Madras High Court
G.Muthu vs The Management Of on 25 August, 2006

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25/08/2006

CORAM
THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA
and
THE HONOURABLE MR.JUSTICE K.VENKATARAMAN

WRIT APPEAL (MD)No.136 OF 2005

G.Muthu ... Appellant

Vs

The Management of
Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Rep.by its Managing Director,
Bye-Pass Road,
Madurai-10. ... Respondent

Writ Appeal under Clause 15 of Letters Patent against the order of the learned Single Judge, dated 06.01.2005, made in W.P.No.70 of 2005.

!For Appellant ... Mr.A.Hariparanthaman
For Mr.A.Rahul

^For Respondent ... Mr.R.Sivamanoharan

:JUDGMENT

K.VENKATARAMAN,J The writ appeal is filed against the order passed in W.P.No.70 of 2005 dated 06.01.2005.

2. The appellant in the writ appeal has filed W.P.No.70 of 2005 for the issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the order dated 26.03.2002 passed by the respondent in Ref.No.Niruvagam/A4/5348/2001 discharging him from service on medical grounds and to quash the same and for a direction to reinstate him in a suitable alternative employment with pay protection, continuity of service, back wages and all other attendant benefits and for costs.

3. The case of the appellant is that he joined the services of the respondent Corporation as a driver on 26.08.1993. Later his services was regularised with effect from 24.07.1994. Thereafter, he was promoted as senior driver. While he was working at Ellis Nagar Branch, the respondent Corporation by its order dated 04.02.2002 directed him to appear before the Regional Medical Board, Madurai, to ascertain whether he is fit to work as a driver. He appeared before the Medical Board on 19.02.2002. The Medical Board examined his physical fitness and informed him that they would send the report to the respondent. The Medical Board submitted its report, dated 19.02.2002, wherein it has been stated as under:

"Vision RE 6/6;

LE 6/6 Near vision +1.50 Ns Intraocular Tension: 18-9 mm ; Normal Fields - Central Peripheral Both eyes Normal.

Binacular single vision - Present.

Colour Vision: DEFECTIVE IN BOTH EYES (COLOUR BLIND) Since he is COLOUR-BLIND he is unfit to work as DRIVER." Based upon the report of the Medical Board, the respondent issued him a show cause notice dated 07.03.2002 stating that the Medical Board has found him suffering from 'colour blindness' and hence he is unfit to work as a driver and proposed to discharge him from the post of driver on medical grounds and asked him to submit his explanation within 72 hours from the receipt of the said notice. He has submitted his explanation on 07.03.2002 wherein he has requested the respondent to provide suitable alternative employment with continuity of service and pay protection.

4. The grievance of the appellant is that instead of favourably responding to his request, the respondent by its order dated 26.03.2002 discharged him from service on medical grounds. It is his further case that he has submitted representation to the respondent on 16.07.2002 through the Branch Manager of Ellis Nagar Branch, where he was working, requesting the respondent to sympathetically consider his case for suitable alternative employment. Since there was no response from the respondent Corporation, again he has submitted a representation on 30.08.2004 stating that the discharge from service is contrary to the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as "the Act"). In view of the fact that the respondent Corporation did not respond to his request to consider

his case for alternative job as per the Act, the appellant challenging the order of the respondent dated 26.03.2002 filed the said writ petition for the reliefs stated above.

5. The learned single Judge by his order dated 06.01.2005 dismissed the said writ petition at the admission stage itself on the sole ground that the petitioner approached the Court after a long time. According to the learned single Judge, the order of discharge was passed on 26.03.2002 and the appellant has filed the Writ Petition only in 2004 and hence it is a clear case of laches. In the result, the appellant's writ petition was dismissed solely on the ground of laches.

6. The appellant aggrieved by the said order dated 06.01.2005 has filed the present writ appeal.

7. Mr.Hariparanthaman, learned counsel appearing for the appellant has in nut shell formulated the following points for our consideration:

(i) The dismissal of the writ petition at the admission stage itself without deciding the question as to whether the appellant is entitled to the benefit under the provisions of the Act, especially when the Act is a benevolent one, is not proper.

(ii) The learned single Judge ought to have considered that even though the appellant is unfit due to the disability, should have been retained in service by providing suitable alternative job without resorting to discharge on medical grounds as per Section 47 of the Act.

(iii) Section 47 of the Act, has to be construed independently without reference to the other provisions of the said Act. There is a clear distinction between the words "with disability" found in various provisions under Chapter IV to VII of the Act and the words "acquiring disability" that found place only in Section 47 of the Act.

(iv) The disability which has been defined under Section 2(i) of the Act is not exhaustive, especially when Section 2 starts with a phrase "Unless the context otherwise requires" which means that the 7th category mentioned in Clause 2(i) alone need not be construed as disability.

