

Bombay High Court

Municipal Corporation Of ... vs Mr.Shrirang Anandrao Jadhav on 11 November, 2009

Bench: Dr. D.Y. Chandrachud

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.1900 OF 2009

Municipal Corporation of Gr.Mumbai.

...Petitioner.

Vs.

Mr.Shrirang Anandrao Jadhav.

...Respondent.

....

Mr.S.K. Talsania, Sr.Advocate with Ms.Kavita Anchan and Mr.Dipankar
Das i/b. M.V.Kini & Co. for the Petitioner.

Mr.S.N. Deshpande for the Respondent.

.....

CORAM : DR.D.Y.CHANDRACHUD, J.

November 11, 2009.

ORAL JUDGMENT :

Rule, made returnable forthwith. By consent of Counsel and at their request taken up for hearing and final disposal.

2. The Respondent joined the BEST Undertaking as a Bus Driver on 24th May 1974. On 16th July 2000 when he was performing his duties as a driver on Route 29/4 from Vaishali Nagar to Wadala Depot, disturbances erupted in Mumbai. According to the statement of facts in the petition, the

protests arose out of the arrest of a political leader. During the course of the protests, an incident of stone :: Downloaded on - 09/06/2013 15:18:00 :: 2 throwing took place in which the Respondent sustained an injury to one of his fingers on the right hand for which he had to undergo a surgical operation. He was declared unfit for work from 16 th July 2000. Thereafter, until 7th July 2001, the Respondent was assigned duties as a Sports Marker. On 7th July 2001, he was informed not to report for work. No order of termination was served.

3. The Respondent moved the Labour Court in a complaint of unfair labour practices under items 1(a), (b), (d), (e) and (g) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. Evidence was adduced before the Labour Court. The Labour Court came to the conclusion that the termination of the services of the Respondent was unlawful on the ground that it was in violation of the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("the Act"). The Labour Court was also of the view that there was a breach of Section 25F and Section 9A of the Industrial Disputes Act, 1947. The Petitioner was directed to reinstate the workman in a suitable post :: Downloaded on - 09/06/2013 15:18:00 :: 3 with the same grade and scale of pay which he was receiving as a driver with continuity of service and full backwages excluding the period of delay in moving the Court which had been condoned.

4. The judgment of the Labour Court was challenged in revision by the Undertaking before the Industrial Court. The Industrial Court dismissed the revision by its order dated 18th April 2009.

5. In assailing the judgment of the Labour Court, as affirmed in Revision, Counsel appearing on behalf of the Petitioner submitted that after the date of the termination, the Undertaking had made an offer to the workman on 6th August 2001 for re-employment in an alternate post as and when a vacancy arises in future. The workman initially accepted the offer on 11th August 2001, but withdrew his acceptance on 28th October 2001. It was urged that the offer of employment was in pursuance of a policy Circular dated 16th August 2000 and the workman having accepted the offer, it was not open to him to resile from his acceptance. Secondly, it is urged that the :: Downloaded on - 09/06/2013 15:18:00 :: 4 provisions of Section 47 of the Act had not been pleaded before the Labour Court. Thirdly, it was sought to be urged that the certificate of disability issued by the Medical Superintendent of the J.J. Hospital shows that the workman had a permanent disability of twelve per cent on one of his fingers on which basis, it was sought to be urged that the Respondent did not fulfil the definition of the expression "person with disability" in Section 2(t) of the Act which means a person suffering from not less than forty per cent disability as certified by the local authority. Fourthly, it was urged that the finding of the Labour Court in regard to the breach of Section 25F is unwarranted, having regard to Section 2(oo)(c) of the Industrial Disputes Act, 1947 and no question as to the invocation of Section 9A would arise.

Fifthly, it is urged that the workman has since attained the age of superannuation; and there is no discussion in the judgment of the Labour Court for awarding full backwages. The Industrial Court had incorrectly placed the burden on the Undertaking to establish that the workman was not gainfully employed.

