

Shailaja

URMILA  
PRAMOD  
INGALE

Digitally signed  
by URMILA  
PRAMOD  
INGALE  
Date:  
2025.10.10  
17:39:50 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1671 OF 2024

a/w

INTERIM APPLICATION [STAMP] NO.470 OF 2025

IN

WRIT PETITION NO.1671 OF 2024

|                                                |   |            |
|------------------------------------------------|---|------------|
| Mr. Dnyaneshwar Lavhaji Kalukhe                | ] |            |
| Age : 44 years, Occupation : nil,              | ] |            |
| Residing in Room No.3103, Patbandhare Vasahat, | ] |            |
| Krishna Nagar, Satara.                         | ] | Petitioner |

Versus

- |    |                                               |   |             |
|----|-----------------------------------------------|---|-------------|
| 1. | Director (Human Resource)                     | ] |             |
|    | Maharashtra State Electricity Distribution    | ] |             |
|    | Company Ltd.                                  | ] |             |
|    | Having Office Address at – “Prakashgad”,      | ] |             |
|    | Station Road, Bandra (East), Mumbai – 51.     | ] |             |
| 2. | Assistant General Manager (Human Resources)   | ] |             |
|    | Maharashtra State Electricity Distribution    | ] |             |
|    | Company Ltd.                                  | ] |             |
|    | Having Office Address at – “Prakashgad”,      | ] |             |
|    | Station Road, Bandra (East), Mumbai – 51.     | ] |             |
| 3. | Superintendent Engineer, Satara Circle        | ] |             |
|    | Maharashtra State Electricity Distribution    | ] |             |
|    | Company Ltd.                                  | ] |             |
|    | Having Office Address at – Administrative     | ] |             |
|    | Building, ‘Vidyut Bhavan’, First Floor,       | ] |             |
|    | Krishnanagar, Satara, 415003.                 | ] |             |
| 4. | The State of Maharashtra                      | ] |             |
|    | Through the Principal Secretary (Energy)      | ] |             |
|    | to the Government of Maharashtra              | ] |             |
|    | [Notice to be served through the Government   | ] |             |
|    | Pleader (High Court) Appellate Side, Mumbai.] | ] | Respondents |

.....

Mr. Sumant Deshpande, for Petitioner.

Mr. Prashant Chawan, Senior Advocate a/w Ms. Reshmarani Nathani and Ms. Niharika Singh i/b Little & Co., for Respondents No.1 to 3.

Ms. Ashwini A. Purav, A.G.P, for Respondent No.4 – State.

.....

CORAM : M.S. KARNIK &  
N.R. BORKAR, JJ.

RESERVED ON : 15<sup>th</sup> JULY, 2025.

PRONOUNCED ON : 10<sup>th</sup> OCTOBER, 2025.

UPLOADED ON : 10<sup>th</sup> OCTOBER, 2025.

**JUDGMENT:** [PER M.S. KARNIK, J.]:

1. Jurisdiction of this Court under Article 226 of the Constitution of India is invoked by the petitioner, challenging termination of petitioner's service vide order dated 6<sup>th</sup> April, 2023 passed by respondent No. 2.

2. Facts of the case in brief are that the petitioner was appointed as Junior Clerk temporarily in the Maharashtra State Electricity Distribution Company Limited (for short “MSEDCL”) with effect from 27<sup>th</sup> August, 2003. The petitioner was made permanent on 30<sup>th</sup> August, 2004. On 17<sup>th</sup> April, 2018, when the petitioner was about to leave the Office, he suddenly felt uneasy. He was admitted in Satara Diagnostic Hospital at Satara for treatment. The petitioner was diagnosed with a serious brain

disease. The petitioner had to be admitted in Sahyadri Hospital in Pune on 18<sup>th</sup> April, 2018. The petitioner was operated in Sahyadri Hospital at Pune and was eventually discharged on 05<sup>th</sup> June, 2018.

3. The petitioner exhausted all his leave. The petitioner obtained a fitness certificate from the doctor who was treating him, for making an application to the respondents on 26<sup>th</sup> November, 2019 to allow him to join duty. Instead of allowing the petitioner to join duty, the petitioner was asked to subject himself to medical examination by Civil Surgeon, Satara. The Civil Surgeon, Satara sent his report dated 13<sup>th</sup> January, 2021 to the Superintendent Engineer of the respondents. The petitioner made an application on 19<sup>th</sup> January, 2021 to respondent No.3 to allow him to join the duty.

