

Delhi High Court

Shri Dilbagh Singh vs Delhi Transport Corporation on 1 August, 2005

Equivalent citations: 123 (2005) DLT 318, 2005 (84) DRJ 208, (2006) ILLJ 480 Del

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Bench: S R Bhat

JUDGMENT S. Ravindra Bhat, J.

1. The claim in these proceedings under Article 226 of the Constitution of India is for a direction to the respondent Nos 1 and 2 (hereafter "DTC") setting aside an order of premature retirement, passed against the petitioner, due to his contracting an injury while on duty, as a driver with the DTC. A decision of the third respondent (hereafter "Chief Commissioner") declining relief under provisions of the Persons with Disabilities ( Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereafter called "the Act"), has been questioned.

2. The petitioner was recruited as a driver, by the DTC in 1983. He continued in its services, and worked in that capacity, when, on 1-10-1991, as he was driving a bus on route from Delhi to Balaji, the vehicle was intercepted, surrounded by an irate mob in Oranda village, and not allowed to proceed further. The bus contained 60 passengers, who were forced to get down. The mob pelted stones, caused damage to it, and sought to put fire to the bus. The petitioner interceded, and incurred the wrath of the mob, who rained lathi blows on him. He was hit on the back of his head, and lost consciousness. The police reached the spot, and the petitioner was removed to a hospital; when he regained consciousness, he was bandaged, given some medical attention, and discharged from hospital. The petitioner drove back the bus to the depot, inspite of his injury, upon receiving directions. The petitioner took leave for a few days. Sometime in 1996, a medical examination was conducted, and the petitioner received an order dated 21st May, 1996, prematurely retiring him from services, of the DTC, on the ground that he was medically unfit. The petitioner approached this court, by filing CW No. 2285/1996, which was disposed off on 2nd November, 1999, recording that he was entitled to compensation as per formula evolved by the Supreme Court, and as far as the relief of employment was concerned, liberty was granted to him to seek it in accordance with law. He subsequently filed another writ petition, being WP 234/2001, for quashing of the order of premature retirement, and direction to DTC to offer employment; that petition was disposed off on 25-9-2001 with liberty to him to approach the Chief Commissioner.

3. The petitioner approached the Chief Commissioner; however his requests were not considered. He approached this court again, and on 17th May, 2002, the court directed the Chief Commissioner to decide the petitioner's complaint within three weeks. The chief Commissioner required the petitioner to furnish a certificate disclosing that he was suffering from a disability more than 40%. The petitioner got himself examined, by the Safdarjung Hospital; on 27th November, 2002, the hospital issued a certificate stating that his "fundus is (n-normal) & (L) cornea has Nibulo-Macular Opecities visual disability is less than 20% (twenty per cent)". This certificate was furnished to the Chief Commissioner.

4. The Chief Commissioner, by order dated 22-1-2003, rejected the petitioner's claim, stating that as per Section 2(t) of the Act, a person with disability was one who was suffering with not less than 40% disability as certified by a medical authority, and that since the certificate showed that the petitioner was suffering from less than 20% visual impairment, he was not entitled to relief under the Act. That order has been questioned.

5. The respondent, in its counter affidavit, has reiterated the reasoning that appealed to the Chief Commissioner, and stated that the petitioner cannot be called as a person with disability under the Act; that in order to qualify for relief under its provisions, including Section 47, the applicant should have suffered, or incurred a disability which was not less than 40%. In addition, the DTC has averred that the petitioner was paid compensation, and cannot, therefore, seek the relief of reinstatement.

6. Ms. Rashmeet Charya, learned counsel for the petitioner submitted that the denial of relief under Section 47 is unwarranted. It was submitted that the provision is beneficial, and obliges every employer to adopt a non-discriminatory approach. In this case, the petitioner incurred the disability while in the employment of DTC, in the performance of his job; at the risk of his life and limb, he protected the property of DTC. Instead of rewarding his loyal services, the employer has uncharitably dispensed with his services.

7. Learned counsel for the petitioner cited the decisions in DTC v. Rajbir Singh to say that the provisions of the Act 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 function in their posts. She also relied upon the decisions in Baljeet Singh v. DTC ; Virender Kumar Gupta v. DTC 2002 (4) LLJ 1314; Kuldeep Singh v. DTC 2003 (1) LLJ 672 to submit that reinstatement possible even after premature retirement, and grant of compensation.

8. Ms Charya also relied upon the decision reported as Kunal Singh v. Union of India, , to submit that the stand of DTC regarding ineligibility of the petitioner, on the ground of his suffering disability which was less than 40%, is unsupported by law.