6. On the other hand, it was urged on behalf of the workman ::: Downloaded on - 09/06/2013 15:18:00 ::: 5 by Learned Counsel that the Persons with Disabilities Act is a piece of benevolent legislation. The expression, "person with disability" in Section 2(t) has not been used by Parliament in Section 47 of the Act and there is a clear distinction between a person with disability and an employee who acquires disability during service. Counsel submitted that the expression "person with disability" has been used in the context of Chapter VI of the Act where a reservation of posts is provided and is not used in Section 47 which forms part of Chapter VIII which deals with non-discrimination. In the present case, it was urged that on the admitted facts the workman was unfit to do the work of a driver and that he acquired a disability while on duty, the Persons with Disabilities Act, 1995 is attracted and a question of law would arise on the basis of those facts. There could be no estoppel against the workman from seeking the benefit of welfare legislation enacted by Parliament and the benefit of the rights conferred by Section 47 cannot be abrogated on the ground that the workman entered into a settlement with the management from which he has withdrawn. Moreover, it was sought to be urged that the terms of the settlement were unconscionable and that the workman was not ::: Downloaded on - 09/06/2013 15:18:00 ::: 6 assured a job with continuity. Reliance was sought to be placed on various Supreme Court judgments to which a reference will shortly be made.

7. Before dealing with the position in law, which must govern the subject matter of these proceedings, it must, at the outset, be noted that there are two admitted facts upon which the case must turn. The first admitted fact is that the workman was rendered unfit to do the work of a driver, a post in which he had worked for nearly 27 years. The second admitted fact is that the workman was rendered unfit to work as a driver on account of a disability which he acquired while on duty. The statement of facts in the petition, as noted earlier, proceeds on the basis that it was while the Respondent was driving a bus on an assigned route, disturbances took place upon the arrest of a political leader and that in the course of a stone-

throwing incident, the Respondent sustained an injury on his hand.

In fact, it was on that basis that the Undertaking proceeded to invalidate him from holding the post of a driver.

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8. The Convention on the Rights of Persons with Disabilities and its Optional Protocol was adopted on 13th December 2006 at the United Nations Headquarters in New York, and was opened for signature on 30th March 2007. The Convention entered into force on 3rd May 2008. India acceded to the convention and ratified it on 1st October 2007.

The purpose of the Convention as laid down in Article 1 is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

The Preamble to the Convention :

'Disability is an evolving concept, and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders full and effective participation in society on an equal basis with others'.

Article 1 of the Convention states:

'Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full ::: Downloaded on - 09/06/2013 15:18:00 ::: 8 and effective participation in society on an equal basis with others'.

The Convention is intended as a human rights instrument with an explicit, social and developmental dimension. It adopts a broad categorization of persons with disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. It clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas where adaptations have to be made for persons with disabilities to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced.

9. Article 4 lays down the General Obligations of the State Parties. Sub-clause (1) of Article 4 states that "State Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability." The Article provides for adoption and modification of legislative, administrative and policy matters to ensure the protection of the rights of all disabled persons.

This broad general obligation has been again reinforced under Article 5 (2) which ensures that:

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"State Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds."

The Convention lays down precise duties on state parties with regard to employment of persons with disabilities under Article 27. Article 27 (1) states that:

" State Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right of the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. State Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of

equal value, safe and healthy working conditions including protection from harassment, and the redress of grievances.

(k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities." (Emphasis Added) The Supreme Court in Vishaka v. State of Rajasthan¹ relied upon the Articles 11 and 24 and General obligations 22, 23 and 24 of the 1 AIR 1997 SC 3011 :: Downloaded on - 09/06/2013 15:18:01 :: 10 Convention on Elimination of All Forms of Discriminations against women.

The Supreme Court in Githa Hariharan v. Reserve Bank of India¹ again relied on the Convention on Elimination of All Forms of Discrimination against women to interpret Section 6 of the Hindu Minority and Guardianship Act 1956 and held that the guardianship right of the mother does not arise only after the death of the father. The Convention on Elimination of All Forms of Discrimination against women was relied upon by the Supreme Court in Municipal Corporation of Delhi v. Female Workers (Muster Roll)² to interpret The Maternity Benefits Act, 1951 where the principles of Article 11 were read into the contract of service between the Delhi Municipal Corporation and the women employees.