(v) To give effect to the purpose of the Act, Court should give helping hand in favour of the disabled persons.

8. Per contra, Mr.R.Siva Manoharan, learned counsel appearing for the respondent in short submitted the following points for our consideration:

(i) Section 2(i) of the Act describes only seven illness as disability and hence, the intention of the Parliament is that only those category of persons mentioned in Section 2(i) of the Act alone are entitled to the benefit under the Act.

(ii) When Section 2(i) of the Act specifies seven categories of illness as disability there is no scope to give wider interpretation under Section 47 of the Act.

(iii) When the language, under Section 47 of the Act is plain and unambiguous, there is no need to give different interpretation.

(iv) When Section 33 of the Act contains similar provisos like under Section 47, Section 47 cannot be said to be having isolated provisos.

(v) Section 56(4) of the said Act deals with persons with severe disability which cannot be compared with mere disability as found in the other provisions of the Act. Hence, if the Parliament intend to give different meaning to disability as found in Section 47, it would have stated so. Further, if the Parliament intended to give elaborate meaning to Section 47, the said provision would not contain the words "who acquires disability" but it would have defined the illness.

(vi) Section 47 (i) of the Act merely says "who acquires "a" disability during the service" not who acquires "any" disability. If liberal interpretation is given every person in the Corporation will try to take advantage of it, since he/she will be getting the same scale of pay without any much work.

(vii) If wider interpretation is given there will be a long queue claiming disability. Further, liberal interpretation to Section 47 will cause havoc among the employees and there will be demotivation among the employees.

(viii) Paying capacity of the Corporation has to be taken into consideration while deciding the case in favour of the disable persons.

9. Now, we will deal with the points raised by Mr.Hariparanthaman, learned counsel appearing for the appellant in detail.

10.1. On the point that the learned Single Judge should not have dismissed the writ petition on the question of mere laches and should have considered the matter on merit by deciding whether the employee is entitled to protection under the Act, the learned counsel for the appellant submitted that since the Act contains benevolent provisions to the disabled persons, relief cannot be denied to the persons like the appellant who knocks the door of justice, only on the ground of laches. Further, he has pointed out that though the order of discharge has been passed on 26.03.2002, later, he has submitted a representation to the respondent on 16.07.2002 and on 30.08.2004 expecting favourable orders from the respondent. Hoping that the respondent will consider his case favourably he has not immediately rushed to the Court, questioning the order of discharge dated 26.03.2002. This cannot at any stretch of imagination be considered as laches on the part of the appellant.

10.2. Per contra, the learned counsel for the respondent vehemently contended that the appellant who has suffered the order of discharge on 26.03.2002 has approached the Court only in December 2004 and the delay has not been properly explained.

10.3. We are unable to accept the contention put forth by the learned counsel for the respondent. As submitted by the learned counsel for the appellant, since the Act contains benevolent provisions for

the disable persons, they cannot be treated like other able persons. Further, the appellant seems to be under the hope that the respondent will be considering his representations favourably. In view of the fact that the respondent did not consider his case favourably he has approached the Court as a last resort. Hence, we are unable to accept the finding of the learned single Judge that the appellant is not entitled for the relief claimed by him since he has approached the court after a long time. In any event, in our opinion, as between March 2002 and December 2004, it cannot be said that the appellant displayed total inaction and thereby his approach to this Court in December 2004 should be held to be hit by laches. In between a period of one year and nine months, the appellant approached the respondent claiming alternate employment by way of representations which did not evoke any response from the respondent. Therefore we do not find any laches or inaction on the part of the appellant in order to throw out his claim without being considered on merits. We are therefore of the considered opinion that the learned single Judge ought to have considered the matter on merits in respect of the claim of the appellant whether he is entitled to the benefit under the Act or not.

11.1. Regarding the submissions of the learned counsel for the appellant that Section 47 of the Act has to be construed independently without reference to the other provisions of the Act, the learned counsel has taken us to the various provisions of the Act from Chapter IV to Chapter VII of the said Act. The crux of the arguments of the learned counsel for the appellant is that when all the provisions under those chapters the words that have been used is "with a disability" in Section 47 of the Act alone the words "who acquires a disability" is used. Though, the learned counsel appearing for the appellant has taken us to all the sections under those chapters instead of reproducing all the provisions contained in those chapters, it will be suffice to pin point only one Section.

11.2. Chapter-V deals with Education and Section 26 in that Chapter deals with Appropriate Governments and local authorities to provide children with disabilities free education etc., The said Section reads as follows:

"26. Appropriate Governments and local authorities to provide children with disabilities free education etc.,-- The appropriate Governments and the local authorities shall--

a) ensure that every child with a disability has access to free education in an appropriate environment till he attains the age of eighteen years.

b) endeavour to promote the integration of students with disabilities in the normal schools;

c) promote setting up of special schools in Government and private sector for those in need of special education, in such a manner that children with disabilities living in any part of the country have access to such schools,

d) endeavour to equip the special schools for children with disabilities with vocational training facilities."