9. Mr. G.S. Aneja, appearing for DTC, submitted that the petitioner could not have claimed the benefit of Section 47 of the Act, after having availed of compensation. He also relied upon the definition of the expression "person with disability" to say that in view of that provision, no one with less than 40% disability could claim relief. Admittedly, the petitioner's visual impairment is less than 20%; hence he cannot be granted relief; the claim in the petition has to therefore, fail.

10. The right against discrimination is one of the most fundamental freedoms that every human being is entitled to. All societies which strove for and succeeded, in varying degrees, to attain political equality and civil rights, however, neglected one large chunk of humanity: those who were physically infirm, or under some form of disability. Legal systems, and societies viewed such persons as dependant, objects of pity and needing special services, instead of capable of serving. In such a milieu, stereotypes abounded. They were invariably treated as children of "lesser gods". The

realization that such stereotypical responses undermined the essential humanity, and denied dignity to such a large body of citizens has come, but rather late.

### International Conventions

11. Article 1 of the Universal Declaration of Human Rights asserts human sensitivity and moral responsibility of every State; and that "all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

The next international document recognizing the need to make special provision for disabled persons and ensure equality to them was Resolution 3447 (XXX) the General Assembly of the United Nations, dated 9 December 1975, entitled "Declaration on the Rights of Disabled Persons". The relevant portion of the declaration stated as follows:

"Disabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow-citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and full as possible."

The International Labor Organization, in the wake of declaration of 1981 by the United Nations General Assembly as International Year of Disabled Persons, with the theme "full participation and equality", adopted the "Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983". Article 2 of the Convention called for member-states to formulate, implement and periodically review a national policy on vocational rehabilitation and employment of disabled persons. Such a policy, as per Article 4, was to be based on "the principle of equal opportunity between disabled workers and workers generally. Equality of opportunity and treatment for disabled men and women workers shall be respected. Special positive measures aimed at effective equality of opportunity and treatment between disabled workers and other workers shall not be regarded as discriminating against other workers"

12. The proclamation on the Full Participation and Equality of People with Disabilities in the Asia and Pacific Region, at Beijing, to which India was a party, was adopted on 1-5th December, 1992, under aegis of the Economic and Social Commission for Asia and the Pacific Region. The Act was enacted as an instance of legislative intervention to secure and achieve the goals pledged in the Proclamation.

13. In other legal systems, such as the United States and the United Kingdom, similar measures have been taken. In the United States, the Americans with Disabilities Act, 1990 was enacted by Congress. Undermining the primary objective of the legislation as promotion of equality, it was said by Robert L. Burgdorf that:

"Just as the point of the Civil Rights Act is not race but it is discrimination, the point of the ADA is not disability -- it is discrimination. The ADA is a mandate for equality. The focus of the Act was and

should be on eliminating employers' practices that make people unnecessarily different because of their mental or physical limitations."

Today, a large body of case law has emerged through implementation of the legislation in the United States; the Act has been interpreted in no less than 16 judgments of the US Supreme Court. Justice William J. Brennan, speaking about the legislation, said that:

"Congress acknowledged that society's accumulated myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairment."

14. The United Kingdom too saw enactment of a law on the lines of the Americans with Disabilities Act, namely the Disability Discrimination Act, 1995. This enactment enjoins employers to ensure a whole range of non-discriminatory rights, such as adjustment as to premises, assignment of duties, reasonable allowance for rehabilitation, treatment, etc. The failure to make such adjustments results in discrimination, or "less favorable treatment" of a disabled employee, for which the employer is statutorily denied the right to claim justification, in an action brought about by the employee ( Ref Collins v. Royal National Theatre Board Ltd, 2004 (2) All ER 851; Meike v. Nottinghamshire County Council 2004 (4) All ER 97). The House of Lords, in its decision reported as Relaxation Group v. Rhys Harper ( 2003 (4) All ER 1113) observed that the Act, like other enactments which ensured gender equality, was meant to foster non-discriminatory practices:

"Discrimination can take a variety of forms but all involve treating the person less favorably than others. Ensuring that all employees in similar positions have the same contractual rights is only a start. Employment is just as much about opportunities as about rights."