4. Respondent No.3 thereupon instructed the petitioner to get himself medically examined by the Standing Medical Board, Government Hospital, Sangli. Respondent No.3 also sent a letter dated 12<sup>th</sup> March, 2021 to the Standing Medical Board, Government Hospital, Sangli requesting them to do a medical examination of the petitioner. The petitioner, therefore, again went through a medical examination by the Standing Medical Board, Sangli on 5<sup>th</sup> and 6<sup>th</sup> April, 2021. The Standing

Medical Board issued a medical certificate dated 23<sup>rd</sup> April, 2021, declaring the petitioner “FIT FOR DUTY for light work” with review after one year.

5. Respondent No.3 wrote a letter dated 31<sup>st</sup> May, 2021 to the Chief Engineer, Baramati requesting him for creation of a supernumerary post as per section 47 (1) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as “**The Disabilities Act, 1995**”). Instead of permitting the petitioner to join duty based on the medical certificate issued by the Standing Medical Board, the petitioner was yet again asked by respondent No.2 to appear for medical examination by the Medical Advisor of MSEDCL Dr. S. Jayaram, vide letter dated 30<sup>th</sup> September, 2021. Dr. Jayaram certified that the petitioner had no complaints and that he was “clinically satisfactory at present” and that “he is fit for light duty not involving verbal communication”. Despite the medical certificate of Dr. S. Jayaram, certifying the petitioner fit for light duty, respondent No.3 wrote a letter to the Standing Medical Board, Government Medical College, Sangli requesting and specifically instructing them to re-examine the petitioner to determine whether the petitioner can perform tasks such as communication, writing and reading.

6. The Standing Medical Board medically examined the petitioner on 18<sup>th</sup> April, 2022 and 19<sup>th</sup> April, 2022. The Medical Board certified on 29<sup>th</sup> June, 2022 that the petitioner is “UNFIT FOR DUTY” due to inability to communicate with verbal commands due to cerebrovascular accident. Respondent No.2, vide order dated 6<sup>th</sup> April, 2023, communicated to the petitioner that he has been terminated from service on medical grounds with effect from 29<sup>th</sup> June, 2022.

7. The petitioner yet again subjected himself to medical examination at the District Civil Hospital, Satara, which issued him a Disability Certificate dated 10<sup>th</sup> November, 2023. The petitioner was diagnosed with Speech and Language Disability, which is a specified disability as per the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as “**the Disabilities Act, 2016**”)

8. Mr. Chawan, learned Senior Advocate for the respondents Nos.1 to 3 invited our attention to the affidavit-in-reply filed on behalf of the respondent Nos.1 to 3. It is submitted that in terms of the policy of the respondents, the petitioner was advised to be examined by the concerned Doctor and Medical Board. The respondents have terminated the service of the petitioner vide a letter dated 6<sup>th</sup> April, 2023 with effect from 29<sup>th</sup>

June, 2022 as per the provisions of the MSEDCL Employees Service Regulation, 2005 which reads thus;

17.

*“Note : 1:-*

*(ii) in case such an employee is declared permanently medically unfit to continue in the service of the Company, his services shall be terminated after giving him notice as prescribed under Regulation No.24 hereinafter.*

*24. The services of an employee of the Company are liable to be terminated by the Competent Authority, with a notice in writing or with salary in lieu of the notice period as prescribed below...”*

9. It is submitted that the petitioner had already received the benefit of disability while being promoted from the post of Lower Division Clerk to Upper Division Clerk. Mr. Chawan submitted that the petitioner was diagnosed with speech and language disability in addition to pre-existing hearing disability. After considering all the factors and the certificate dated 29<sup>th</sup> June, 2022 issued by Standing Medical Board, Miraj, it was observed by MSEDCL that the petitioner is unfit and, therefore, services of the petitioner were terminated. It is submitted that this action on the part of the respondents No.1 to 3 is not unreasonable and arbitrary. It is the submission of the learned Senior Advocate for the respondents No.1 to 3 that if the health condition of an employee comes in the way of

efficient discharge of his duties, then the provisions of the Disabilities Act, 2016 may not be attracted.