11.3. It will be useful to reproduce Section 47 of the said Act which reads as follows:

"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, 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."

11.4. Thus the argument of the learned counsel for the appellant is when provision in Chapter IV to VII of the Act deals with "persons with disability" Section 47 alone deals with "employees who acquires a disability". Hence, according to the learned counsel appearing for the appellant, Section 47 of the Act has to be construed independently without reference to the other provisions of the said Act.

12.1. Regarding the next contention of the learned counsel appearing for the appellant that even though Section 2(i) of the Act specifies seven illness as disability, it is not exhaustive, since the opening words in Section 2 of the said Act states "unless the context otherwise requires". It will be useful to reproduce Section 2(i) of the Act which runs as follows:-

"(i) "disability means"

i) blindness

ii) low vision

iii) leprosy-cured

iv) hearing impairment

v) locomotor disability

vi) mental retardation

vii) mental illness"

12.2. The learned counsel thus vehemently contended that the illness mentioned under the category of disability under Section 2(i) of the Act does not say that the persons affected with the seven illness mentioned in that Section alone are entitled to benefit under the provisions of the Act. According to the learned counsel, liberal interpretation should be attributed to the said provision and Section 2(i) of the Act is not exhaustive.

12.3. In this connection, the learned counsel appearing for the appellant has relied on a judgment of the Hon'ble Apex Court rendered in Vijoy and Director-General, Border Security Force reported in 2006(1) L.L.N 665 wherein it has been held as follows:

"A rigourous, literal and pedantic interpretation is not to be attributed to the definition of disease as appearing under the Rules, for the only reason that a particular disease is not included in the schedule and if the disease has caused disability to a serving personnel to continue in service, the law is not helpless in the matter of disability pension. It will not also be altogether out of context to note that some of the diseases noted in the guidelines which are given as examples, fibrositis, bronchitis, eczema etc., are not included in the schedule and yet it provided that in such cases the resurvey Medical Board should assess the disability. The crucial consideration should be whether a serving personnel is disabled continue in service owing to any disease. It is in that context the opinion of the Medical Board becomes crucially relevant. According to the Medical Board the petitioner who is suffering from psoriasis vulgaris is "unfit for further service BSF". The Medical Board also has opined that the disease is aggravated by service conditions. There is also no dispute that the disease is contracted in circumstances over which the petitioner had no control. It is also not in dispute that the disability was contracted while the petitioner was in service. It is also a fact that even after the initial symptoms the petitioner continued for about 8 years and only when it was certified that the petitioner was unfit to continue in the service of BSF he was invalidated from service declaring him to be unfit to continue in the service of the BSF. According to the Medical Board the petitioner is "completely and permanently incapacitated for further service of any kind in the department to which he belongs". In such circumstances, it will be highly unjust and unreasonable to deny the petitioner the benefit of disability pension for the only reason of specific non-inclusion of the disease causing the disability, in the schedule. Such under inclusion does not matter since the Rules provide for a purposive interpretation as required in the given circumstances so as to achieve the object of the Rules, the object being the grant of disability pension to a serving personnel invalidated from service owing to disability for the reason that he is unfit to continue in BSF."

12.4. The learned counsel also relied upon the judgment rendered in The Vanguard Fire and General Insurance Co., Ltd. Madras, Vs. M/s.Fraser and Ross and another reported in AIR 1960 SC 971 wherein the apex Court has held in Para-6 which reads as follows:

"6.The main basis of this contention is the definition of the word "insurer" in Section 2(9) of the Act. It is pointed out that that definition begins with the words "insurer means" and is therefore exhaustive. It may be accepted that generally the word " insurer" has been defined for the purposes of the Act to mean a person or body corporate etc. which is actually carrying on the business of insurance, i.e., the business of effecting contracts of insurance of whatever kind they might be. But

Section 2 begins with the words "in this Act, unless there is anything repugnant in the subject or context" and then come the various definition clauses of which (9) is one. It is well settled that all statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition clauses which created them and it may that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject of the context. That is why all definitions in statutes generally begin with the qualifying words similar to the words used in the present case, namely, unless there is anything repugnant in the subject or context. Therefore in finding out the meaning of the word 'insurer" in various sections of the Act, the meaning to be ordinarily given to it is that given in the definition clause. But this is not inflexible and there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the word has been used and that will be giving effect to the opening sentence in the definition section, namely, unless there is anything repugnant in the subject or context. In view of this qualification, the Court has not only to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances. Therefore, though ordinarily the word 'insurer" as used in the Act would mean a person or body corporate actually carrying on the business of insurance it may be that in certain sections the word may have a somewhat different meaning".

