

SUPREME COURT OF INDIA

Bhagwan Dass.

Vs.

Punjab State Electricity Board

C.A.No.8 of 2008

(G.P.Mathur and Aftab Alam,JJ.)

04.01.2008

JUDGMENT

Aftab Alam, J.

1. Leave granted.

2. This case highlights the highly insensitive and apathetic attitude harbored by some of us, living a normal healthy life, towards those unfortunate fellowmen who fell victim to some incapacitating disability. The facts of the case reveal that officers of the Punjab State Electricity Board were quite aware of the statutory rights of appellant No.1 and their corresponding obligation yet they denied him his lawful dues by means that can only be called disingenuous.

3. The facts of the case are brief and are all taken from the (Reply) Affidavit filed on behalf of the Punjab State Electricity Board and its officers (the respondents in the appeal). Appellant No.1 joined the respondent Board on July 19, 1977, on ad-hoc/work-charged basis. His services were regularized as an Assistant Lineman on June 16, 1981. While in service he became totally blind on January 17, 1994 and a certificate to that effect was issued by the civil surgeon, Faridkot.

4. Here, it may be noted that the rights of an employee who acquires a disability during his service are protected and safeguarded by Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Section 47 reads as follows:

“Non-discrimination in Government employments

(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. It may further be noted that the import of Section 47 of the Act was considered by this court in *Kunal Singh vs. Union of India & Anr.*¹ and in paragraph 9 of the decision it was observed and held as follows :

“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 a 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 the section reads no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service”

6. 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 employee shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of a 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.(Emphasis added) After the Act came into force with effect from December 7, 1996 (vide S.O.107(E) dated 7th February, 1996), the Government of Punjab, Department of Personnel and Administrative Reforms, issued a letter dated September 24, 1996 directing all the heads of departments to comply with Section 47 of the Act. The Punjab State Electricity Board too adopted the Government letter under its Circular No.6/97, dated February 17, 1997.

7. In view of Section 47 of the Act and the Circulars issued by the State Government and the Board it is clear that notwithstanding the disability acquired by the appellant the Board was legally bound to continue him in service. But on behalf of the respondent it is stated that the disabled employee himself wanted to retire from service and, therefore, the provisions of Section 47 had no application to his case. Here it needs to be made clear that at no stage any plea was raised that since the appellant was declared completely blind on January 17, 1994 he was not covered by the provisions of the Act that come into force on February 7, 1996. Such plea cannot be raised because on February 7, 1996 when the Act came into force the appellant was undeniably in service and his contract of employment with the Board was subsisting. His case was, therefore, squarely covered by the provisions of the Act.

8. Coming now to the reason assigned by the Board to deny him the protection of Section 47 of the Act, it is stated on behalf of the respondents that he remained absent from duty without any sanctioned leave from January 18, 1994 to March 21, 1997. He was directed by the Executive Engineer to resume duties vide Memo No.412, dated March 16, 1994 and Memo No.6411, dated August 4, 1994. He, however, failed to report for duty and on September 13, 1994, a charge sheet was issued initiating disciplinary proceedings against him for gross misconduct under regulation 8 of the Punjab State Electricity Board Employees Punishment & Appeal Regulation 1971.

9. The matter appears to have lain dormant for some time and then it is stated that the appellant by his letter dated July 17, 1996 requested the Board to retire him from service. As a matter of fact by this letter the appellant sought to explain his absence from duty and requested that his wife might be employed in his place. But it was made the basis for denying the appellant his lawful dues. Since the whole case of the respondents is based on this letter it would be appropriate to reproduce it in full:

10. Sir, I explain as under the subject cited unnatural happening which I met, When I was returning home after performing my duty on 17-1-94 then vision of my eyes lessened suddenly. I got treatment from far and near for eye-sight/lessening of vision of my eyes. But I became completely blind. Now I cannot perform my hard work duty. I want to retire from service. I may be retired and my wife may be provided with suitable job against me. You will be genesis to me.(Emphasis added) At this stage some internal correspondences took place between the officers of the Board over the question how to deal with the appellant. On July 10, 1997, the Senior Executive Engineer (OP) Division, Malout wrote to the Deputy Chief Engineer, Operation Circle, Muktsar, asking for

instructions in the matter. Paragraphs 2, 3 and 4 of the letter are relevant and are reproduced below:

“2) As per report of Medical Board the official is unfit for duty, he cannot perform any duty.

3) But as per instructions contained in Punjab Government Memo No.17/16/94-5 PP-1/6546 adopted by PSEB vide its Circular No.6/97 the official/officer it (sic is) not to be retired from service who become disable during service.

4) The official has represented that he may be retired from duty and his wife be provided with suitable job.”

11. The Senior Executive Engineer received the reply from the Secretary of the Board vide letter dated February 17, 1998 in which he was advised as follows:

“It is advisable to retire the official as per rules and regulations of the Board if the employee is not otherwise interested in taking the benefit of Boards Circular No.6/97. For the purpose of clarification as to whether employee is entitled to the benefits, otherwise admissible under rules/regulations of the Board in preference to Benefits admissible under Circular No.6/97, if he so desires, can be obtained from the Office concerned which issued said circular.”