The Supreme Court in Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd³ dealt with the interpretation of international conventions and held that :

"It is for the aforementioned limited purpose, a visit to the provisions of International Conventions would be necessary. In interpreting the domestic/municipal laws, this Court has extensively made use of International law inter alia for the following purposes:

- (i) As a means of interpretation;
- (ii) Justification or fortification of a stance taken;
- (iii) To fulfill spirit of international obligation which India has entered into, when they are 1 AIR 1999 SC 1149 2 AIR 2000 SC 1274 3 2008 (9) SCALE 69 :: Downloaded on - 09/06/2013 15:18:01 :: 11 not in conflict with the existing domestic law;
- (iv) To reflect international changes and reflect the wider civilization;
- (v) To provide a relief contained in a covenant, but not in a national law;
- (vi) To fill gaps in law."

The Supreme Court in Suchita Srivastava v. Chandigarh Administration⁵ held that since India has ratified the Convention on the Rights of Persons with Disabilities (CRPD) on October 1, 2007 its contents would be binding on our legal system.

10. The Persons with Disabilities Act, 1995 was enacted by Parliament to give effect to the proclamation on the full participation and equality of people with disabilities in the Asian and Pacific Region. The proclamation came to be adopted at a meeting held in December 1992 to launch the Asian and Pacific Decade of Disabled Persons 1993-2002. India was a signatory to that proclamation. The Statement of Objects and Reasons states that the object of the legislation was to provide for the following:

"(i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of 5 2009(11) SCALE 813 at para 26 ::: Downloaded on - 09/06/2013 15:18:01 ::: 12 medical care, education, training, employment and rehabilitation of persons with disabilities;

-(ii) to create barrier free environment for persons with disabilities;

-(iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-a-vis non-disabled persons;

-(iv) to counteract any situation of the abuses and the exploitation of persons with disabilities;

-(v) to lay down a strategy for comprehensive development of programmes and services and equalisation of opportunities for persons with disabilities; and

-(vi) to make special provision of the integration of persons with disabilities into the social mainstream."

Section 2(i) defines the expression "disability" to mean (i) blindness;

(ii) low vision; (iii) leprosy cured; (iv) hearing impairment; (v) locomotor disability; (vi) mental retardation; and (vii) mental illness.

Sub-clause (v) of Clause (i) includes a locomotor disability within the purview of the expression "disability". The expression 'locomotor disability' is defined in 2(o) to mean disability of the bones, joints or muscles leading to a substantial restriction of the movement of the ::: Downloaded on - 09/06/2013 15:18:01 ::: 13 limbs or any form of cerebral palsy. (The medical certificate issued by the Board of the J.J. Group of Hospitals upon which reliance has been placed by Counsel appearing on behalf of the Petitioner, records that the workman had a permanent partial disability of twelve percent on one of his fingers of the right hand). Chapter VIII of the Act deals with non-discrimination. Section 44 deals with non-discrimination in transport, Section 45 with non-discrimination on the road and Section 46 non-discrimination in the built environment. Section 47 which deals with non-discrimination in government employment is to the following effect :

"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:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, he 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, :::: Downloaded on - 09/06/2013 15:18:01 :::: 14 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."

11. The principle which Section 47 adopts as a legislative mandate is that an employee who acquires a disability during service shall not be dispensed with or reduced in rank by the establishment by which he is employed. Section 47 applies to an existing employee and to a situation where the disability is acquired while in service.