12.5. The learned counsel also relied upon a judgment rendered in K.V.Muthu Vs. Angamuthuammal reported in (1997) 2 SCC 53 wherein the Hon'ble Apex Court while dealing with the definition of family under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 has held as in Paragraphs 10 to 12 as follows:

"10.Apprantely, it appears that the definition is conclusive as the word "means" has been used to specify the members, namely, spouse, son, daughter, grandchild or dependant parent, who would constitute the family. Section 2 of the Act in which various terms have been defined, opens with the words "in this Act, unless the context otherwise requires" which indicates that the definitions, as for example, that of "family", which are indicated to be conclusive may not be treated to be conclusive if it was otherwise required by the context. This implies that a definition, like any other word in a statute, has to be read in the light of the context and scheme of the Act as also the object for which the Act was made by the legislature.

11.While interpreting a definition, it has to be borne in mind that the interpretation placed on it should not only be not repugnant to the context, it should also be such as would aid the achievement of the purpose which is sought to be served by the Act. A construction which would defeat or was likely to defeat the purpose of the Act has to be ignored and not accepted.

12. Where the definition or expression, as in the instant case, is preceded by the words "unless the context otherwise requires", the said definition set out in the section is to be applied and given effect to but this rule, which is the normal rule may be departed from if there be something in the context to show that the definition could not be applied."

12.6. The learned counsel also would rely upon a judgment of the Apex Court rendered in State of Maharashtra Vs. Indian Medical Association and others reported in 2002 1 SCC 589, wherein in Para-7 Their Lordships held as follows:-

"In K.Balakrishna Rao V.Haji Abdulla Sait (1980 (1) S.C.C. 321, it was held that a definition clause does not necessarily in any statute apply in all possible contexts in which the word which is defined may be found therein. In Printers (Mysore) Ltd., Vs. Asstt. CTO (1994 (2) S.C.C. 434), it was held that it should be remembered that the provisions which define certain expressions occurred in the Act open with the words"in this Act unless the context otherwise requires which shows that wherever the word so defined occurred in the enactment, it is not mandatory that one should mechanically attribute to the said expression the meaning assigned to it in the definition clause. Ordinarily, where the context does not permit or where the context requires otherwise, the meaning assigned to it in the said definition need not be applied."

12.7. The learned counsel also would rely upon a judgment of the Apex Court rendered in Mukesh K.Tripathi Vs. Senior Divisional Manager, LIC and others reported in 2004 (8) SCC 387, while dealing with the definition of the word "workman" under the provisions of Industrial Disputes Act, 1947 has held in Paras 38-40 as follows:-

"38. It is true that the definition of "workman" as contained in Section 2(s) of the Industrial Disputes Act is exhaustive.

39. The interpretation clause contained in a statute although may deserve a broader meaning having employed the word "includes" but therefor also it is necessary to keep in view the scheme of the object and purport of the statute which takes him out of the said definition. Furthermore, the interpretation section begins with the words "unless the context otherwise requires.

40. In Ramesh Mehta Vs. Sanwal Chand Singhvi (2004 (5) S.C.C. 409), it was noticed: (SCC P.426, paras 27-28) "27. A definition is not to be read in isolation. It must be read in the context of the phrase which would define it. It should not be vague or ambiguous. The definition of words must be given a meaningful application; where the context makes the definition given in the interpretation clause inapplicable, the same meaning cannot be assigned."

12.8. The learned counsel appearing for the appellant also would rely upon a judgment of the Apex Court rendered in Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others reported in 1998 (8) SCC 1 wherein the Hon'ble Apex Court in Paras-28 and 30 has held as follows:

"28.Now, the principle is that all statutory definitions have to be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or context. That is why all definitions in statutes generally begin with the qualifying words, similar to the words used in the present case, namely "unless there is anything repugnant in the subject or context". Thus there may be sections in the Act where the meaning may have to be

departed from on account of the subject or context in which the word had been used and that will be giving effect to the opening sentence in the definition section, namely "unless there is anything repugnant in the subject or context". In view of this qualification, the court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words " under those circumstances".(See Vanguard Fire and General Insurance Co.Ltd., Vs.Fraser & Ross (AIR 1960 S.C. 971))

29. Before considering the contextual aspect of the definition of "Tribunal", we may first consider its ordinary and simple meaning. A bare look at the definition indicates that the High Court and the Registrar, on their own are not "Tribunal". They become "Tribunal" if "the proceeding concerned" comes to be pending before either of them. In other words, if "the proceeding concerned" is pending before the High Court, it will be treated as "Tribunal". If, on the contrary, "the proceeding concerned" is pending before the Registrar, the latter will be treated as "Tribunal".