10. Heard. Perused the materials on record. The present case is governed by the provisions of the Disabilities Act, 2016 . This Court, in **Vikas s/o Khanderao Keng vs. State of Maharashtra and others**<sup>1</sup> had an occasion to consider the relevant provisions of the Disabilities Act, 2016, which are equally relevant in the present case. For ease of reference, relevant portion of the order which deals with relevant provisions is quoted;

*“7. Prior to dealing with the legality and/or validity of the Impugned Circular, we propose to first deal with the legal framework relevant to the present matter. This would be the 2016 Act and the 1995 Act. Firstly, it is pertinent to note that prior to the enactment of the 2016 Act, the issue of providing equal opportunities and protection of rights to persons with disabilities was covered under the 1995 Act. Section 47 of the 1995 Act under Chapter VII with the heading “non-discrimination”, provided that there shall be no discrimination in Government employment. Section 47 reads thus :*

***"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.***

---

<sup>1</sup> 2021 (2) Mh. L.J.131

*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.”*

8. *On 13th December, 2006, the United Nations General Assembly adopted a Convention on "Rights of Persons with Disabilities". India is a signatory to this Convention which it ratified on 1st October 2007. Realizing the requirement to protect the rights of the persons with disabilities and India's commitment to the Convention of the United Nations General Assembly, the Legislature repealed the 1995 Act and brought in the 2016 Act to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto.*

9. *Considering the scope of these Writ Petitions, we deem it appropriate to reproduce the Preamble of the 2016 Act, which reads thus :*

*“An Act to give effect to the United Nations Convention on the Rights of Persons with Disabilities*

*and for matters connected therewith or incidental thereto.*

*Whereas the United Nations General Assembly adopted its Convention on the Rights of Persons with Disabilities on the 13th day of December, 2006;*

*And whereas the aforesaid Convention lays down the following principles for empowerment of persons with disabilities,*

*(a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;*

*(b) non-discrimination;*

*(c) full and effective participation and inclusion in society;*

*(d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;*

*(e) equality of opportunity;*

*(f) accessibility;*

*(g) equality between men and women;*

*(h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities;*

*And whereas India is a signatory to the said Convention;*

*And whereas India ratified the said Convention on the 1st day of October, 2007;*

*And whereas it is considered necessary to implement the Convention aforesaid.*

*Be it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:”*

*As can be discerned from the aforesaid Preamble, the 2016 Act is a beneficial Legislation that prioritizes and recognizes the benefits provided for under the 2016 Act. As compared to the 1995 Act, the 2016 Act confers higher benefits and provides for additional categories of disability that it seeks to protect. In addition, it emphasises the right to equality of opportunity, access to justice and various other rights such as free education, etc. In our opinion, the interpretation and construction of any provisions of the 2016 Act would therefore have to be in aid of and in furtherance of this legislative intent”.*

11. In the context of the present case, a reference to the definitions which are relevant needs to be made, which read thus;

***“2. Definitions.\_***

*(c) “barrier” means any factor including communicational, cultural, economic, environmental, institutional, political, social, attitudinal or structural factors which hampers the full and effective participation of persons with disabilities in society;*

*(h) “discrimination” in relation to disability, means any*

*distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation;*

*(k) “Government establishment” means a corporation established by or under a Central Act or State Act or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 2 of the Companies Act, 2013 (18 of 2013) and includes a Department of the Government;*

*(r) “person with benchmark disability” means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;*

*(s) “person with disability” means 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;*

*(zc) “specified disability” means the disabilities as specified in the Schedule;*

12. The disability certificate issued by District Civil Hospital, Satara dated 10<sup>th</sup> November, 2023 reveals that the petitioner is;

- (A) a case of **Speech and Language Disability**
- (B) The diagnosis in his case is **Global aphasia (Speech disability)**
- (C) He has **93%** (in figure) **Ninety Three** percent (in words) Permanent Disability in relation to his mouth as per the guidelines (Guidelines for the purpose of assessing the extent of specified disability in a person included under the Disabilities Act, 2016.

