

Delhi High Court

Delhi Transport Corporation vs Harpal Singh on 9 January, 2009

Author: Mool Chand Garg

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ LPA 506/2003

%

Reserved on : 11.12.2008

Date of decision: 09.01.2009

Delhi Transport Corporation ...Appellant
Through: Mr. R. D. Makheeja, Adv.

Versus

Sh. Harpal Singh ...Respondent
Through: Mr.G.S.Charya , Adv.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

MOOL CHAND GARG, J.

1. Brief facts giving rise to the filing of this LPA are;

(i) That the respondent workman was employed with the appellant as a Security Guard. On 05.06.1991 while returning to his house after discharging his duties, he met with an accident and sustained grievous injuries rendering him unsuitable for employment as security guard, thereafter he proceeded on medical leave. He was referred to DTC medical board where he refused to appear. He was prematurely retired from service w.e.f. 22.02.1994 vide letter dated 18.05.1994. The respondent aggrieved by the aforesaid order raised a Industrial Dispute before the Conciliation Officer, Delhi Administration for issuing directions to the Management for reinstating him in service. Govt. of NCT of Delhi referred the dispute between the respondent and the appellant to the Labor Court registered as ID No. 118/1996;

(ii) The same was adjudicated upon by the Presiding Officer, Labor Court VII. Vide order dated 18.02.2002 an award was given in favor of the respondent directing inter alia his reinstatement with

continuity of service and full back wages. It was further held that if the workman cannot be retained as a Security Guard, the management shall deal with his case in terms of the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities Protection of Rights And Full Participation) Act, 1995 (hereinafter referred to as the said Act), as those provisions will prevail over any other administrative guidelines laid down by the management. The said Act came into being only in 1995 and was not applicable when the respondent suffered injury or was terminated out of service as the said Act was enforced only on 7.02.1996;

(iii). The award delivered by the Labor Court was upheld by a learned Single Judge of this Court who was pleased to dismiss the writ petition filed by the appellant-corporation being CWP No. 2735/2003 for quashing the award. It is this judgment delivered on 25.04.2003 which is the subject matter of adjudication before us. LPA 506/2003 Page 2 of 22

2. It is the submission of the learned counsel for the appellant that the primary question to be gone into by this Court in this LPA is as to "whether the provisions of Section 47 of the said Act can have retrospective operation". It is his contention that this is not the mandate of the Act. He has also relied upon the following judgments:

I) P. Mahendran & Ors. Vs. State of Karnataka & Ors., AIR 1990 SC 405.

ii) The Land Acquisition Officer-cum-DSWO Vs. M/s B.V. Reddy & Sons AIR 2002 SC 1045

iii) Shyam Sunder & Ors Vs. Ram Kumar & Anr. AIR 2001 SC 2472

iv) Raminder Singh Sethi Vs. D. Vijayarangam, AIR 2002 SC 2087

v) Union of India Vs. Deoki Nandan Aggarwal, AIR 1992 SC 96

vi) State Bank of India & Ors. Vs. Jaspal Kaur [Appeal (civil) No. 409/2007 decided on 01.02.2007.

vii) Mr. C. Gupta Vs. Galxosmithklin Pharmaceutical Ltd. [Appeal (Civil) No. 6543-44/2004 decided on 23.05.2007

a) In the case of P. Mahendran & Ors. Vs. State of Karnataka & Ors. (supra) it has been held:

" that it is well settled rule of construction that every statute or statutory Rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rule showing the intention to affect the existing rights the Rule must be held to be prospective."

b) In the case of The Land Acquisition officer-cum-DSWO Vs. M/s.

B.V. Reddy & Sons (supra) it has been held that:

" it is well settled principle of construction that a LPA 506/2003 Page 3 of 22 substantive provision cannot be retrospective in nature unless the provision itself indicates the same."

c) In the case of Shyam Sunder & Ors. Vs. Ram Kumar & Anr.