30. Since "Tribunal" is defined in Section 2 which, in its opening part, uses the phrase "Unless the context otherwise requires", the definition, obviously, cannot be read in isolation. The phrase "unless the context otherwise requires" is meant to prevent a person from falling into the whirlpool of "definitions" and not to look to other provisions of the Act which, necessarily, has to be done as the meaning ascribed to a "definition" can be adopted only if the context does not otherwise require."

12.9. The learned counsel also would rely upon a judgment of the Apex Court rendered in K.Balakrishna Rao and others Vs. Haji Abdulla Sait and others reported in 1980 (1) SCC 321, while dealing with the Tamil Nadu Buildings (Lease and Rent Control) Amendment Act,1964 in Para-24 has held as follows:

"24. A definition clause does not necessarily in any statute apply in all possible contexts in which the word which is defined may be found therein. The opening clause of Section 2 of the principal Act itself suggests that any expression defined in that Section should be given the meaning assigned to it therein unless the context otherwise requires."

13.1. Per contra, the learned counsel appearing for the respondent has contended that the Parliament has chosen only seven illness under the category of disability under Section 2(i) of the Act and hence the intention of the Parliament is that persons with all disability should not claim benefit under the disability Act but only the persons affected with illness as enumerated under Section 2(i) of the Act alone can claim disability and protection under the Act.

13.2. He has drawn our attention to Section 33 of the Act, which reads as follows:-

"33. Reservation of posts.-- Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent, for persons or class of persons with disability of which one per cent, each shall be reserved for persons suffering from--

(i) blindness or low vision;

(ii) hearing impairment;

(iii) locomotor disability or cerebral palsy;

in the posts identified for each disability.

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

13.2. Thus Section 33 provides for reservation of post of three category of the persons mentioned therein. He has also drawn our attention to Section 39 which reads as follows:-

"39. All educational institutions to reserve seats for persons with disabilities.-- All Government educational institutions and other educational institutions receiving aid from the Government, shall reserve not less than three per cent seats for persons with disabilities."

Thus, according to the learned counsel for the respondent, under Section 39 of the Act, for educational purpose disabled persons shall be considered.

13.3. He also drew our attention to Section 56 of the Act which reads as follows:-

"56. Institutions for persons with severe disabilities.-- (1) The appropriate Government may establish and maintain institutions for persons with severe disabilities at such places as it thinks fit.

(2) Where, the appropriate Government is of opinion that any institution other than an institution, established under sub-section (1), is fit for the rehabilitation of the persons with severe disabilities for the purposes of this Act;

Provided that no institution shall be recognised under this section unless such institution has complied with the requirements of this Act and the rules made thereunder.

(3) Every institution established under sub-section (1) shall be maintained in such manner and satisfy such conditions as may be prescribed by the appropriate Government.

(4) For the purposes of this section "person with severe disability" means a person with eight per cent, or more of one or more disabilities."

13.4. His argument on Section 56 of the Act is that it is a special provision for the persons with severe disability which cannot be compared with the persons with mere disability in other provisions of the Act. Thus the crux of the argument of the learned counsel appearing for the respondent is that only seven clauses of illness as shown in 2(i) of the Act alone can claim protection

of the Act and not otherwise. Since, the appellant is affected with 'colour blindness' he is not entitled to protection under the provisions of the Act.

14.Having heard the learned counsel for the appellant as well as the respondent on the above referred to contentions, namely as regards the distinctive application of Section 47 dehors the definition of 'disability' as found in Section 2(i), we find force in the submission of the learned counsel for the appellant. As pointed out by the learned counsel for the appellant, the law makers have used a different set of expressions in Section 47, which deals with an employee who "acquires a disability" in contra distinction to the expression "with disability" which has been used in the various provisions falling under Chapters IV to VII of the Act. On a close reading of such provisions contained in Chapters IV to VII, we could discern that the benefits which are conferred under those provisions are to be made available to persons who already suffer a disability. In other words, the two categories, namely a person 'with a disability' is always distinguishable from a person who later on 'acquires a disability'. Viewed in that respect, it will have to be held that the expression 'disability' used in Section 47 of the Act can, by no stretch of imagination, be equated with a case of a person 'with the disability'. Once the said distinction as between Section 47 and the various other provisions of the Act, in particular the provisions falling under Chapters IV to VII, is understood, then the stand of the appellant can be better appreciated. A close reading of Section 47 of the Act would show that the benefit granted under the said provision was to be conferred on a serving employee in an establishment who acquires a 'disability' during such service. When such 'disability' was acquired by him during his service, the Parliament thought it fit to ensure that his service is not in any way affected because of acquisition of such a 'disability' and with that view directed that he should be shifted to some other post with the same pay scale and service benefits and in the event of such alternate post not being available, to create a supernumerary post until a suitable post is available or till he attains the age of superannuation. Sub- section (2) of Section 47 goes one step further and stipulates that no promotion should also be denied to a person merely on the ground of his disability. A further reading of the last proviso to section 47 disclose that it is for the appropriate Government to take note of the type of work carried on in any establishment and issue a notification exempting such establishment from the provisions of the said section 47, subject to such conditions if any. Therefore, unless and otherwise such a specific notification exempting an establishment depending upon the nature and type of work of that establishment is issued, no other establishment covered by the provisions of the Act can take a different stand.

