

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.122 OF 2023

DISTRICT : SOLAPUR
Sub.:- Invalid Pension

Shri Chanbasayya S. Sangamath.)
Age : 53 Yrs, Working as Police Naik,)
R/o. 2/4, Killa Police Line, Morarji Peth,)
Behind Foujdar Chawdi Police Station,)
Solapur – 413 002.)...**Applicant**

Versus

1. The Commissioner of Police.)
Solapur City Police Commissionerate))
Having Office at New Administrative)
Building, Gandhi Nagar,)
Solapur – 3.)
2. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department, Madam Cama)
Road, Opp. Mantralaya,)
Mumbai – 400 032.)...**Respondents**

Shri A.V. Bandiwadekar, Advocate for Applicant.

Smt. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 09.06.2023

JUDGMENT

1. The Applicant has challenged the communication dated 18.11.2022 whereby he was declared invalid for continuation of service on medical ground and also challenged the order dated 09.11.2022

whereby his absence from duty on medical ground was adjusted as Commuted Leave, Earned Leave and remaining period as 'Leave Without Pay', invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this O.A. are as under :-

The Applicant was Police Naik on the establishment of Respondent No.1 – Commissioner of Police, Solapur. He was attached to Sadar Bajar Police Station, Solapur. On 28.10.2022 while he was on leave, he met with an accident and suffered grievous injuries. He lodged FIR of the incident and consequent to it, offences under Sections 279, 427 of Indian Penal Code and Section 184 of Motor Vehicles Act was registered against the Driver of Truck. The Applicant was hospitalized for the treatment. He was hospitalized for a long period, and therefore, could not attend duty. He suffered Left Hemiparesis in the accident. Since he was bed-ridden for a long time, he was referred to Medical Board, Solapur. Medical Board issued Certificate dated 14.10.2022 declaring him unfit for duty and also recommended for regularizing leave on medical ground. He was again referred to Medical Board and Medical Board declared him completely and permanently incapacitated for further services in view of Left Hemiparesis vide Medical Certificate dated 29.11.2022.

3. It is on the above background, Respondent No.1 by communication dated 18.11.2022 retired the Applicant on medical ground w.e.f. 07.11.2022 and granted invalid pension under Rule 68 read with 72 of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules of 1982' for brevity). Insofar as earlier absence from duty is concerned, the Respondent No.1 by communication dated 09.11.2022 granted 82 days as Commuted Leave, 266 days as Earned Leave and remaining 364 days was treated as 'Extra-ordinary Leave Without Pay and Allowances'. The Applicant has challenged the order dated 18.11.2022 as well as communication dated 09.11.2022 in the

present O.A. *inter-alia* contending that since he suffered permanent disability during the course of employment, his services are protected by Section 20 of 'The Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as 'Act of 2016' for brevity) which is in *para-materia* to Section 47 of 'The Persons with Disabilities (Equal Opportunities for Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as 'Act of 1995' for brevity) and ought to have been continued in service with all service benefits till he attain the age of superannuation.

4. Respondent No.1 resisted the O.A. *inter-alia* contending that at the time of accident, the Applicant was on leave, and therefore, he cannot be said to have suffered physical disability during the course of employment. Respondent, therefore, sought to justify the order of invalid pension dated 18.11.2022 and also sought to justify the order dated 09.11.2022 whereby absence was adjusted by granting Commuted Leave, Earned Leave and Extra-ordinary Leave.

5. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the impugned order dated 18.11.2022 and 09.11.2022 *inter-alia* contending that since Applicant suffered permanent disability while he was in employment, he ought to have been continued in service in the light of Section 20(4) of 'Act of 2016', but Respondent No.1 granted invalid pension by order dated 18.11.2022, which is in total defiance of law and liable to be quashed and set aside. As regard order dated 09.11.2022, according to him, since Applicant was permanently incapacitated for service, the said period also ought to have been treated as duty in view of protection under Section 20(4) of 'Act of 2016'.

6. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer all that submits that at the time of accident, the Applicant was on leave, and therefore, he cannot be said in actual employment or on duty so as to avail protection under Section 20(4) of 'Act of 2016'.

7. At the very outset, it needs to be stated that the issue posed for consideration in the present O.A. about the entitlement of the Applicant to the protection of Section 20 of Sub-section 4 of 'Act of 2016' which is *para-materia* to Section 47 of 'Act of 1995' is no more *res-integra* in view of express provisions contained in 'Act of 1995' which is now replaced by 'Act of 2016'. The scope and applicability of Section 47 of 'Act of 1995' has been considered by Hon'ble Supreme Court in **(2003) 4 SCC 524 [Kunal Singh Vs. Union of India]**. Para Nos.9, 10, 11 and 12 of the Judgment in **Kunal Singh's** case are as under :-

"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 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 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 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 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.

11. *We have to notice one more aspect in relation to the appellant getting invalidity pension as per Rule 38 of the CCS Pensions Rules. The Act is a special Legislation dealing with persons with disabilities to provide equal opportunities, protection of rights and full participation to them. It being a special enactment, doctrine of generalia specialibus nonderogant would apply. Hence Rule 38 of the Central Civil Services (Pension) Rules cannot override Section 47 of the Act. Further Section 72 of the Act also supports the case of the appellant, which reads: -*

"72. Act to be in addition to and not in derogation of any other law. – The provisions of this Act, or the rules made thereunder 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 thereunder, enacted or issued for the benefits of persons with disabilities.

12. *Merely because under Rule 38 of CCS Pension Rules, 1972, the appellant got invalidity pension is no ground to deny the protection, mandatorily made available to the appellant under Section 47 of the Act. Once it is held that the appellant has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay-scale and service benefits; if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation, whichever is earlier. It appears no such efforts were made by the respondents. They have proceeded to hold that he was permanently incapacitated to continue in service without considering the effect of other provisions of Section 47 of the Act."*

8. As such, in view of Judgment of Hon'ble Supreme Court in **Kunal Singh's** case, even grant of invalid pension on the basis of State Pension Rules cannot be the ground to deny the protection mandatorily made applicable to the persons coming under the purview of Section 47 of 'Act 1995'. Once the person is found acquired disability during his service and found not suitable to the post he was holding, he should be shifted to some other post with same pay and scale and if it is not possible to do so, he need to be kept on supernumerary post till he attains the age of superannuation. This is the law laid down by Hon'ble Supreme Court in **Kunal Singh's** case.

9. The same issue came up before consideration of this Tribunal in **O.A.No.741/2007 [Surendra Malge Vs. Director General and**

Inspector General of Police, M.S.) decided on 06.01.2009 and O.A.No.1160/2010 (Ashok Pawar Vs. State of Maharashtra) decided on 23.04.2011 and again in O.A.No.916/2018 (Dr. Suhas V. Ganu Vs. State of Maharashtra & Anr.) decided on 09.05.2019. O.A.No.741/2007 was filed by Surendra Malge, who was working as Assistant Sub-Inspector with State Reserve Police and was granted invalid pension on the basis of Medical Certificate by claiming benefit of Section 47 of 'Act of 1995' which was in force at the relevant time. O.A. came to be allowed and directions were issued to keep Applicant on supernumerary post till he attain the age of superannuation. In that case also, defence was raised that employee must be on actual duty at the time of incident. However, Tribunal turned down the defence. In para No.12, the Tribunal held as under :-