13. Chapter II of the Disabilities Act, 2016 deals with Rights and Entitlements. Section 3 (1) ordains that 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. Sub-section (2) provides that the appropriate Government shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment. Section 20 of Chapter IV is a provision dealing with Non-discrimination in employment. Sub-section (1) therein provides that no Government establishment shall discriminate against any person with disability in any matter relating to employment. Sub-section (2) imposes an obligation on the Government establishment to provide reasonable accommodation and appropriate barrier free and conducive environment

to employees with disability. Sub-section (3) ordains that no promotion shall be denied to a person merely on the ground of disability. Having regard to the scheme of this welfare legislation, the respondents could well have avoided subjecting the petitioner to multiple medical examinations. We refrain from saying anything more. Suffice it to observe that the respondents may consider at the earliest framing guidelines/policy while subjecting persons with disabilities to medical examination so as to ensure that such a procedure does not become an ordeal for him/her but is meant to solely ascertain the degree of disability.

14. In fact, it is the stand of the respondents that the petitioner has already got the benefit of disability while being promoted from the post of Lower Division Clerk to Upper Division Clerk. Sub-section (4) provides that no Government establishment shall dispense with or reduce in rank of an employee who acquires a disability during his or her service. Proviso to sub-section (4) says 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. The scope of this beneficial legislation is so wide that the second proviso to sub-section (4) of section 20 stipulates 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.

15. Though not relevant in this context, such is the obligation imposed by the Disabilities Act, 2016 on the appropriate Government that sub-section (5) provides that the appropriate Government may frame policies for posting and transfer of employees with disabilities. Section 21 is also relevant, which provides equal opportunity policy. Sub-section (1) provides that every establishment shall notify equal opportunity policy, detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Government. It is thus seen that “Rights- Based Approach” in the form of the Disabilities Act, 2016 treats the lives of the persons with disabilities as that of another human being.

16. The stand of the respondents that the illness of the petitioner adversely affects efficient working of the establishment and, therefore, the respondents are entitled to terminate his services is anathema to the benevolent object for which the Disabilities Act, 2016 is enacted. Such a stand of the respondents cannot be countenanced as the same is in the teeth of the provisions of sub-section (4) of Section 20 (1) of the

Disabilities Act, 2016.

17. We, therefore, have no hesitation in directing the respondents that if it is not possible to adjust the petitioner against any post, he be kept on supernumerary post until a suitable post is available or till he attains age of superannuation, whichever is earlier.

18. Though not in the context of the Disabilities Act, 2016, a reference to the decision of the Hon'ble Supreme Court in **Kunal Singh Vs. Union of India and another**<sup>2</sup> is significant which provides much needed guidance. In that case, Their Lordships were considering the provisions of section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. In paragraphs 9 and 10 it is observed thus;

*“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*

---

<sup>2</sup> (2003) 4 SCC 524

*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 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 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.*

**10.** *The argument of the learned counsel for the respondent on the basis of definition given in Section 2(t) of the Act that benefit of Section 47 is not available to the appellant as he has suffered permanent invalidity*

*cannot be accepted. Because, the appellant was an employee, who has acquired 'disability' within the meaning of Section 2(i) of the Act and not a person with disability”.*

19. The respondents did make an attempt to justify the order of termination on the strength of the Regulation 17 of the MSEDCL Employees Service Regulation 2005 which reads thus;

17.

*“Note : 1:-*

*(ii) in case such an employee is declared permanently medically unfit to continue in the service of the Company, his services shall be terminated after giving him notice as prescribed under Regulation No.24 hereinafter.*

*24. The services of an employee of the Company are liable to be terminated by the Competent Authority, with a notice in writing or with salary in lieu of the notice period as prescribed below...”*

20. In our considered opinion, we have no hesitation in saying that if the petitioner is governed by the provisions of the Disabilities Act, 2016, the Central legislation shall obviously prevail over the regulations framed by the MSEDCL. On this ground also, the impugned order deserves to be quashed and set aside.

21. The Writ Petition is allowed in terms of prayer clauses (a) and (b).
22. As observed earlier, if it is not possible to adjust the petitioner against any post, he may be kept on supernumerary post until a suitable post is available or until he attains age of superannuation, whichever is earlier.
23. The petitioner to be reinstated in service as well as the arrears of salary be paid to the petitioner within a period of four weeks from today. If the arrears are not paid within four weeks, the same shall carry interest at the rate of 9% per annum till realisation.
24. The petition is disposed of in the aforesaid terms. No order as to costs.
25. In view of disposal of the petition, Interim Application also stands disposed of.

[N.R. BORKAR. J.]

[M.S. KARNIK, J.]