The position in India

15. India, too had to await nearly five decades for legislative intervention to further the goal of equality, and create positive rights in favor of persons with disabilities. Courts had, however, on several occasions, even before the Act came into force, stepped in and creatively interpreted Article 14 of the Constitution of India, in favor of such persons ( 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 ). This approach is best summed up in the following passage of the judgment of the Supreme Court, in Consumer Education & Research Centre v. Union of India , (rendered in a somewhat different context; nevertheless containing an undeniable universality):

"19. In a developing society like ours steeped with unbridgeable and ever-widening gaps of inequality in status and of opportunity, law is catalyst, rubicon to the poor etc. to reach the ladder of social justice. Justice K. Subba Rao, the former Chief Justice of this Court, in his Social Justice and Law at page 2, had stated that: "Social justice is one of the disciplines of justice and the discipline of justice relates to the society." What is due cannot be ascertained by absolute standard which keeps changing depending upon the time, place and circumstance. The constitutional concern of social justice as an elastic continuous process is to accord justice to all sections of the society by providing

facilities and opportunities to remove handicaps and disabilities with which the poor etc. are languishing and to secure dignity of their person. The Constitution, therefore, mandates the State to accord justice to all members of the society in all facets of human activity. The concept of social justice embeds equality to flavour and enliven practical content of 'life'. Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of law, therefore, is a potent instrument of social justice to bring about equality in results.

20. Article 1 of the Universal Declaration of Human Rights asserts human sensitivity and moral responsibility of every State that "all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." The Charter of the United Nations thus reinforces the faith in fundamental human rights and in the dignity and worth of human person envisaged in the Directive Principles of State Policy as part of the Constitution. The jurisprudence of personhood or philosophy of the right to life envisaged under Article 21, enlarges its sweep to encompass human personality in its full blossom with invigorated health which is a wealth to the workman to earn his livelihood, to sustain the dignity of person and to live a life with dignity and equality."

#### Provisions of the Act

16. Before proceeding further, it would be necessary to notice certain provisions of the Act. Section 2 is the definition clause; relevant portions of that provision are as follows:

"2. Definitions.'In this Act, unless the context otherwise requires,'

(a)-(d) \* \* \*

(e) 'cerebral palsy' means a group of non-progressive conditions of a person characterized by abnormal motor control posture resulting from brain insult or injuries occurring in the prenatal, perinatal or infant period of development;

(f)-(h) \* \* \*

(i) 'disability' means' i.blindness ii.low vision \* \* \*

(v) locomotor disability;

(vi)-(vii) \* \* \*

(j) \* \* \*

(k) 'establishment' means a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956) and includes departments of a Government;

(l)-(n) \* \* \*

(o) 'locomotor disability' means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy;

(p)-(s) \* \* \*

(t) 'person with disability' means a person suffering from not less than forty per cent of any disability as certified by a medical authority;

(u)-(v) \* \* \* (w) 'rehabilitation' refers to a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, psychiatric or social functional levels;"

Section 47, which is under consideration in these proceedings, 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."

17. Section 47 has come up for consideration in a number of cases, 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 broadly summarized below:

i. Laches cannot be set up to deny relief, since the Act is a beneficial legislation: *Krishan Chander v. DTC 2003 (71) DRJ 11* ii. 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 ; DTC v. Harpal Singh ;*

iii. 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 function in their posts: DTC v. Rajbir Singh ;

iv. Construction of the Act should be made in the light of international conventions: DTC v. Rajbir Singh (DB);

v. Reinstatement possible even after premature retirement, and grant of compensation: Baljeet Singh v. DTC ; Virender Kumar Gupta v. DTC 2002 (4) LLJ 1314; Kuldeep Singh v. DTC 2003 (1) LLJ 672;

vi. Benefits of the enactment, and entitlements under Section 47, available irrespective of where the employee contracted the disability: Ranbir Singh v. DTC

18. The above analysis would show that Section 47 was enacted as an absolute, unalterable, non-discriminatory standard to be followed by every establishment, in relation to their disabled employees, at the workplace. The provision is broad in its coverage, and does not allow deviation on account of an employer's compulsion or inability to provide an alternative post or employment; indeed he is under a positive obligation to give some work or job to the disabled employee, who suffers injury or incurs disability, and protect the existing terms and conditions of service, if necessary, by keeping him "on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier."

The authorities, viz decisions of this court, serve to underline the width and scope of the provision. Hence, the defense of DTC that the petitioner cannot be given employment, rings hollow; it is unacceptable.

19. The second issue requiring determination is whether the petitioner is a "person with disability" under Section 2(t) which mandates 40% disability. In this context, the expression used in Section 47 (while imposing a non-discriminatory standard) is "No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The absence of the expression "person with disability" is thus not without significance; the controlling expression is person "who acquires a disability". "Disability" is defined expansively; it includes blindness and low vision. Hence, the view taken by DTC and the Chief Commissioner that the petitioner is not entitled to employment, is opposed to the plain language of the enactment.