(supra) it has been held that:

" there is no such rule of construction that a beneficial legislation is always retrospective in operation even though such legislation either expressly or by necessary intendment is not made retrospective."

d) In the case of Raminder Singh Sethi Vs. D. Vijayarangam (supra) it has been held that:

"Ordinarily the rights of the parties to litigation stand crystallized on the date of commencement of lis. Any new provision does not apply to the pending litigation."

e) In the case of Union of India Vs. Deoki Nandan Aggarwal (supra) it has been held that:

"the Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Courts. The Court cannot add words to a statue or read words into which are not there."

f) In the case of State Bank of India & Ors. Vs. Jaspal Kaur (supra), the Apex Court was pleased to hold:

" that the Scheme of Compassionate Appointment formulated by the Bank in 2005 could not be applied to an application for compassionate appointment made in 2000 under the old scheme prevailing at that time."

3. On the other hand, the respondent has submitted that the said Act being a welfare legislation, the provisions of Section 47 of the said Act must be given retrospective operation. It is also submitted that even de hors the provisions of the aforesaid act, such benefits LPA 506/2003 Page 4 of 22 had been granted in the past keeping in view of the spirit of the said Act and the history of legislation as well as the

Constitutional provisions. They have also relied upon various judgments on this point as follows:

- i) Order dated 29.01.2002 in CWP 722/1998 titled as DTC Vs. Shri Ganpat Singh
- ii) State of Haryana Vs. Narinder Kumar Chawla (1994) 4 SCC 460
- iii) Baljeet Singh Vs. Delhi Transport Corporation, 83 (2000) DLT 286
 - a) In the case of DTC Vs. Shri Ganpat Singh (supra) it has been held that the workman therein be taken back into service and be paid salary from the date when the salary was stopped after termination of service. In that case, the petitioner met with an accident on 07.03.1987 and fractured his bones in his right leg and the Medical Board declared him to be medically unfit. This happened much before the said Act came into force. An Industrial Dispute was referred to by the workmen which was decided in his favor relying upon the earlier pronouncements. He was directed to be re instated in service with full back wages. Benefits of the provisions of the said Act were also given effect to and it was further ordered that in case the petitioner was not fit to perform his duty than his case to be dealt with in terms of proviso to Section 47 of the said Act. The ld. Single Judge up held the award in the light of previous pronouncement without deciding the question of the applicability of the Act retrospectively as the said issue was not before the Court at that time.

b) In the case of State of Haryana Vs. Narinder Kumar Chawla (supra) it has been held that:

"7..... Article 21 protects the right to livelihood as an integral facet of right to life. When an employee is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the posts he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge the duties. Asking the appellant to discharge the duties as a Carrier Attendant is unjust. Since he is a matriculate, he is eligible for the post of LDC. For LDC, apart from matriculation, passing in typing test either in Hindi or English at the speed of 15/30 words per minute is necessary. For a Clerk, typing generally is not a must. In view of the facts and circumstances of this case, we direct the respondent Board to relax his passing of typing test and to appoint him as an LDC. ."

4. We have also come across some other judgments on this subject which are as under:

i) Vijender Singh Vs. Delhi Transport Corporation, 105 (2003) DLT 261

ii) Delhi Transport Corporation Vs. Presiding Officer, Labour Court IV, Delhi & Anr., 2003 (105) DLT 2008

iii) O.P. Sharma Vs. Delhi Transport Corporation & Anr., 125 (2005) DLT 742

5. It may, however, be observed that all the aforesaid judgments are based upon the judgment delivered in Baljeet Singh's Case (Supra) and the judgment in Vijender Singh's Case (Supra) taken note of the decision of the Apex Court in the case of Ved Prakash Singh arising out of SLP No. 1575/1991 decided on 05.08.1991.

6. Before us, appellant has assailed the order passed by the learned Single Judge dated 25.04.2003 upholding the order of the Labor Court extending the benefit of Section 47 of the said Act to the respondent retrospectively despite the fact that the services of the respondent were terminated prior to the coming into force of the said Act. It is the submission of the appellant that the said Act contains no provision whereby the benefit of the said Act can be granted retrospectively even though one may be entitled to the benefit under Section 47 of the said Act if services are terminated after coming into force of the said Act.

