

Before Permod Kohli, J.

BHUPINDER SINGH,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents

CWP No. 7233 of 2010

25th May, 2011

Constitution of India, 1950 -Art. 226 - Person with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 - Ss. 2(1), 32, 38, 39, 43& 47 - Govt. Circular raising retirement of blind employees from 58 to 60 years subject to being declared physically & mentally fit after attaining the age of 58 years - Circular clarified that such employee should not be medically checked up after the age of 58 years - However, if he is declared mentally and physically unsuitable he may be referred for medical check-up - Petitioner who lost his forearm claiming parity with such blind govt. employees with regard to enhancement of retirement age - Held, that all categories of disabled persons have to be treated alike - No distinction between a person suffering from one disability or another - Benefit of circular to be extended to all - Writ allowed.

Held, That from the provisions of the Act it is clear that all categories of disabled persons have been treated alike (SIC! alike). From the Scheme of the Act it also appears that the every kind of disability places a person in one or other kind of disadvantage depriving him not only enjoyment of a normal life but also deprives him of equal opportunities. There is no distinction between a person suffering from one kind of disability or the other. It is thus, necessary rather expedient that all categories of the disabled persons be treated alike without any discrimination to achieve the objective of the Act.

(Para 7)

Further held, The Circulars confining the benefit of enhancement of retirement age only to blind persons tends to discriminate between different categories of the persons suffering with disabilities. Benefit of

Circular is required to be expanded and extended to all physically disabled persons as well. These Circulars are administrative in nature and the Govt. cannot discriminate by its executive or administrative action. Respondent-State is directed to modify the Circulars and extend the benefit of enhancement of age to all categories of disabled Govt. employees as specified under Section 2(i). Petitioner will be deemed to have retired at the age of 60 years and will be entitled to all consequential benefits.

(Para 9 & 10)

Pawan Kumar, Sr. Advocate with S.A. Khan, Advocate, *for the petitioner.*

B.S. Chahal, D.A.G., Punjab.

PERMOD KOHLI.J (ORAL)

(1) State of Punjab issued Circular Letter dated 16.2.1996 from the Department of Personnel and Administrative Reforms raising the age of retirement of blind State Govt. employees from 58 years to 60 years subject to they being declared physically and mentally fit after the age of 58 years by the Civil Surgeon of the district concerned for further service. This Circular was reiterated in Circular dated 17.1.2001 with a further stipulation that blind Govt. employee should not be medically checked up after the age of 58 years, however, where the blind employee is adjudged mentally or physically unsuitable for performing duties of the post being held by him only he may be referred for medical check up.

(2) The petitioner was a Govt. employee. He was appointed as a Carpenter on 17.5.1972 in the Department of Animal Husbandry, Patiala. He was on duty in Indo-Swiss Project of Animal Husbandry, where he met with an accident and lost his forearm on 12.3.1974. His right arm was amputated. He was accordingly adjusted on the post of Clerk on 3.12.1975. He earned promotions as Senior Assistant and then as Superintendent, wherefrom he has retired in the month of April, 2010. This petition was filed before his retirement. On account of physical infirmity the petitioner is claiming similar treatment as granted to the blind persons regarding enhancement of retirement age from 58 years to 60 years vide Circulars dated 16.2.1996 (Annexure P-2) and 17.1.2001 (Annexure P-3).

(3) The contention of the petitioner is that he is a disabled person and falls in the same category as a blind Govt. employee and is thus, entitled to the similar treatment. Respondents, however, resisted the claim of the petitioner on the ground that blind employees are in a more disadvantageous position. It is pleaded that at the first place the blind employees take long time for their studies as they are taught by special method called “Braille”, whereas physically handicapped employees do not suffer this disadvantage. Regarding blind employees, they join the service at late stage as compared to other physically handicapped Govt. employees and on account of late joining in the service, they do not get full pension, which is not the case with the other kind of physically disabled persons. It is further stated that the job and promotional avenues for blind persons are negligible, whereas for physically handicapped employees, there are more and better avenues; both at the time of recruitment and promotion.

(4) Petitioner is seeking parity with the blind persons for enhancement of age on the basis of the provisions of the **Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995**, enacted by the Parliament (hereinafter referred to as the Disability Act). Section 2 (i) defines disability which means following disabilities:-

“(i) “disability” means—

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

Section 2 (t) defines persons with disability and reads as under:-

“(t) “*person with disability*” means a person suffering from not less than forty per cent of any disability as certified by a medical authority.”

Chapter VI deals with the employment. Section 32 requires the appropriate Govt. to identify the posts in the establishment which can be reserved for the persons with disabilities. It also requires periodical review of the list of posts identified. Section 33 makes reservation of 3% for three categories of persons suffering with disabilities and with 1% reservation for each of the following categories:-

- “(i) blindness or low vision;
- (ii) hearing impairment;
- (iii) locomotor disability or cerebral palsy.”