20. The view expressed above is in consonance with the judgment of the Supreme Court in Kunal Singh v. Union of India, where it was held as follows:

"9. Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that a

person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of the section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The section further provides that if an employee after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service.

10. The argument of the learned counsel for the respondent on the basis of the definition given in Section 2(t) of the Act that benefit of Section 47 is not available to the appellant as he has suffered permanent invalidity cannot be accepted. Because, the appellant was an employee, who has acquired "disability" within the meaning of Section 2(i) of the Act and not a person with disability."

21. The third issue is whether the DTC can raise the plea that the petitioner, having received compensation, cannot now seek employment. Apart from the decisions of this court in *Baljeet Singh v. DTC* ; *Virender Kumar Gupta v. DTC* 2002 (4) LLJ 1314; *Kuldeep Singh v. DTC* 2003 (1) LLJ 672 which have categorically held that such a plea by the employer cannot be countenanced, there is yet another provision, Section 72 of the Act, which clarifies the position. It provides as follows:

"72. Act to be in addition to and not in derogation of any other law."The provisions of this Act, or the rules made there under shall be in addition to, and not in derogation of any other law for the time being in force or any rules, order or any instructions issued there under, enacted or issued for the benefit of persons with disabilities."

The terms of Section 72 make it abundantly clear that the rights under Section 47 are independent of, and in addition to rights and entitlements under other laws/ rules or conditions of service. Hence, the contention of DTC in this regard is devoid of merit.

22. The approach of the Chief Commissioner betrays non-application of mind, and a fundamentally limiting view of the Act. By virtue of Sections 59, that authority has fairly wide powers to make, inter alia, suo motu enquiry into instances of violations of provisions of the Act; including deprivation of rights of persons with disabilities. He also has the power to look into complaints, under Section 62. Rule 42 of the Rules framed in 1996 under the Act prescribes the procedure to be followed while

investigating into complaints; the Chief Commissioner can "decide" the matter ex-parte, and decide, on merits, after hearing the parties (sub-rule 8). Powers of a civil court, in regard to matters specifically listed, inhere with the Chief Commissioner (Section 63(1)); proceedings before him are deemed to be judicial proceedings under Sections 193 and 228 of the Indian Penal Code (Section 63(2)). It can therefore, safely be concluded that the powers and duties of the authority are akin to a quasi judicial tribunal, charged with deciding issues entrusted to it.

23. The Act does not, expressly provide that the orders/ decisions of the authority bind the establishment/ government body concerned. However, the statutory provisions noted above give sufficient indication that its functions are not purely recommendatory; it decides the issue of entitlements of individuals. In such a situation, it must necessarily be inferred, in the absence of any provision to the contrary, that full and effectual adjudicatory powers were granted by the statute. To this end, the maxim "ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest" (Where anything is conceded, there is conceded also anything without which the thing itself cannot exist) can be invoked. The maxim was explained by the Supreme Court in Savitri v. Govind Singh Rawat, in the following terms:

"Every court must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective. This principle is embodied in the maxim "ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest" (Where anything is conceded, there is conceded also anything without which the thing itself cannot exist). [Vide Earl Jowitt's Dictionary of English Law, 1959 Edn., p. 1797.] Whenever anything is required to be done by law and it is found impossible to do that thing unless something not authorised in express terms be also done then that something else will be supplied by necessary intendment."

24. In the present case, the Chief Commissioner not only did not invoke the powers under the Act, but declined the complaint on an untenable construction of the statutory provisions. Hence his order cannot be sustained. Having regard to the circumstance that the petitioner had to approach this court on no less than three earlier occasions, and also the Chief Commissioner, and also that there are no dispute on facts, it would be in the fitness of things that the matter is decided finally by this court, by appropriate directions.

25. The result of the foregoing discussion is that the petitioner is entitled to relief. The order of the respondent DTC, prematurely retiring the petitioner from its services, is therefore quashed. The DTC is directed to re-instate the petitioner in its services within a period of six weeks from today, to a suitable post, of equivalent rank, and grant continuity of service, in regard to matters such as pay revisions, allowances, increments, seniority, etc. The petitioner shall also be entitled to arrears of salary for the period 8-10-2001 (ie the date of filing claim for reinstatement before the Chief Commissioner) till date, within eight weeks from today, based on the refixed salary payable in October, 2001, with due increments. In the event of non-payment, within eight weeks, the DTC is liable to pay interest on those amounts @ 7% p.a. till date of payment.

26. The writ petition is allowed in terms of the above directions, with costs assessed at Rs. 5000, which shall be paid within 6 weeks to the petitioner.