7. To appreciate the relevant submissions, it may be appropriate to take note of Section 47 of the said Act which reads as under:

47. Non-discrimination in Government employment.- (1) No establishment shall dispense LPA 506/2003 Page 6 of 22 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.

8. The said Act was enacted by the Indian Parliament pursuant to having become a signatory to an International Convention held in Beijing in December, 1992, which took a decision to launch the Asian and Pacific Decade of disabled persons 1993-2002. In that meeting a resolution about full Participation and Equality of People with Disabilities in the Asian and the Pacific Region was adopted. The members participating in the convention decided to grant certain benefits to the disabled persons in respect of their services.

9. The objects of the aforesaid Act provide:-

"(i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care education, training, employment and rehabilitation of persons with disabilities;

(ii) to create better 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;

LPA 506/2003 Page 7 of 22

(iv) to counter act any situation of the abuse and the exploitation of persons disabilities;

(v) to lay down strategies for comprehensive development of programmes and services and equalization of opportunities for persons with disabilities; and

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

10. Both the parties have filed written synopsis and have also made oral submissions. We have gone through the same and have also given our thoughtful consideration to the rival submissions.

11. It has been submitted on behalf of the learned counsel for the appellant that in view of the legal position examined the judgment of the Learned Single Judge as well as the award given by the Labour Court cannot be sustained. On the other hand learned counsel for the respondent argued otherwise.

12. At this stage, it may be appropriate to also take note of the some other Judgments. Firstly, we would make reference to some observations made by a Division Bench of this Court in the case of Delhi Transport Corporation Vs. Rajbir Singh reported 100 (2002) DLT 111, as under:

13. Can a provision be read differently than its plain and grammatical meaning. Answer to the said question must be rendered in the negative.

14. The true way to read and apply a legislation is to take the words as Legislature have given them and to take the meaning the word gives naturally, unless the construction in those words as offered by preamble or context appear contrary thereto. The golden rule is that all the statute should be interpreted literally. Exercises for construction of a statute should be taken recourse to only when the LPA 506/2003 Page 8 of 22 literal construction thereof would give rise to an absurdity.

15. Grant of some relief to the disabled person had been in the mind of all concerned for a long time.

16. As indicated hereinbefore 1995 Act came into force only after India became signatory to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region. The said Act, therefore, must be read in the context of the said proclamation.

17. It is now well settled that construction of such a statute must be made in the light of the International Covenants. See Jolly George Verghese v. Bank of Cochin, 1980 SC 470; Vishaka v. State of Rajasthan, AIR 1992 SC 3011; Apparel Export Promotion Council v. A.K. Chopra, AIR 1999 SC 625.

18. In G.P. Singh's Principles of Statutory Interpretation (Eighth Edn. 2001) at pages the law is stated in the following terms:

"In construing Wills and indeed statutes and all written instruments, the grammatical and ordinary sense of the word is adhered to, unless that would lead to some absurdity, or some repugnance or

inconsistency with the rest of the instrument in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity, and inconsistency, but no further. And as stated Lord Atkinson: "in the construction of statutes, their words must be interpreted in their ordinary grammatical sense unless there be something in the context, or in the object of the statute in which they occur or in the circumstances in which they are used, to show that they were used in a special sense different from their ordinary grammatical sense". Viscount Simon, L.C., said: "The golden rule is that the words of a statute must prima facie be given their ordinary meaning". Natural and ordinary meaning of words should not be departed from "unless it can be shown that the legal context in which the words are used requires a different meaning". Such a meaning cannot be departed from by the Judges "in the light of their own views as to policy" although they can "adopt a purposive LPA 506/2003 Page 9 of 22 interpretation if they can find in the statute read as a whole or in material to which they are permitted by law to refer as aids to interpretation an expression of Parliament's purpose or policy".