The proviso to sub-section (1) lays down that if the employee, upon sustaining a disability is not suitable for the post which he was holding, he can be shifted to some other post in the same pay scale and service benefits. If it is not possible to adjust the employee against any post whatsoever, the employee has to be kept on a supernumerary post until a suitable post is available or until he attains the age of superannuation whichever is earlier. Section 47, therefore, confers upon an employee, a significant element of protection upon the acquisition of a disability while in service. Firstly, the protection is against dispensing with the services of the employee or reduction in the rank. Secondly, the protection is to the effect that :::: Downloaded on - 09/06/2013 15:18:01 :::: 15 the employee must be given the same pay scale and service benefits if he/she cannot be continued in the same post and has to be absorbed in some other post. Thirdly, even if it is not possible to adjust the employee against some other post, he/she shall not be discharged, but shall be accommodated in a supernumerary post until a suitable post is available or until the employee attains the age of superannuation, whichever is earlier. Under the proviso to sub-

section (2), the appropriate government may exempt any establishment from the provisions of the Section.

12. The manner in which the Respondent was dealt with results in a total abrogation of his rights under the Persons with Disabilities Act, 1995. Initially, upon his invalidation from duty as a bus driver, the workman was assigned with what is termed as 'light duty' as a Sports Marker. However, with effect from 7th July 2001, the workman was terminated from service without as much as a written order of termination. He was simply informed on the date of his termination that he was being asked not to report for work. The Undertaking was in a gross violation of the mandate of Section 47 of :::: Downloaded on - 09/06/2013 15:18:01 :::: 16 the Persons with Disabilities Act. The

Respondent who acquired a disability while in service could not have been discharged or reduced in rank. For some time, after the acquisition of the disability, he was placed in an alternate post. His pay scale and service benefits could not have been reduced. If it was not possible to adjust the Respondent against the post which he was assigned in the alternate job, the Undertaking was duty bound to keep him on a supernumerary post until a suitable post became available or until the age of superannuation, whichever would occur earlier. In defiance of parliamentary mandate the service of the workman was summarily dispensed. This was a brazen defiance of law.

13. The submission which has been urged on behalf of the Petitioner, to the effect that the workman in the present case is not entitled to the benefit of Section 47 on the ground that the disability was less than forty percent is misconceived. Section 2(t) defines the expression "person with disability" to mean a person suffering from not less than forty percent of any disability as certified by a medical authority. The expression "person with disability" is distinct from the :::: Downloaded on - 09/06/2013 15:18:01 :::: 17 expression "employee who acquired disability during his service." The expression "person with disability" is used in the context of Chapter VI of the Act which deals with employment. Section 32 deals with identification of posts which can be reserved for persons with disability. Section 33 provides for reservation of not less than three per cent for persons with disability. Section 34 provides for special employment exchanges for persons with disability. Section 36 provides for vacancies not filled up to be carried forward. On the other hand, Section 47 of the Act is part of Chapter VIII which deals with non-discrimination. Sub-section (1) of Section 47 which contains a prohibition on the discharge or reduction in rank of an employee who acquires disability during service does not use the expression "person with disability". It would be impermissible to read a requirement of a person having a disability of not less than forty per cent, under Section 2(t) while construing the expression 'employee who acquires a disability during service'. Parliament has legislated two separate requirements. The first is for an employee who acquires a disability while in service. The second is for persons with disability who are to be provided employment by making reservations.

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14. This distinction has been noted by the Supreme Court and in several judgments of the High Courts. In Kunal Singh vs. Union of India,⁶ the Supreme Court dealt with a case of a constable who had suffered an injury which led to the amputation of a leg. The Supreme Court observed as follows:

Under Section 2 "disability" and "person with disability" are separately defined and they are distinct."

Dealing with the beneficial provisions of Section 47, the Supreme Court held thus:

"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/expressions, they must be understood accordingly in terms of the definition. It must be remembered that 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 6 AIR 2003 SC 1623 :: Downloaded on - 09/06/2013 15:18:01 :: 19 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 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."

