



न्यायालय मुख्य आयुक्त निःशक्तजन
Court of Chief Commissioner for Persons with Disabilities
सामाजिक न्याय एवं अधिकारिता मंत्रालय
Ministry of Social Justice & Empowerment
निःशक्तता कार्य विभाग / Department of Disability Affairs

Case No.23/1024/11-12

Dated:-10.07.2014

In the matter of:

Shri S. Murugan,
No.23, 3rd Cross East,
Thanthai Periyar Nagar,
Puducherry – 605 005.

..... Complainant

Versus

Pondicherry University,
(Thru the Vice Chancellor),
Bharat Ratna Dr. B.R. Ambedkar Administrative Building,
R. Venkataraman Nagar,
Kalapet,
Puducherry – 605 014.

.... Respondent

Date of hearing : 30.05.2014

Present :

1. Shri S. Murugan, complainant alongwith Shri T. Djanaguiramane, U.S.(Retd.)
2. S/Sri S. Aravindh, Advocate and B. Roottiramourthy, Assistant Register on behalf of the respondent.

ORDER

The above named complainant, a person with 55% locomotor disability filed a complaint dated 07.12.2011 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding reinstatement in service as Junior Assistant.

2. The complainant submitted that he was initially appointed as Peon in the Pondicherry University on 08.06.1987 and promoted to the post of Junior Assistant-cum-Typist on 17.08.1995. He met with an accident on 29.04.1999 while on official duty and sustained serious bone fracture and dislocation of spinal cord disc. Due to disability, the administration reverted him from the post of Junior Assistant to the post of Peon w.e.f. 20.12.2003.

3. Section 47(1) of the Persons with Disabilities Act, 1995, inter-alia provides :-

“No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service;

.....2/-

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 or superannuation, whichever is earlier.”

4. The matter was taken up with the respondent vide this Court's letter dated 24.02.2012.
5. The respondent vide his letter No.PU/Estt/NT4/2012-13/1 dated 05.04.2012 submitted that the complaint is a total distortion of facts, misleading and factually incorrect. The complainant neither acquired any disability during his service nor was he reduced in rank till his resignation. He was found fit for service by two medical boards based on which he was asked to join duty repeatedly but he avoided it citing one reason or the other. Since he was not willing to continue to do the work at the University, the complainant sought invalid pension. Neither the University nor the medical Boards at any point of time found him unfit for service. The complainant was not ready to join duty and wanted only invalid pension. The University following the Pension Rules offered him the lower post of Peon which is a pre-requisite for grant of invalid pension. The complainant refused the post and insisted for invalid pension.
6. Though the complainant was not eligible for invalid pension as the medical boards had found him fit for service yet the University Executive Council approved invalid pension as a special case. As the matter was under process the complainant submitted resignation from service and left the University on his own. Now after 08 years of resignation he is seeking re-instatement of service as Junior Assistant. Since he on his own resigned the post and left the University, the question of applicability of Section 47(1) of persons with disabilities Act, 1995 does not arise in his case.
7. A copy of respondent's reply dated 05.04.2012 was forwarded to complainant vide letter dated 09.05.2012 for submitting the comments.
8. The complainant vide his rejoinder dated 13.01.2014 submitted that the points put forth by the respondents are far from truth and mostly fabricated which stand to be proved in the first para itself as well as in para 2 of the conclusion in their reply. The complainant's rejoinder is self-explanatory wherein he shows his dissatisfaction to the reply of respondent.
9. Upon considering the written submissions of the respondent and the complainant, a hearing was scheduled on 30.05.2014.
10. Reiterating his written submissions, the complainant assisted by Shri T. Djanaguiramane submitted that the disability of the complainant which was 40% aggravated due to the accident in 1999. Consequently, he acquired disability to the extent of 10%. Therefore, his case is covered under Section 47 of the Persons with Disabilities Act and the complainant should get the protection

under that section. The Medical Board advised that the complainant should be given light work. Instead of giving him light work, the University offered him the post of Peon, a lower post than the one he was holding and thus violated Section 47(1) of the Act. The complainant also submitted photo copy of the telegram received from the University directing him to report for duty, failing which, action will be taken against him as per rules. He further submitted that this Court may refer him to a Medical Board to ascertain the aggravation of the disability of the complainant.

