

Before Hemant Gupta and Ajay Tewari, JJ.

NIRMAL RANI,—Petitioner

versus

UNION OF INDIA & OTHERS—Respondents

C.W.P. No. 8122-CAT of 2004

29th July, 2008

Constitution of India, 1950—Art. 226—Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995—S. 47—Central Civil Services (Medical Examination) Rules, 1957—RI.2(2)—Central Civil Services (Leave Rules), 1972—RI.20—Termination of services with retrospective effect—Medical Board reporting that Government servant is completely and permanently incapacitated—Order of termination passed after enactment of 1995 Act—Violation of provisions of S.47 which contemplate that services of an employee acquiring disability during service cannot be terminated—No order declining leave passed by the competent authority—No automatic cessation of service even if Medical Board reporting Government servant is completely and permanently incapacitated—An order is required to be passed on basis of such medical report—Order terminating services with retrospective effect is wholly illegal, unwarranted and unjustified—Petition allowed, order of Tribunal set aside.

Held, that the opinion of the Medical Board was received on 5th August, 1994. But no order in respect of services of Yash Pal was passed. It was subsequent to second report of the Medical Board, the order terminating the services has been passed. No order of declining the leave was passed in respect of Yash Pal by the competent authority. There is no automatic cessation of service even if the report of the Medical Board is received to the effect that the Government servant is completely and permanently incapacitated. On the basis of such medical report an order is required to be passed. Such order has been passed in the year 2002, therefore, it cannot be said that the service came to an end soon after the report of the Medical Board was received

in the year 1994. Apart from Rule 20 of the Study Rules, respondents could not refer to any precedent or Rule in respect of terminating the service of Yash Pal with retrospective effect.

(Para 7)

Further held, that the order passed on 11th June, 2002 terminating the services of Shri Yash Pal, with retrospective effect, is wholly illegal, unwarranted and unjustified and is violative of the provisions of Section 47 of the Act. Therefore, the termination of Shri Yash Pal after the commencement of the Act is of no legal consequence and unjustified.

(Para 8)

None for the petitioner.

R.K. Sharma, Advocate, *for respondent Nos. 1 and 2.*

HEMANT GUPTA, J.

(1) The challenge in the present writ petition is to the order dated 26th August, 2003, whereby, an original application filed by Smt. Nirmala Devi (hereinafter referred to as 'the applicant') was dismissed.

(2) Shri Yash Pal, deceased husband of the applicant was employed in the National Dairy Research Institute, Karnal (for short 'NDRI') as an Attendant Grade-I, with effect from 24th January, 1991. He met with an accident on 25th February, 1993 and remained admitted as indoor patient in Sir Ganga Ram Hospital from 26th February, 1993 to 19th March, 1993. As per the medical opinion, Shri Yash Pal was found to be completely and permanently incapacitated for further service of any kind,—*vide* the report dated 5th August, 1994. A representation was submitted by Shri Yash Pal on 11th October, 1995 for his re-examination by the Medical Board on the ground of improvement of his physical condition. However, he was examined by the Medical Board only in the year 2002 and,—*vide* report dated 22nd May, 2002, it was found that there is no improvement in the condition of the applicant. On the basis of such report, an order was passed on 11th June, 2002 terminating the services of Shri Yash Pal with effect from

13th August, 1994. Unfortunately, Shri Yash Pal died on 13th July, 2002. Aggrieved against the termination of his services, the applicant invoked the jurisdiction of the Tribunals by filing an application under Section 19 of the Administrative Tribunals Act, 1985 (for short 'the Act'), wherein the applicant claimed terminal benefits as well as appointment for her son on compassionate ground.

(3) The learned Tribunal dismissed the application, *inter alia*, on the ground that in terms of the provisions of the Central Civil Services (Medical Examination) Rules, 1957 (for short 'the Rules') the services of Shri Yash Pal have been terminated with effect from 13th August, 1994. It was found that for all practical purposes, the deceased has been declared permanently incapacitated,—*vide* medical report dated 5th August, 1994. The termination cannot be said to be unjustified only because respondent No. 2 has passed order dated 11th June, 2002 conveying termination of services of the deceased with effect from 13th August, 1994. It does not *ipso-facto* create a right for deeming him to be on duty from 1994 onwards to the date of passing of the order. It was also found that since the deceased has not completed 10 years continuous service at the time of invalidment, therefore, the family of the deceased is not entitled to the terminal benefits nor the claim of the son of the applicant can be considered for compassionate appointment.