"12. It has come on record that the applicant is suffering from Hemiplegia and the said disease is covered by Section 2(i)(v) of the Act. However, the main and the material question is whether it can be said that the applicant has acquired said disability during service. Shri Rajpurohit, learned Presenting Officer submitted that "during his service" means "while actual on duty". So, according to him, benefit of this Section can be given only if the employee sustains disability while on duty. However, it must be noted that if really the intention of the legislature would have been to restrict the cases of the employee sustaining injury while on duty, then certainly the legislature would have specifically used such words and in that event, the legislature would have mentioned "disability arising out of and in the course of his employment or service". But no such phraseology is used and it is simply mentioned "acquires a disability during his service". The plain and simple meaning of the same would be, 'when an employee is in the service'. It does not mean that he must acquire disability while actually working or doing official duty. Incidentally, it must be noted that in this very Act, the legislature has at times used the word "person with disability". However, these two words viz. "disability" and "person with disability" are separately defined and they are distinct. It must be mentioned that in other Acts, for example, in Workmen's Compensation Act, 1923, the legislature has specifically used the word "accident arising out of and in the course of his employment". Similarly, in the instant cases, had it been the intention of the legislature to give protection only to those Government employees who sustained injury while performing their official duties, the legislature could have very well used specific phraseology to that effect. But that has not happened. So, under the circumstances, the words "an employee who acquires the disability during his service" has to be construed liberally and then it means that an employee who has acquired disability while in service. So, we are of

the considered view that in the instant case, the applicant is entitled for benefit of Section 47 of the "Disabilities Act."

10. The Judgment of this Tribunal in O.A.741/2007 was challenged by the Government in Writ Petition No.7920/2009 and the Hon'ble High Court by Judgment dated 19.11.2009 confirmed the Judgment of this Tribunal. The Hon'ble High Court in Para Nos.6 and 7 held as follows :-

"6. Section 47 reads as under :-

47. Non-discrimination in Government employments – (1) No establishment shall dispense with, or reduce in rank, an employee who acquired 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.

A perusal thereof will show that establishments which are covered by the Act cannot dispense with or reduce in rank, an employee who acquires disability during his service. Thus, the disability has no connection with the employment. The proviso thereof provides, as to what has to be done on an employee acquiring disability. After considering the various provisions, in Devki Nandan (Dr.) and considering the Judgment of the Supreme Court in Kunal Singh vs. Union of India & another AIR 2003 SC 1623, this Court took the view that it is not open to an employer to remove such a person but a supernumerary post will have to be created and he will have to be kept on that post till such time he is able to work on a suitable post commensurate with the disability. However, if no such posts are available, then till he attains the age of superannuation.

7. *It is not doubt true that this is contrary to the provisions for removal of a person on medical unfitness in terms of the Service Rules governing continuation in employment. We have to bear in mind that those Rules are an exercise in subordinate legislation where the Disabilities Act being primary legislation and as such the subordinate legislation must give way to the primary legislation. In our opinion, considering the law as settled, no case made out to interfere with the order passed by the learned Tribunal."*

11. Thereafter again, same issue was dealt with by this Tribunal in O.A.No.1160/2010 as well as in O.A.No.916/2018 (referred to above). All these decisions have attained finality and implemented by the

Government. As such, the defence that person must suffer disability literally while discharging duties to attract Section 47 of 'Act of 1995' or Section 20 of 'Act of 2016' is devoid of any merit. There is no such stipulation that disability should suffer while discharging the duties. All that, it says that the protection is available to an employee who acquired disability during his service. If the interpretation canvassed by the Respondent is accepted, it would render Section 20(4) of 'Act of 2016' nugatory. The 'Act of 1995' has been repealed and is replaced by 'Act of 2016'. Section 20 of 'Act of 2016' is material, which is as under :-

“20. Non-discrimination in employment.- (1) No Government establishment shall discriminate against any person with disability in any matter relating to employment :

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, exempt any establishment from the provisions of this section.

(2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

(3) No promotion shall be denied to a person merely on the ground of disability.

(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service :

Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall 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.

(5) The appropriate Government may frame policies for posting and transfer of employees with disabilities.”