11. The Ld. Counsel for the respondent submitted that the present complaint is not maintainable as there has been no violation of any of the provisions of the Act nor is the complainant an aggrieved person under the provisions of the Act, more particularly, Section 47 of the Act. Further, the present case is of not acquiring disability during service as envisaged under Section 47 but a case of a person having been offered employment under the physically handicapped quota. The complainant was found fit to work by two Medical Boards – one referred to by the University and the other of his own choice. The complainant continued to claim disability and inability to work and sought for converting his E.O.L. to special disability leave and grant him invalid pension. This aspect was considered out of the para-meters of the service rules and as per concurrent findings of the Medical Board were to the effect that he was fit to work and as rules do not provide for declaring a person invalid to award him the pension when found to work, he was, on humanitarian ground, offered a lower post under the same rules, namely, CCS (Pension) Rules. The Rule 38(4) of the CCS(Pension) Rules reads as under:-

“38(4). Where the Medical Authority referred to in sub-rule (2) has declared a Government servant fit for further service of less laborious character than that which he had been doing, he should, provided he is willing to be so employed, be employed on lower post and if there be no means of employing him even on a lower post, he may be admitted to invalid pension.”

12. In pursuance of the same, the Executive Council of the University approved the offer to be given to the complainant for reduction in post and continuance in service. As the complainant refused to consent to the same, the University once again endeavoured to atleast give him the benefit of invalid pension and the said aspect was also approved by the Executive Council vide their decision dated 11.06.2004. This approval was objected to by the Audit Department as the same involved financial implication. The Internal Auditor raised an objection citing O.M. 13015/3/2002-Estt.(L) dated 19.01.2004 of the Ministry of Social Justice and Empowerment (Disability Division), wherein it was categorically stated that any person who acquires disability during his service and found not suitable for the post which he was holding, could be shifted to some other post and shall not be reduced in rank. The University was in dilemma and decided to seek the information or clarification from the DoP&T and also kept on extending the medical leave of the complainant from time to time. On 18.10.2004, the complainant voluntarily resigned citing illness. The said resignation of the complainant was accepted by the Executive Council and the same was communicated to the complainant vide letter dated 06.04.2005. Thus, the complainant voluntarily resigned and was relieved from the post held by him w.e.f. 21.10.2004 on medical ground and he is not in any manner entitled to maintain the present status at any rate. Thus the complaint is belated and suggested to be

an after thought and vexatious. The prayer of the complainant to be referred to a Medical Board at this juncture is untenable as this Court does not have the power to refer the complainant to a Medical Board. The question involved is not to the extent of his disability but whether he is entitled to the protection under the Persons with Disability Act, the answer is in the negative and it is humbly prayed that the complaint be closed as vexatious. It was only because the Medical Board specifically advised that he may be given the light nature of work.

13. On perusal of the record made available by the parties to this Court, there is no paper in support of the contention of the complainant that he acquired disability during the service or even the disability was aggravated to such an extent that it rendered him unsuitable for the post he was holding and to create a supernumerary post on the ground that it was not possible to adjust the complainant against any post. Admittedly, the offer of the lower post of Peon w.e.f. 20.12.2003 as per Rule 38(4) of CCS (Pension Rules) was also not effected as the complainant had resigned on 18.10.2004 without accepting the post of Peon offered to him on 12.03.2004. In the circumstances, the complaint fails and is disposed of accordingly.

Sd/-

(P.K. Pincha)
Chief Commissioner
for persons with Disabilities