(4) Learned counsel for the respondent relies upon Rule 2(2) of the Rules and Rule 20 of the Central Civil Services (Leave Rules), 1972 (for short 'the Leave Rules'), to contend that Yash Pal would be deemed to be invalidated out of service on the expiry of six months of leave i.e., the maximum leave which could be granted under Rule 20 of the Leave Rules. Thus, the order of termination has been rightly passed by the competent authority. However, learned counsel for the respondent was confronted with the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short 'the Act'), which contemplates that services of an employee acquiring disability during service, cannot be terminated.

(5) Learned counsel for the respondents has contended that since the termination has been effected from the retrospective date and in terms of the Rules referred to above, Yash Pal is deemed to be invalidated out of service prior to the commencement of the Act. Therefore, the benefit of Section 47 of the Act, cannot be extended to the husband of applicant i.e. Yash Pal. It is not in dispute that the order terminating the services of Yash Pal was passed on 11th June, 2002 i.e., after the enactment of the aforesaid Act. Once, the termination has been effected after the commencement of the Act, the same is in violation of the provisions of Section 47 of the Act and thus, cannot be sustained.

(6) The only argument, which now requires to be examined is whether the services of Shri Yash Pal can be dispensed with, with the retrospective effective or can it be said that the service came to an end with the expiry of the maximum period of leave contemplated under Section 20 of the Leave Rules. Rule 20 of the Leave Rules, reads as under :—

“20. Leave to a Government servant who is unlikely to be fit to return to duty.

(1) (a) xx xx xx

(b) xx xx xx

(2) A Government servant who is declared by a medical authority to be completely and permanently incapacitated for further service shall—

(a) if he is on duty, be invalidated from service from the date of relief of his duties, which should be arranged without delay on receipt of the report of the medical authority; if however, he is granted leave under sub-rule (1) he shall be invalidated from service on the expiry of such leave ;

(b) if he is already on leave, be invalidated from service on the expiry of that leave or extension of leave if any, granted to him under sub-rule (1).”

(7) A perusal of the above would show that the opinion of the Medical Board was received on 5th August, 1994. But no order in respect of services of Yash Pal was passed. It was subsequent to second report of the Medical Board, the order terminating the services has been passed. No order of declining the leave was passed in respect of Yash Pal by the competent authority. There is no automatic cessation of service even if the report of the Medical Board is received to the effect that the Government servant is completely and permanently incapacitated. On the basis of such medical report, an order is required to be passed. Such order has been passed in the year 2002, therefore, it cannot be said that the service came to an end soon after the report of the Medical Board was received in the year 1994. Apart from the said Rule, learned counsel for the respondents could not refer to any precedent or Rule in respect of terminating the service of Yash Pal with retrospective effect.

(8) Reference may be made to the Hon'ble Supreme Court judgment in **Kunal Singh versus Union of India and another (1)**, wherein it was held that an employee, who acquires disability during his service, is to be protected under Section 47 of the Act. In view of the said fact, we are of the opinion that the order passed on 11th June, 2002 terminating the services of Shri Yash Pal, with retrospective effect, is wholly illegal, unwarranted and unjustified and is violative of the provisions of Section 47 of the Act. Therefore, the termination of Shri Yash Pal, after the commencement of the Act is of no legal consequence and unjustified.

(9) In view of the above, the present writ petition is allowed. The impugned order passed by the Tribunal dated 26th August, 2003 is set aside. As a consequence thereof, the Original Application filed by the applicant is allowed and the order dated 11th June, 2002 terminating the services of Shri Yash Pal with effect from 13th August, 1994 is set aside. The respondents are directed to treat Yash Pal in service up to the date of his death i.e., 13th July, 2002 and pay all consequential benefits. Needful be done with a period of three months.

R.N.R.