 and the undisputed fact that Petitioner was infected with the virus and suffered from serious co-morbidities, there could have been a justifiable reason for him to take leave. These were unprecedented times and called for unprecedented measures and actions. It was therefore imperative for the Bank to have called upon the Petitioner to explain the cause for absence and then taken action if the explanation was found unsatisfactory and the absence without leave was found wilful. This Court cannot countenance the action of the Bank in straightway deducting the salary of the Petitioner, violating the principles of natural justice, embedded in which is the principle 'no man can be condemned unheard'.

11. Accordingly, this writ petition is disposed of holding that there is no infirmity with the impugned order dated 30.07.2021 passed by the Commissioner Disability as also holding that Petitioner cannot be declared as a Person with Disability under the 1995 and/or the 2016 Acts. Insofar as an amount of Rs.9,01,327/- is concerned, the same shall be credited to the account of the Petitioner within a period of eight weeks from the date of receipt of this order. It will, however, be open to the Bank to take recourse

to appropriate legal remedies to initiate action for the alleged unauthorized leave, if so advised and take action as per law.

JYOTI SINGH, J

OCTOBER 08, 2024/YA/*shivam*