13. At this Juncture it would also be relevant to refer to another Judgment of this court heavily relied upon by the respondent delivered in the case of Baljeet Singh Vs. DTC, 83 (2000) DLT

286. In the aforesaid judgment while interpreting Section 47 of the Act, it has been held:

"13. Section 47 in clear terms mandates that no establishment shall dispense with or reduce in rank the employee who acquires the disability during his service. Even if he is not suitable for the post he was holding as a result of disability he is to be shifted to some other post with same pay scale and service benefits. Even when he cannot be adjusted against any other post he is to be kept on supernumerary post until a suitable post is available for he attains the age of superannuation, whichever is earlier. The intention of Section 47 is clear and unambiguous namely, not to dispense with the service of the person who acquires disability during his service. The purpose is not far to seek. When the objective of the enactment is to provide proper and adequate opportunities to the disabled in the field of education, employment etc. it is obvious that those who are already in employment should not be uprooted when they incur disability during the course of employment. Therefore their employment is protected even if the destiny inflicts cruel blow to them affecting their limbs. Even if he is not able to discharge the same duties and there is no other work suitable for him, he is to be retained on the same pay scale

and service benefits so that he keeps on earning his livelihood and is not rendered jobless. Notwithstanding the aforesaid clear and mandatory provisions contained in Section 47 of the Act, the respondent Corporation has passed the orders of voluntary retirement in the aforementioned cases which is an establishment within the meaning of Section 2(k) of the Industrial Disputes Act as it was established under Central Act. Such obvious Legislature intent is not understood by the officials of the DTC who are at the helm of affairs and have handed out such shabby treatment to the petitioners. Even when their attention was drawn to the provision they chose to lend deaf ears and did and did not rectify their wrong acts."

LPA 506/2003 Page 10 of 22

14. The Division Bench in Rajbir Singh's Case (Supra) also considered the ratio of the aforesaid judgment and observed as under:

24. The contention of Mr. Sabharwal to the effect that therein also this Court said "when they acquire disability during the course of employment" and thus, the same meaning should be attributed to Section 47 of the Act cannot be accepted. The said contention, in our opinion is misplaced.

25. A judgment, as is well known, must not be read as statute. It must be understood in the context of the facts involved therein and points required to be decided.

26. What was emphasized in the said paragraph was that those who were already in employment should not be uprooted when they incurred disability. It would not mean that such disability must occur during the course of employment which expression finds place in certain statutes, as for example, Workmen Compensation Act.

32. Whether a substantive right can be taken away by giving retrospective effect to a statute is not in question in these matters. Accident might have occurred in 1995, and the Act might have come into force on 7.2.1996 but the submission of Mr. Vibhu Shanker that the date of acquisition of disability must be considered to be the cut off date for the purpose of Section 47 of the Act cannot be accepted. After coming into force of the said Act only the order impugned was passed- If prior to coming into force of the said Act, services had been terminated the matter would have been different but as the services were not terminated till the Act came into force the same must be held to be bad in law.

33. Once the Act came into force having regard to the phraseology used in Section 47 the appellant herein became debarred from terminating the services of the respondent.

34. The question as to whether in a situation of this nature, the Act may be held to have retrospective effect or not has succinctly been stated in G.P. Singh's Interpretation of Statute (Eighth Edn. 2001) at page 403 as under:

"The rule against retrospective 'construction is not applicable to a statute merely "because a part of the requisites for its action is drawn from a time antecedent to its passing" If that were not so, every statute will be presumed to apply only to persons born and things come into existence after its operation and the rule may well result in virtual nullification of most of the statutes. An amending Act is, therefore, not retrospective merely because it applies also to those to whom pre-amended Act was applicable if the amended Act has operation from the date of its amendment and not from an anterior date. But this does not mean that a statute which takes LPA 506/2003 Page 11 of 22 away or impairs any vested right acquired under existing laws or which creates a new obligation or imposes a new burden in respect of past transactions will not be treated as retrospective. Thus to apply an amending Act, which creates a new obligation to pay additional compensation, or which reduces the rate of compensation to pending proceedings for determination of compensation for acquisitions already made, will be to construe it retrospective which cannot be done unless such a construction follows from express words or necessary implication."

15. Thus, if a person is in employment may be his disability might have been acquired before the date the Act came into force, the benefit of Section 47 of the Act needs to be conferred upon the petitioner if he is sought to be terminated after coming into force of the Act. However, the said Act does not have any retrospective operation. To that extent the judgment of the learned Single Judge cannot be upheld.