15.Having regard to the special features contained in the said section 47, providing for such a special benefit to an existing employee in an establishment when he acquires a 'disability' as held by us earlier, the application and implementation of the said provision will have to be ensured independent of various other benefits provided under the various other provisions falling under Chapters IV to VII of the Act which are meant for persons 'with disability'. Having regard to the said distinctive features contained in Section 47 of the Act, as compared to the other provisions, we are of the considered opinion that the context in which the benefit has been conferred under Section 47 stands apart from the context of all other provisions where various other benefits have been conferred. In other words, we are of the firm view that the opening set of expressions contained in the definition clause, namely Section 2, which denotes "unless the context otherwise requires" squarely gets attracted to Section 47 and therefore the definition of 'disability' as defined under

Section 2(i) cannot be blindly applied to the term 'disability' which has been used in Section 47 of the Act. In other words, the term 'disability' used in Section 47 can draw support not only in respect of the defined 'disabilities' as contained in Section 2(i) of the Act but will also encompass such other 'disabilities' which would disable a person from performing the work which he held immediately prior to acquisition of such 'disability' and thereby entitle him to avail the benefits conferred under the said provision for having acquired such a 'disability'.

16.The decisions of the Hon'ble Supreme Court relied on by the learned counsel for the appellant reported in AIR 1960 SC 971 and the subsequent decisions reported in 1997 (2) SCC 53, 2002 (1) SCC 589, 1998 (8) SCC 1 and 1980 (1) SCC 321, which have been set out in detail in the earlier paragraphs, fully support the above conclusion of ours.

17.As far as the contentions made by the learned counsel for the respondent based on Sections 33, 39 and 56 of the Act to the effect that where the Parliament thought it fit to widen the scope of 'disability' or limit the scope of 'disability', it has made specific stipulations in the concerned section itself and therefore in the absence of any such specific stipulations regarding the disability, the expression 'disability' used in Section 47 should be subjected to and controlled by the definition of 'disability' as defined under Section 2(i) of the Act, we are unable unable to agree with the learned counsel for the respondent. In fact, the said contention of the learned counsel for the respondent would some extent support the stand of the appellant. We say so because apart from the definition of 'disability' as defined under Section 2(i), the Parliament thought it fit to state that only a specific percentage of such disability alone would enable a person with such disability to secure the benefit as stipulated under those provisions. In the same line of reasoning, it will have to be held that the specific expression contained in Section 47 to the effect that 'a person who acquires a disability' should be applied with particular reference to the context in which the said expression was used. We also do not find any scope of comparison of those provisions with that of Section 47 when we consider the submission of the learned counsel for the appellant, according to whose submissions the definition of 'disability' under Section 2(i) was not exhaustive and that the expression 'disability' used in Section 47 will have to be independently applied to the facts of the each case.

18. Therefore, we are unable to accept the arguments of the learned counsel appearing for the respondent and we are in full agreement with the submissions made by the learned counsel appearing for the appellant in this regard. As pointed out by the learned counsel appearing for the appellant, since the opening phrase of Section 2 reads "unless the context otherwise requires" purposive construction to definition clause has to be adopted. The court should not only look at the words but also look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to convey by the use of words under such circumstances. Thus a rigourous, literal and pedantic interpretation need not be attributed to Section 2 (i) of the Act. We are, therefore, of the opinion that the intention of the law makers is not to restrict only to those categories of persons mentioned in Section 2(i) of the Act alone to be entitled to the benefits under the Act. If justifiable and reasonable approach is to be made, then it has to be held that Section 2(i) of the Act is not exhaustive.

19.Therefore, as argued by the learned counsel for the appellant, while the provisions contained in Chapters IV to VII of the Act deals with "Persons with disability" Section 47 alone deals with " an employee who acquires a disability during his service". The said provision clearly says that no establishment shall dispense with or reduce in rank, an employee who acquires a disability during his service which means that the person who is employed in an establishment when he acquires a disability, his services cannot be dispensed with or there should be any reduction in rank. Further, the proviso to the said Section clearly states that if he is not suitable for the post he could be shifted to some other post with the same scale of pay and benefits. If it is not possible, he could be kept on a supernumerary post until a post is available or he attains the age of superannuation whichever is earlier. The said provision further states that no promotion shall be denied to any person merely on the ground of his disability. Thus, if we apply Section 47 of the said Act, the order of discharge passed by the respondent dated 26.03.2002 has no leg to stand.