12. Later on, the charge-sheet issued against the appellant was withdrawn by the Senior Executive Engineer vide Office Order No.14, dated January 13, 1999 and the appellant was asked to submit leave application for the period of absence. Next in series is a letter, dated November 15, 1999, from the Director/IR, PSEB, Patiala to the Senior Executive Engineer, (OP) Division, Malout. In this letter it was stated as follows:

“As per cited subject it is made clear that employee who is blind shall not be retired as per instructions of the Board. But is (sic. if) such employee himself make request for retirement then he can be given retirement on medical ground. Finally, the Senior Executive Engineer, issued Office Order No.559, dated December 14, 1999, by which the appellant was relieved from service with effect from March 21, 1997 (the date of issuance of Medical Certificate) as per Rule 5.11 of Civil Services Rules-Vol.II.”

13. It appears that the appellant protested against the action of the Board in relieving him from service and made representations. The representations, it seems, were forwarded to the superior authorities and the Board's decision was communicated to the Senior Executive Engineer vide letter dated February 18, 2000 from the Director/IR, PSEB, Patiala. The contents of the letter are as follows:

“With regard to cited subject it is made clear that there are instructions of the Board on which blind employee is not liable to be retired. But in the

case of Shri Bhagwan Dass ALM advice of retirement was given as he himself made request for his retirement on Medical Ground. So the case of this employee is not likely considered for his rejoining of duty.”

14. The appellant then filed an affidavit before the concerned officers. A copy of the affidavit is at Annexure R-12 to the respondent’s affidavit. In the affidavit he pathetically pleaded that he had no knowledge about the Rules of the Electricity Board and represented for retirement unknowingly. He further stated that when he came to know that there was no need for retirement for those who were disabled during service he again represented that he might not be retired and might be retained in service as per the instructions of the department. The affidavit did not evoke any response but the severance was completed by making payment of his terminal dues.

15. The disabled employee then approached the Punjab & Haryana High Court in Civil Writ Petition No.12534 of 2004 seeking relief in terms of section 47 of the Act and the Circulars issued by the State Government and the Board in its furtherance. In the writ petition he was joined by his son, appellant No.2, and an alternative relief was sought for employment of his son in his place. Unfortunately, before the High Court it was the second relief that came into focus and the High Court dismissed the writ petition by a brief order referring to the decision of this Court in *Umesh Nagpal vs. State of Haryana*² In the High Court order there is no mention of Section 47 of the Act and the disabled employees claim/right on that basis. Against that order this appeal is preferred in which the disabled employee agitates his rights on the basis of Section 47 of the Act. From the materials brought before the court by none other than the respondent-Board it is manifest that notwithstanding the clear and definite legislative mandate some officers of the Board took the view that it was not right to continue a blind, useless man on the Boards rolls and to pay him monthly salary in return of no service. They accordingly persuaded each other that the appellant had himself asked for retirement from service and, therefore, he was not entitled to the protection of the Act. The only material on the basis of which the officers of the Board took the stand that the appellant had himself made a request for retirement on medical grounds was his letter dated July 17, 1996. The letter was written when a charge sheet was issued to him and in the letter he was trying to explain his absence from duty. In this letter he requested to be retired but at the same time asked that his wife should be given a suitable job in his place. In our view it is impossible to read that letter as a voluntary offer for retirement.

16. Appellant No.1 was a Class IV employee, a Lineman. He completely lost his vision. He was not aware of any protection that the law afforded him and apparently believed that the blindness would cause him to lose his job, the source of livelihood of his family. The enormous mental pressure under which he would have been at that time is not difficult to imagine. In those circumstances it was the duty of the superior officers to explain to him the correct legal position and to tell him about his legal rights. Instead of doing that they threw him out of service by picking up a sentence from his letter,

completely out of context. The action of the concerned officers of the Board, to our mind, was depreciable.

17. We understand that the concerned officers were acting in what they believed to be the best interests of the Board. Still under the old mind-set it would appear to them just not right that the Board should spend good money on someone who was no longer of any use. But they were quite wrong, seen from any angle. From the narrow point of view the officers were duty bound to follow the law and it was not open to them to allow their bias to defeat the lawful rights of the disabled employee. From the larger point of view the officers failed to realise that the disabled too are equal citizens of the country and have as much share in its resources as any other citizen. The denial of their rights would not only be unjust and unfair to them and their families but would create larger and graver problems for the society at large. What the law permits to them is no charity or largess but their right as equal citizens of the country. In light of the discussions made above, the action of the Board in terminating the service of the disabled employee (appellant No.1) with effect from March 21, 1997 must be held to be bad and illegal. In view of the provisions of Section 47 of the Act, the appellant must be deemed to be in service and he would be entitled to all service benefits including annual increments and promotions etc. till the date of his retirement. The amount of terminal benefits paid to him should be adjusted against the amount of his salary from March 22, 1997 till date. If any balance remains, that should be adjusted in easy monthly installments from his future salary. The appellant shall continue in service till his date of superannuation according to the service records. He should be reinstated and all due payments, after adjustments as directed, should be made to him within six weeks from the date of presentation of a copy of the judgment before the Secretary of the Board. In the result the appeal is allowed with costs quantified at Rs.5,000/-.

Cases Referred

*1*2003 (4) SCC 524

*2*1994 (3) SCT 174