16. However, whether de-hors the provisions of the said Act, benefits of similar nature can be granted to a person who is shunted out of the service by the state or the instrumentality of the state is another question. In this regard also some observations made in the case of Rajbir Singh (Supra) are important and needs to be referred to. Those observations are as under:-

9. Section 47 of the said Act occurs in Chapter VII thereof which deals with non-discrimination. Section 44 deals with non-discrimination in transport whereas Section 45 deals with non-discrimination on the road. Section 46 deals with non-discrimination in the built environment. Section 47 deals with

non-discrimination in Government employment. The said provision reads thus:
"47. Non-discrimination of 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, LPA 506/2003 Page 12 of 22 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."

10. History of legislation as noticed here in before clearly shows that said Act was enacted in conformity with the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region. It is not in dispute that the Act is beneficent in nature. It is also not in dispute that by reason of the said Act provisions have been made so that the persons with disability feel themselves as a part of the society which eventually may lead to his full participation at the work place. Nobody suffers from disability by choice. Disability comes as a result of an accident or disease.

11. The said Act was enacted by the Parliament to give some sort of succour to the disabled persons. By reason of Section 47 of the said Act which is beneficent in nature, the employer had been saddled with certain liabilities towards the disabled persons. Section 47 of the Act we may notice does not contemplate that despite disability, a person must be kept in the same post where he had been working. Once he is not found suitable for the post he was holding, he can be shifted to some other post but his pay and other service benefits needs to be protected. The second proviso, appended to Section 47 of the Act in no uncertain terms, state 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. The said Act provides for social security for the disabled persons and if for the said purpose a statutory liability has been thrust upon the employer, the same cannot be held to be arbitrary.

12. Yet again this Bench in Social Jurist v. Union of India, CWP 1283/2002, decided on 13.8.2002 observed:

"It is common experience of several persons with disabilities that they are unable to lead a full life due to LPA 506/2003 Page 13 of 22 societal barriers and discrimination faced by them in employment access to public spaces, transportation etc. Persons with disability are most neglected lot not only in the society but also in the family. More often they are an object of pity. There are hardly any meaningful attempts to assimilate them in the mainstream of the nation's life. The apathy towards their problems is so pervasive that even the number of disabled persons existing in the country is not well documented.

2. T.R. Dye, Policy Analyst in his book 'Understanding Public Policy' says:

"Conditions in society which are not defined as a problem and for which alternatives are never proposed, never become policy issues. Government does nothing and conditions remain the same.

3. This statement amply applies in the case of the disabled. At least this was the position till few years ago. The condition of the disabled in the society was not defined as a problem, and therefore, it did not become public issue. It is not that this problem was not addressed. Various NGOs, Authors, Human Rights Groups have been focusing on this problem from time to time and for quite sometime. But it was not defined as a problem which could become public issue. Until the realization dawned on the Government and the policy makers that the right of the disabled was also human right issue.

It was further observed:

"Unless the mindset of the public changes; unless the attitude of the persons and officials who are given the duty of implementation of this Act changes, whatever rights are granted to the disabled under the Act would remain on paper."

15. Grant of some relief to the disabled person had been in the mind of all concerned for a long time.

16. As indicated hereinbefore 1995 Act came into force only after India became signatory to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region. The said Act, therefore, must be read in the context of the said proclamation.

17. Article 51 of the Constitution of India imposes an obligation to implement international conventions and to abide by the decisions taken in the convention and as a matter of fact the aforesaid act was also enacted by the Parliament keeping into consideration the aforesaid obligations. The said Article 51 reads as under:-

Art. 51. The State shall endeavour to -

- (a) Promote international peace and security;
- (b) Maintain just and honourable relations between nations;
- (c) Forster respect for international law and treaty obligations in the dealings of organized peoples with one another; and
- (d) Encourage settlement of international disputes by arbitration.

18. Similarly Article 41 of the Constitution of India mandates the taking into consideration the benefits of disabled persons specifically and to provide them equal opportunities. The said Article Reads as under:

"Art 41. The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."