The same view was followed in the judgment of a Division Bench of the Madras High Court in G.M., T.N. State Transport Corporation Ltd. vs. Udayasuriyan.⁷ The Division Bench held thus:

"In the light of the decision in Kunal Singh v. Union of India & Anr., 2003 I CLR 786, it is clear that S.47 deals with an employee who has acquired disability during service and it is not necessary that he should have suffered 40 per cent disability. The test is whether an employee, after acquiring disability, has become unsuitable for the post he was 7 2008 II CLR 706 :: Downloaded on - 09/06/2013 15:18:01 :: 20 holding earlier and it is provided by S.47 that in such a case, the employee could be shifted to some other post with the same pay scale and service benefits, and if it is not possible to adjust the employee against any such post he may be kept in a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. In a recent decision of the Division Bench of this Court in G.Muthu v. Management of Tamil Nadu State Transport Corporation (Madurai) Ltd.

(represented by its Managing Director), Madurai (2007 (1) LLN 246), it was held that the term disability used in S.47 of the Disabilities Act would encompass not only those contained in S.2(i), but also those which disabled a person from performing a work which he held immediately prior to acquisition of such disability. In that case, the appellant driver was discharged from service on the ground that he had acquired colour blindness which rendered him unfit to work as driver. Rejecting the argument

that colour blindness would not fall under S.2(i) of the Act, the Division Bench held that the term disability used in S.47 of the Disabilities Act would encompass not only those contained in S.2(i), but also those which disabled a person from performing a work which he held immediately prior to acquisition of such disability. It was held that the benefits of benevolent legislation could not be denied on the ground of mere hyper technicalities. The S.L.P. filed against the said judgment of the Division Bench was also dismissed by the Supreme Court."

A similar view was taken by another Division Bench in John Peter A.

vs. Tamil Nadu State Transport Corporation.⁸ The Madras High Court held that 'acquisition of disability' is not same as 'a person with disability' and it is not necessary for the workman to establish that he ⁸ 2008 III CLR 116 ::: Downloaded on - 09/06/2013 15:18:01 ::: 21 suffered from more than a forty per cent disability in order to entitle him to the benefit of Section 47 of the Act.

15. In Union of India v. Devendra Kumar,⁹ the Supreme Court distinguished Section 47 from other provisions of the Act. The Court held that :

"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."

16. Both as a matter of first principle and in view of the precedent on the subject, the submission which has been urged on behalf of the Petitioner cannot be accepted.

17. An effort was made to demonstrate on behalf of the Petitioner that the workman had, in the present case, been made an ⁹ JT 2009(9) SC 552 ::: Downloaded on - 09/06/2013 15:18:01 ::: 22 offer of employment by the Undertaking by its letter dated 6th August 2001 which he had accepted on 10th August 2001 before resiling therefrom. Now, the letter of the Corporation dated 10th August 2001 and the acceptance of the workman, must be understood in the background of the circumstance that on 7th July 2001, the services of the workman had been summarily dispensed with in violation of the provisions of Section 47 of the Persons with Disabilities Act, 1995.

Once the dispensation of service was illegal, as it must be held to be so, no settlement purported to have been arrived at with the workman can override the right conferred upon the workman by the provisions of Section 47. The statute conferred upon the workman a protection against discharge from service upon acquisition of disability while in service. A right had been conferred to protect his existing service benefits and pay scale. In defiance of this right, the services of the workman were dispensed with. He was informed by the Corporation that he would be reinstated in an alternate job of Peon or Lift man as and when a vacancy arises in future. The workman was informed that there

was no post vacant in the Undertaking in the grade of Peon or lift man. In the event that such a post fell vacant, he would be ::: Downloaded on - 09/06/2013 15:18:01 :: 23 considered for a post in that grade. The period from his date of invalidation, till the date of reinstatement, would be considered as sanctioned leave or leave without pay. The workman initially agreed to the offer by his letter dated 10th August 2001, but on 28th October 2001 informed the General Manager that he was not agreeable to an indefinite deferral of the period for resumption of work. The workman requested the General Manager to allow him to resume service as soon as possible. In a similar situation, the Supreme Court, in a recent judgment in Bhagawan Das vs. Punjab State Electricity Board,¹⁰ observed that the conduct of a public sector employer disclosed a complete lack of sensitivity to an employee who had suffered from an incapacitating disability. The Court observed as follows :

"This case highlights the highly insensitive and apathetic attitude harboured 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 1 and their corresponding obligation yet they denied him his lawful dues by means that can only be called disingenuous."