12. Suffice to say, where Government servant suffers disability during the period of employment, his services cannot be dispensed with by granting invalid pension and if he is suitable for holding the same post, he is required to be shifted to some other post and where it is not

possible to accommodate him on some other post, he is required to be kept on supernumerary post until suitable post is available or attains the age of superannuation whichever is earlier. The only defence raised by the Respondents that Applicant was on leave and suffered disability in leave period cannot be the ground to deny the benefits of Section 20 of 'Act of 2016'. Otherwise, very purpose of the Act would be frustrated. Where employee is on leave, he obviously continues in employment and there is no such severance of relationship of employer and employee. In other words, the plain and simple meaning would be where an employee is in service and suffers disability is entitled to protection of law. Thus, the words "who acquire the disability during service" has to be construed liberally bearing in mind the aim and object of the Act. Suffice to say, even if person suffers disability in leave period, he is entitled to protection under Section 20 of 'Act of 2016'. In this view of the matter, the impugned order dated 18.11.2022 granting invalid pension instead of keeping the Applicant on supernumerary post till his retirement is totally in derogation of law and liable to be quashed and set aside.

13. Insofar as impugned order dated 09.11.2022 is concerned, it pertains to regularization of absence period of 712 days. By this order, absence from 02.07.2020 to 21.09.2020 (82 days) was granted as 'Commutated Leave', the period from 22.09.2020 to 14.06.2021 (266 days) was granted as 'Earned Leave' and the period from 15.06.2021 to 13.06.2022 (364 days) was granted as 'Extra-ordinary Leave' on medical ground. This order seems to have been passed in view of Medical Certificate dated 14.10.2022 in which Medical Board recommended for grant of Medical Leave from 02.07.2020 to 13.06.2022.

14. The perusal of record reveals that Applicant suffered injuries twice. Initially, he met in accident on 24.06.2020 and was on leave from 27.06.2020 to 13.06.2022. In between, he met in another accident on 18.02.2022 in which he suffered grievous injuries. Thus, apparently, because of some injuries, he was absent from duty for a long time.

However, Medical Board declared him unfit for duty on 14.10.2022 and later again issued Medical Certificate on 29.11.2022 declaring him completely incapacitated for further service. It is on the basis of these two Certificates, the Respondents granted invalid pension w.e.f. 07.11.2022 by order dated 18.11.2022. Thus, apparently, whatever leaves were at the credit of Applicant, those were adjusted while regularizing absence period. Since, there was no balance leaves, remaining 364 days were treated as 'Extra-ordinary Leave without Pay and Allowances'.

15. The submission advanced by learned Advocate for the Applicant that his entire leave period was required to be regularized as on duty in view of his ailment is not acceptable. He is declared incapacitated for further service for the first time by Medical Board on 29.11.2022. Since Applicant has no other leave at his credit, remaining absence of 364 days for the period from 15.06.2021 to 13.06.2022 is treated as 'Extra-ordinary Leave without Pay and Allowances'. He met in accident on 28.02.2022 which was the reason for Hemiparesis. This being so, he cannot claim pay and allowances of the absence period of 712 days. Though the order of invalid pension dated 18.11.2022 is not in conformity with Section 20(4) of 'Act of 2016', no such benefit to treat his 712 days as duty period cannot be regularized with retrospective operation. Suffice to say, the submission advanced by the learned Advocate for the Applicant in this behalf holds no water. I see no reason to interfere in order dated 09.11.2022.

16. The totality of aforesaid discussion leads me to conclude that the order dated 08.11.2022 retiring the Applicant and granting invalid pension is violative of Section 20(4) of 'Act of 2016' and liable to be quashed and set aside. He is declared entitled for protection of Section 20(4) of 'Act of 2016'. He needs to be kept on supernumerary post, since he became permanently incapacitated to perform any work till he attains the age of superannuation. Hence, the order.

ORDER

- (A) The Original Application is allowed partly.
- (B) Impugned order dated 18.11.2022 is quashed and set aside.
- (C) Respondents are directed to keep the Applicant on supernumerary post till he attains the age of superannuation and extend the service benefits as per his entitlement in terms of Section 20(4) of 'Act of 2016' and shall issue necessary orders within six weeks from today.
- (D) Impugned order dated 09.11.2022 needs no interference.
- (E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 09.06.2023

Dictation taken by :

S.K. Wamanse.

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