19. In Baljeet Singhâs case (supra) there was also a reference to a judgment delivered by the Apex Court in the case of Ved Prakash Singh Vs. DTC SLP NO. 1575/1991 decided on 05.08.1991 i.e much before the coming into force of the said Act, wherein a direction was given to DTC to post the appellant who became disabled during the course of service an equivalent post and to pay salary to him for the intervening period by holding that in case of an employee rendered physically handicapped due to a disease, the Court has power to give directions regarding absorption of such employee enjoying a pay scale equal to that of his original post.

20. In this regard we may also refer to the judgment delivered by a Single Judge of this Court (Vijender Jain, J), as his Lordship then LPA 506/2003 Page 15 of 22 was, in the case of Vijender Singh Vs. D.T.C. (Supra) relying upon the judgment of the Honâble Supreme Court in the case of Ved Prakash Singh (supra) wherein it has been held:

"I find no force in the argument of Counsel for the respondent. Even before coming into effect of the Disability Act, Supreme Court in Ved Prakash Singh Vs. Delhi Transport Corporation & Ors., SLP No. 1575/91, held on the basis of the policy of respondent which was in vogue at that time that respondent adopted the policy to rehabilitate the physically handicapped persons. If the respondents had their own policy as is reflected by the Circulars dated 15.10.73 and 20.01.92, the Act which came subsequently has secured the said principle in the statute, intention of the Legislature in enacting the said Act was to rehabilitate the persons who acquired disability during the course of employment by providing suitable alternative employment. Similarly in State of Haryana v. Narender Kumar Chawla, 1994 (4) SCC 460, Supreme Court held that in case of employees rendered physically handicapped

during the course of employment, the Court has power to give directions regarding observation of such employee carrying a pay scale equal to that of his original post. Judging from any angle it cannot be said that the respondents are under no obligation to provide suitable alternative employment, keeping in view the disability of the petitioner in mind and on the basis of their own circulars.

21. In O.P. Sharma Vs. Delhi Transport Corporation and Anr. (supra) some other observations have also been made which approves grant of similar reliefs de hors the provisions of the Act. They are also reproduced for the sake of reference:

13. The provision was considered in several decisions, by this court. It has been held that it applies, regardless of where the employee incurs the disability; it acquires primacy, and can be invoked, without application of laches; its benefits have to be given even if compensation is paid, for premature retirement of an employee. The position emerging from the various authorities are as follows:

LPA 506/2003 Page 16 of 22

1) Laches cannot be set up to deny relief, since the Act is a beneficial legislation: *Krishan Chander v. DTC* 115 (2004) DLT 559 = 2003 (71) DRJ 11

2) The provisions of the Act have to be given effect to in respect of grievances that arose before enactment of the Disability Act: *Vijender Singh v. DTC*, 105 (2003) DLT 261; *DTC v. Harpal Singh* 105 (2003) DLT 113;

3) The provisions categorically enjoin every employer not only to retain, and desist from discriminating employees suffering from impairment, but also to place them in other posts, without depriving any service conditions or benefits, if they are unable to perform the function in their posts: *DTC v. Rajbir Singh* 100 (2002) DLT 111 DB;

14. All 'establishments,' defined to include those under the control of the Government, are under an obligation to comply with the Act, particularly Section 47. This obligation is merely an affirmation of the primary duty not to discriminate, enjoined by Article 14 of the Constitution of India. The Supreme Court had recognized the need by the employer, particularly the State, to ensure rehabilitative measures to persons incurring disability. This emerges from reported decisions prior to the coming into force of the Act (Ref (*Ref Rakesh Chandra Narayan v. State of Bihar* 1986 (Supp) SCC 576; *B.R. Kapoor v. Union of India* AIR 1990 SC 662 and *National Federation of Blind v. Union Public Service Commission*, 1993 (2) SCC 411). The Act merely gave statutory shape to the primary right of such persons to non-discrimination.