In that case, the employee in question who had suffered a visual 10 (2008) I SCC 579 ::: Downloaded on - 09/06/2013 15:18:01 :: 24 impairment while in service was served with a chargesheet. The employee explained his visual impairment and sought retirement from service with a request that his spouse may be provided with alternate employment. On this basis, it was urged on behalf of the employer that it was the employee himself who had sought retirement from service. Dealing with the situation, the Supreme Court observed as follows:

"17. 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 Board's 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 17-7-1996. 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.

-18. Appellant 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, ::: Downloaded on - 09/06/2013 15:18:01 :: 25 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. It 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 officers concerned of the Board, to our mind, was deprecable."

18. The Persons with Disabilities Act, 1995 creates valuable rights which are intended to protect employees of public bodies, in a welfare state, who acquire a disability while in service. The protection which is conferred by Section 47 cannot be violated or abrogated by taking recourse to disingenuous methods which would defeat the rights which Parliament has conferred upon persons with disability. The Persons with Disabilities Act, 1995, is a Parliamentary recognition of the special needs of persons with disabilities; of the affirmative action that is required to protect their life and liberty under Article 21 of the Constitution and to ensure them a right of dignified existence. In cases governed by the Persons with Disabilities Act, 1995, the Court has viewed an abrogation of the mandate of Section 47 in strict terms. The general principles which are applicable to the grant of backwages in a situation of termination :: Downloaded on - 09/06/2013 15:18:01 :: 26 governed by the Industrial Disputes Act, 1947 would need to be modulated where there is a breach by a public employer of the rights which are conferred by Section 47 of the Persons with Disabilities Act, 1995. A case governed by Section 47 cannot be treated at par with cases where the services of an employee have been dispensed with as a result of an act of misconduct, or for that matter as a result of volition on the part of the employee. In a case where the employer has been in breach of the mandatory obligation under Section 47, it would not be permissible to deprive the employee of consequential benefits when the Court sets aside an illegal action. An employer in the public sector must be held to strict compliance with the Persons with Disabilities Act, 1995 and any dereliction of the obligation mandated by Section 47 will have to be visited with the grant of consequential benefits. As a matter of fact, the Supreme Court in *Bhagwandas vs. Punjab State Electricity Board*,¹¹ came to the conclusion that the termination of the services of a disabled employee in that case was illegal and "in view of the provisions of Section 47 of the Act, the Appellant must be deemed to be in service and would be entitled to all service benefits including annual increment and 11 (2008) 1 SCC 579 :: Downloaded on - 09/06/2013 15:18:01 :: 27 promotion etc. till his retirement". The same grant of consequential benefits has also been adopted in a judgment of the Division Bench of the Madras High Court to which a reference has been made earlier.

19. For all these reasons, the view which has been taken by the Labour Court, as affirmed in Revision, does not warrant interference.

The Labour Court was of the view that there was a breach of Section 25F of the Industrial Disputes Act, 1947. Section 2(oo)(c) of the Industrial Disputes Act, 1947 specifically provides that the expression "retrenchment" does not include the termination of the services of the workman on the ground of continued ill-health. Similarly, the provisions of Section 9A of the Industrial Disputes Act, 1947 may not be attracted. However, independent of the aforesaid two points, the judgment of the Courts below is correct on the view which has been taken on the provisions of Section 47 of the Persons with Disabilities Act, 1995 and is accordingly affirmed. Since the workman has attained the

age of superannuation, he cannot be reinstated in service.

The workman would be entitled, however, to all consequential benefits including backwages and continuity of service from the date :: Downloaded on - 09/06/2013 15:18:01 :: 28 of his termination until the date on which he attained the age of superannuation. In the event that the workman has been paid his terminal dues in the meantime, due adjustment shall be made. The Petition shall stand dismissed. The Petitioner shall pay to the Respondent costs quantified at Rs.7,500/-.

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