20.1. The next submission of the learned counsel for the appellant is that liberal construction should be applied to the provisions of the said Act, especially to Section 2(i) of the Act for the furtherance of the object for which the Act has been enacted by the Parliament. Further, to give effect to the purpose of the Act, the court should give a helping hand in favour of the disabled persons like the appellant. In this connection, the learned counsel for the appellant has cited the decision of the Apex Court in THE REGIONAL PROVIDENT FUNDS COMMISSIONER v. SHIBU METAL WORKS (AIR 1965 S.C. 1076) wherein, in paragraph 13, Their Lordships have held as under:-

"Reverting then to the question of construing the relevant entry in Schedule I, it is necessary to bear in mind that this entry occurs in the Act which is intended to serve a beneficent purpose. The object which the Act purports to achieve is to require that appropriate provision should be made for the employees employed in the establishments to which the Act applies; and that means that in construing the material provisions of such an Act, if two views are reasonably possible, the courts should prefer the view which helps the achievement of the object. If the words used in the entry are capable of a narrow or broad construction, each construction being reasonably possible, and it appears that the broad construction would help the furtherance of the object, then it would be necessary to prefer the said construction. This rule postulates that there is a competition between the two constructions, each one of which is reasonably possible. this rule does not justify the straining of the words or putting an unnatural or unreasonable meaning on them just for the purpose of introducing a broader construction."

20.2. The learned counsel for the appellant has also drawn our attention to the judgment of the Supreme Court in UNION OF INDIA v. HANSOLI DEVI (2002 (7) S.C.C. 273) wherein, in paragraph 9, Their Lordships have held as follows:-

"Before we embark upon an inquiry as to what would be correct interpretation of Section 28-A, we think it appropriate to bear in mind certain basic principles of interpretation of a statute. The rule stated by Tindal, C.J. in SUSSEX PERRAGE CASE (8 ER 1034) still hold the field. The aforesaid rule is to the effect: (ER p. 1057) "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver."

It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In KIRKNESS v. JOHN HUDSON & CO. LTD., Lord Reid pointed out as to what is the meaning of "Ambiguous" and held that: (All.ER p. 366 C-D) "A provision is not ambiguous merely because it contains a word which in different contexts is capable of different meanings. It would be hard to find anywhere a sentence of any length which does not contain such a word. A provision is, in my judgment, ambiguous only if it contains a word or phrase which in that particular context is capable of having more than one meaning."

It is no doubt true that if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the court may look into the purpose for which the statute has been brought and would try to give a meaning, which would adhere to the purpose of the statute."

21. Thus, according to the learned counsel for the appellant, if there is any anomaly or injustice, then the court has to look into the purpose for which the statute has been brought and should try to give a meaning, which would adhere to the purpose of the statute. We find full force in the submission of the learned counsel for the appellant. The object which Section 47 of the Act purports to achieve is that appropriate provision should be made for the employees employed in the establishments who acquire a disability during their service. While having this in mind, in construing the material provisions of such an Act, if two views are reasonably possible, the courts should prefer the view which helps the achievement of the object. If the words used in the provisions of the Act are capable of a narrow or broad construction, each construction is being reasonably possible, and it appears that the broad construction would help the furtherance of the object, then it would be necessary to prefer such construction. The other circumstance which has to be borne in mind in interpreting the provisions of the Act is that the interpretation should not concentrate on the word used therein. In construing the relevant provisions of the Act what the courts have to ask themselves is, "Is the object for which the Act has been introduced, achieved?" Thus, the interpretation shall fit in with the object for which the Act has been introduced and it should be considered in the light of the object intended to be achieved.

22. Welfare legislations are meant to ensure benefits to the needy. They should be interpreted in such a way so that the purpose of the legislation is allowed to be achieved. Even assuming that there is any ambiguity in the provisions of the Act, in view of the object underlying the Act, it requires a reasonable interpretation of Section 2(i) of the said Act so as to make it applicable to the case on hand. The legislative purpose must be noted and the statute must be read as a whole.

23. The learned counsel for the respondent has submitted that there should not be any sympathy while construing the provisions of the Act. He has drawn the attention of this Court to the judgment of the Apex Court in STATE OF KARNATAKA v. C.LALITHA (2006 (2) L.L.N. 45) wherein, in paragraph 32, Their Lordships have held as under:-

"Justice demands that a person should not be allowed to derive any undue advantage over other employees. The concept of justice is that one should get what is due to him or her in law. The concept of justice cannot be stretched so as to cause heart-burning to more meritorious candidates."