Section 38 of the Act provides for formulation of schemes for ensuring employment of persons with disabilities by the appropriate govt. and local authorities. This section reads as under:-

- “38. (1) The appropriate Govt. and local authorities shall by notification formulate schemes for ensuring employment of persons with disabilities and such schemes may provide for—
- (a) the training and welfare of persons with disabilities;
 - (b) the relaxation of upper age limit;
 - (c) regulating the employment;
 - (d) health and safety measures and creation of nonhandicapping environment in places where persons with disabilities are employed;
 - (e) the manner in which and the persons by whom the cost of operating the schemes is to be defrayed; and
 - (f) constituting the authority responsible for the administration of the scheme.”

(5) Section 39 further makes it obligatory for all Govt. Educational Institutions and other educational institutions receiving aid from the Govt. to reserve not less than 3% seats for persons with disabilities. Similarly

Section 43 also imposes an obligation upon the Govt. and local authorities to frame schemes in favour of the persons with disabilities for the preferential allotment of land at concessional rates for houses, setting up of business, special recreational centres, establishment of special schools, research centres and establishment of factories by entrepreneurs with disabilities etc. Chapter VIII of the Disability Act further deals with the non-discrimination with persons under disabilities in respect to transport, user of road, facilities in public buildings. Section 47 further prevents discrimination in Govt. employment and reads as under:-

“47. (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 Govt. 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.”

(6) The entire scheme underlining the Disability Act is to provide equal opportunities to persons suffering from various kinds of disabilities with those who do not suffer with any such disabilities. The Act also protects the rights of disabled persons and provides opportunities for full participation in all matters to enable the disabled persons to come to the level of normal human beings and not to suffer on account of any physical deformity or disability. Section 2 (i) has defined 7 kinds of disabilities. Chapter VI

(Section 32 to Section 41) provides for equal opportunities for employment and also reservation in services. Section 33 provides reservation in services not less than 3% for three categories of disabled persons i.e. (i) blindness or low vision (ii) hearing impairment (iii) locomotor disability or cerebral palsy. Persons suffering from all kinds of disabilities have been treated at par.

(7) From various provisions of the Act noticed herein above, it is abundantly clear that all categories of disabled persons have been treated alike and have been subjected to similar treatment in all spheres of their life. From the scheme of the Act it also appears that every kind of disability places a person in one or other kind of disadvantage depriving him not only the enjoyment of normal life but also deprives such a person of equal opportunities with those who do not suffer from any deformity. It is with this objective that the Parliament of this country enacted this legislation. There is no distinction between a person suffering from one kind of disability or the other. All seems to be in similar disadvantageous position. Thus, the contention of the State that the enhancement of age meant only for blind persons cannot be extended to persons suffering from other kinds of physical disabilities does not seem to be rational, logical nor does it achieve any special purpose. It is, thus, necessary rather expedient that all categories of the disabled persons be treated alike without any discrimination to achieve the objective of the Act.

(8) A Division Bench of this Court while considering the question of allotment of houses to one category of disabled persons under Section 43 of the Act issued directions for expanding the scheme to all categories of disabled persons as defined under Section 2 (i) of the Disability Act. The relevant observations are as under:-

“If the expression “disability” under the Act covers seven categories of persons including persons suffering from mental retardation and mental illness, we do not see how a scheme or a policy framed pursuant to Section 43 of the Act can have a restricted meaning to the said definition. Section 33 of the Act which deals with reservation of posts for only three categories of persons suffering with disabilities

is a specific provision dealing with public employment of disabled persons. The provisions contained in the aforesaid Section 33 of the 1995 Act, therefore, have no application to other fields covered by the Act including the field covered by Section 43 of the 1995 Act. We, therefore, direct that the policy in force for providing housing/accommodation/land to disabled persons be suitably expanded to all categories of persons with disabilities as defined by Section 2 (i) of the 1995 Act. However, it is left to the discretion of the State to specify the percentage of reservation for each of the said categories. With the aforesaid observations and directions, these Public Interest Litigations are disposed of.”

(9) In my humble opinion the Circulars (Annexures P-2 & P-3) confining the benefit of enhancement of retirement age only to blind persons tends to discriminate between different categories of the persons suffering with disabilities. The benefit of Circular is thus required to be expanded and extended to all physically disabled persons as well. These Circulars are administrative in nature and the Govt. cannot discriminate by its executive or administrative action.

(10) In view of the above, this petition is allowed. Respondent-State is directed to suitably modify the Circulars (Annexures P-2 & P-3) and extend the benefit of enhancement of age to all categories of disabled Govt. employees as specified under Section 2 (i) of the Disability Act in tune and spirit of the Act. The petitioner has been retired at the age of 58 years. It is more than one year that the petitioner has retired. I leave it to the wisdom of the State to re-induct the petitioner into service for the rest of period of retirement up to age of 60 years, however, petitioner shall be entitled to emoluments for extended period of retirement. He shall be deemed to have retired at the age of 60 years and will be entitled to all consequential benefits.

M. Jain