15. In *Ramji Purshottam v. Laxmanbhai D. Kurlawala IV* (2004) SLT 734 = AIR 2004 SC 4010, the Supreme Court held as follows: "The law coming into force during the

pendency of the proceedings is being applied on the date of judgment to the pre-existing facts for the purpose of giving benefit to the tenant in the pending proceedings. This is not retroactivity.

14. Justice G.P. Singh states in Principles of Statutory Interpretation (9th Edn., 2004, at p. 462) "[T]he fact that a prospective benefit under a statutory provision is in certain cases to be measured by or depends on antecedent facts does not necessarily make the provision retrospective. ... the rule against retrospective construction is not always applicable to a statute merely because a part of the requisites for its action is drawn from time antecedent to its passing."

LPA 506/2003 Page 17 of 22

In Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha¹ the Constitution Bench held that Bombay Act 57 of 1947 is a piece of legislation passed to protect the tenants against the evil of eviction. And the benefit of the provisions of the Act ought to be extended to the tenants against whom the proceedings are pending on the date of coming into force of the legislation."

Earlier, in the decision reported as *S. Sai Reddy v. S. Narayana Reddy*, (1991) 3 SCC 647, the Supreme Court had to consider the impact of an enactment, which conferred a new statutory right, by way of entitlement to female Hindus, in co- parcenary properties. Upon resistance to use of the amendment in pending proceedings, on the ground that the rights were freshly created, and applied prospectively, and could not apply in pending proceedings, which were governed by law existing on the date of institution of proceedings, the Court held that:

"Since the legislation is beneficial and placed on the statute book with the avowed object of benefitting women which is a vulnerable section of the society in all its stratas, it is necessary to give a liberal effect to it. For this reason also, we cannot equate the concept of partition that the legislature has in mind in the present case with a mere severance of the status of the joint family which can be effected by an expression of a mere desire by a family member to do so. The partition that the legislature has in mind in the present case is undoubtedly a partition completed in all respects and which has brought about an irreversible situation. A preliminary decree which merely declares shares which are themselves liable to change does not bring an out any irreversible situation. Hence, we are of the view that unless a partition of the property is effected by metes and bounds, the daughters cannot be deprived of the benefits conferred by the Act."

16. In the decision reported as Dilip v. Mohd. Azizul Haq, II (2000) SLT = (2000) 3 SCC 607, the Supreme Court explained the meaning of retroactivity, and application of a law, enacted during pendency of proceedings:

"The result is that if at the time of the institution of the suit for eviction clause 13-A was not in force, but at the time of appeal such a clause is introduced, the tenant in appeal becomes entitled to its protection. We draw support for these propositions from the three decisions of this Court cited by the learned counsel for the appellants. therefore, we are of the view that the High Court was not justified in holding that there was no LPA 506/2003 Page 18 of 22 appeal filed or pending against the tenant. In this case, although a decree for eviction had been passed in the suit, that decree was under challenge in a proceeding arising out of that suit in appeal and was pending in a court. Thus, an appeal being a rehearing of the suit, as stated earlier, the inference drawn by the High Court that no proceedings were filed or pending against the tenant as on the date would not be correct. 8. The High Court further concluded that the amendments have no retrospective effect. The provision came into force when the appeal was pending. Therefore, though the provision is prospective in force, has 'retroactive effect '. This provision merely provides for a limitation to be imposed for the future which in no way affects anything done by a party in the past and statutes providing for new remedies for enforcement of an existing right will apply to future as well as past causes of action. The reason being that the said statutes do not affect existing rights and in the present case, the insistence is upon obtaining of permission of the Controller to enforce a decree for eviction and it is, therefore, not retrospective in effect at all, since it has only retroactive force.

9. The problem concerning retrospectivity concerning enactments depends on events occurring over a period. If the enactment comes into force during a period it only operates on those events occurring then. We must bear in mind that the presumption against retrospective legislation does not necessarily apply to an enactment merely because a part of the requisites for its action is drawn from time antecedent to its passing. The fact that as from a future date tax is charged on a source of income which has been arranged or provided for before the date of the imposition of the tax does not mean that a tax is retrospectively imposed as held in Commrs. of Customs and Excise v. Thorn Electrical Industries Ltd. Therefore, the view of the High Court that clause 13-A is retrospective in effect is again incorrect.