We are unable to concede that the said judgment of the Apex Court will in any way come to the rescue of the respondent, since that is a case pertaining to entitlement to promotion and nothing to do with the entitlement to a disabled person. Since the context in which the above ratio has been laid down does not fit in to the case on hand, the said principle has no application here. Hence, we are unable to place any reliance on the said judgment.

24. The other judgment that has been cited by the learned counsel for the respondent is ANAND BIHARI v. RAJASTHAN STATE ROAD TRANSPORT CORPORATION, JAIPUR (AIR 1991 S.C. 1003) wherein, in paragraph 12, Their Lordships have held as under:-

"In view of the helplessness shown by the Corporation, we are constrained to evolve a scheme which, according to us, would give relief as best as it can to the workmen such as the ones involved in the present case. While evolving the scheme and giving these directions we have kept in mind that the workmen concerned are incapacitated to work only as drivers and are not rendered incapable of taking any other job either in the Corporation or outside. Secondly, the workmen are at an advanced age of their life and it would be difficult for them to get a suitable alternative employment outside. Thirdly, we are also mindful of the fact that the relief made available under the scheme should not be such as would induce the workmen to feign disability which, in the case of disability such as the present one, viz., the development of a defective eye-sight, it may be easy to do."

25. By citing the said judgment, the learned counsel for the respondent has vehemently argued that the capacity of the respondent-Corporation has to be seen while giving liberal interpretation to Section 2(i) of the Act. Further he has submitted that if liberal interpretation is given, every person will claim disability and try to enforce the provisions of the Act by claiming alternative job with the same scale of pay. Then there will be a long queue claiming disability. We are unable to accept the argument of the learned counsel for the respondent in this regard for more than one reason. First of all, the decision reported in AIR 1991 S.C. 1003 is much earlier to the enactment of the present Act which came into force in the year 1995. Secondly, even in that case, certain guidelines have been formulated by Their Lordships wherein the employees have been given certain benefits. In paragraph 8 of the said judgment, Their Lordships have clearly stated that "there is no justification in treating the cases of workmen like drivers who are exposed to occupational diseases and disabilities on par with the other employees. The injustice, inequity and discrimination are writ large in such cases and are indefensible. The service conditions of the workmen such as the drivers in the present case, therefore, must provide for adequate safeguards to remedy the situation by compensating them in some form for the all-round loss they suffer for no fault of them." Thirdly, as argued by the learned counsel for the appellant, there will not be too many claims on false pretext. The Corporation can very well refer the persons to the Medical Board to verify their plea of disability and take all precautions to ensure that no false claim is entertained. On that score, deserving persons cannot be denied the benefits under the Act.

26. After analysing the entire provisions of the Act and also various decisions cited above, we feel that the courts cannot shut its eyes if a person knocks at its door claiming relief under the Act. In a welfare State like India, benefits of benevolent legislation cannot be denied on the ground of mere hyper technicalities. When the law makers have conferred certain privileges on a class of persons, like in this case to a disabled person, the duty is cast upon the judiciary to oversee that the authorities or the persons to whom such a power is conferred, enforce the same in letter and spirit for which such enactment has been made. In the present case on hand, the appellant has been discharged on the ground of 'colour blindness' without providing alternative job as per Section 47 of the Act, which is unjustified and unreasonable. Hence, the order of the respondent dated 26.3.2002 discharging the appellant on medical grounds has no leg to stand. The appellant is entitled to the protection under Section 47 of the Act. He should have been given a suitable alternative employment with pay protection, instead of discharging him from service on the ground of 'colour blindness'. Viewed from any angle, the order of the learned Single Judge dismissing the writ petition on the mere ground of laches without considering the claim of the appellant on merits is liable to be set aside.

27. In fine, the Writ Appeal is allowed setting aside the order of the learned Single Judge in W.P.No.70 of 2005 dated 6.1.2005, thereby we set aside the order of the respondent dated 26.3.2002 discharging the appellant from service on medical grounds. During the pendency of the writ appeal, by an interim order dated 29.04.2005, the appellant was given employment as Helper based on G.O.Ms.No.746, Transport Department, dated 02.07.1981. Since we have held that the appellant is entitled for the benefit of alternate employment as provided under Section 47 of the Act, we direct the respondent to provide such alternate employment to the appellant from the date of his discharge with pay protection, continuity of service, back-wages and all other attendant benefits for which he is legally entitled to. No costs.

To The Managing Director, Tamil Nadu State Transport Corporation (Madurai) Ltd, Bye-Pass Road, Madurai-10.