10. The High Court further took the view that the expression 'premises' in the Act (sic Order) does not state as to when the amendment was to be effective as it does not state whether the amendment was retrospective or prospective. The same is on the statute-book on the date on which the suit or proceeding is pending for purpose of eviction and cannot ignore the provision on the statute-book. therefore, the view of the High Court on this aspect of the matter also, is incorrect. The arguments advanced on behalf of the respondents that these amendments are retrospective in character and could not have been made in the LPA 506/2003 Page 19 of 22 absence of an authority under the main enactment by virtue of which such order is made are untenable."

17. It would therefore appear that where by an enactment, beneficial measures are introduced, a litigant is entitled to avail of its benefits, certainly in pending proceedings. In the present case, the DTC, an instrumentality of the State, and admittedly bound by Article 14, was under an obligation to behave in a non-discriminatory and non-arbitrary manner. During the pendency of litigation, the Act was brought into force; it gave statutory shape to the principle of non-discrimination at the workplace. Hence, its application cannot be construed as retrospective application of a later law.

22. In *Rajasthan State Road Transport Corporation, Jaipur Vs. Narayan Shankar and Others* reported in (1980) 2 SCC 180 the Apex Court held as under:

3. In the present case, State Corporation put forward a falls plea and contested the application of the principle of *res ipsa loquitur* to avoid liability. It would have been more humane and just if, instead of indulging in wasteful litigation, the Corporation had hastened compassionately to settle the claims so that the goodwill and public credibility could be improved. After all, the State has a paramount duty, apart from liability for tout, to make effected provision for disablement in cases of undeserved want- Article 41 of the Constitution states so. It was improper of the Corporation to have tenaciously resisted the claim. It was the right of the part of the Tribunal to have raised a rebuttable presumption on the strength of the doctrine of *res ipsa loquitur*.

23. It has been further observed in *Rajbir Singh* case (Supra) which reads as under 39, In Rameshwar Dass v. State of Haryana 1995 (3) SCC 285, the Apex Court held:

"3. The question whether a State Road Transport Corporation can retire the bus drivers on the ground of their defective or subnormal eye-sight developed during the course of the employment has been examined by this Court in the case of Anand Bihari v. Rajasthan State Road Transport Corporation.. This Court held LPA 506/2003 Page 20 of 22 that such terminations of service were unjustified, inequitable and discriminatory, though not amounting to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act. It was impressed by this Court that service conditions of the bus drivers must provide adequate safeguards because such bus drivers have developed defective eye-sight or subnormal eye-sight because of the occupational hazards. A scheme was directed to be framed for providing alternative jobs along with retirement benefits and for payment of additional compensation proportionate to the length of service rendered by them, in case of non availability of alternative jobs, it was brought to our notice that in view of the judgment in Anand Bihari v. Rajasthan State Road Transport Corporation, the Transport Commissioner, State of Haryana has issued a communication dated 20.8.1992."

24. Even though the Labour Court order was not so explicit while giving an award in favor of the respondent which has been upheld by the learned Single Judge, the benefits which have been

granted to the respondent also flows from the constitutional obligations imposed upon the state accepted and emphasized by the Apex Court as well as our own court in a number of Judgments (supra) awarding the reinstatement of the workmen in service cannot held to be illegal more so when similar provisions came into the statute by enactment of Section 47 of the said Act.

25. In these circumstances, while holding that the provisions of Section 47 of the Act cannot be given retrospective operation but in a pending proceedings, the benefit of the provisions can certainly be extended. This is also the mandate of Article 41 of the Constitution of India. Thus, we do not find any infirmity in the judgment of the learned Single Judge or the award given by the Labor Court.
LPA 506/2003 Page 21 of 22

26. Accordingly, we dismiss the appeal with the aforesaid observations leaving the parties to bear their own costs.

MOOL CHAND GARG, J.

SANJAY KISHAN KAUL, J.

JANUARY 09, 2008 and LPA 506/2003 Page 22 of 22