

HIGH COURT OF TRIPURA
AGARTALA

WP(C) 694 OF 2020

Sri Bijoy Kumar Hrangkhawl,

...Petitioner.

Vrs.

1. Tripura State Electricity Corporation Limited (TSECL),
Represented by its Managing Director, Bidyut Bhavan,
Banamalipur, Agartala-799001.

2. Deputy General Manager (Corporate),
Tripura State Electricity Corporation Limited (TSECL), Bidyut Bhavan,
Banamalipur, Agartala-799001.

3. Director (Finance),
Tripura State Electricity Corporation Limited (TSECL), Bidyut Bhavan,
Banamalipur, Agartala-799001.

4. The State of Tripura, represented by Secretary,
Power Department, Government of Tripura, New Secretariat,
PIN 799010, Agartala, West Tripura.

... Respondents.

Present:

For the petitioner (s) : Mr. C.S. Sinha, Advocate.

For the respondent (s) : Mr. N. Majumder, Advocate.
Mr. H. Sarkar, Advocate.

Date of hearing & date : 01.08.2022
of delivery of
judgment and order

Whether fit for : Yes
reporting

HON'BLE MR.JUSTICE ARINDAM LODH**Judgment & Order (oral)**

Heard Mr. C.S. Sinha, learned counsel appearing for the petitioner.

Also heard Mr. N. Majumder, learned counsel appearing for the Tripura State Electricity Corporation Limited (TSECL), respondent nos. 1, 2 and 3 as well as Mr. H. Sarkar, learned counsel appearing for the State of Tripura, respondent no.4.

2. It is the case of the petitioner that while the petitioner was discharging his duties he suffered an accident and out of that accident, he became disabled. Due to such disability, he could not attend his duties. It is the contention of the respondents that the salary of the petitioner was duly paid upto 16.03.2020. Thereafter, no salary was paid to the petitioner though he was all along willing to join to perform his duties commensurate to his disability.

3. From the report of the Standing Medical Board, it is clear that the petitioner was not in a position to perform his official and field level activities which may work out throughout the State. It is further observed in the report dated 18.02.2020 that his conditions may improve. In spite of that report, the petitioner was not paid his due salary and other allowances treating his absence from duty as unauthorized. Considering the nature of

the case, it would be relevant here-in to reproduce the office memo dated 25th February, 2015 issued by the Government of India, Ministry of Personnel, Public Grievances & Pensions which reads thus:

“No.18017/1/2014-Estt(L)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training
New Delhi, the 25thFebruary, 2015

OFFICE MEMORANDUM

Subject: Amendment to Central Civil Service (Leave) Rules, 1972 - Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PWD Act, 1995)-regarding

The Central Civil Services (Leave) Rules, 1972 were amended vide the Department of Personnel and Training Notification No. 13026/1/2002-Est(L) dated the 15/16th January, 2004 consequent to the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PWD Act, 1995) which came into force from 7thFebruary, 1996.

2. Section 47 of the PWD Act, 1995 provides that services of no employee can be terminated nor can he be reduced in rank in case the employee has acquired a disability during his service. The first proviso to the Section 47 lays down that if such an employee is not suitable for the post he was holding, he could be shifted to some other post. However, his pay and service benefits would be protected. The second proviso provides that if it is not possible to adjust such an employee against any post, he would be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Further, the Clause (2) of Section 47 provides that no promotion shall be denied to a person merely on ground of his disability. In Kunal Singh v. Union of India, [2003] 4 SCC 524, Hon'ble Supreme Court has observed that the very frame and contents of Section 47 of the PWD Act, 1995 clearly indicate its mandatory nature.

3. The issues relating to leave or absence of Government servants who have acquired a disability while in service are required to be dealt with in the light of the provisions of the Section 47 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The case of a disabled government servant who is declared fit to resume duty but who may not able to perform the duties of the post he was holding earlier may be dealt with as per the first proviso to Section 47 of the PWD Act, 1995. The second proviso shall apply if it is not possible to adjust him against any existing post. In all such cases, the Government servant so adjusted shall be entitled to the pay scale and other service benefits attached to the post he was holding.

4. A disabled Government servant who is not fit to return to duty shall be adjusted as per second proviso to the Section 47 mentioned above, until he is declared fit to resume duty or attains the age of superannuation whichever is earlier, with the same pay scale and service benefits. On being declared fit for

resuming duty, the Government servant who is not fit for the post he is holding, may be adjusted as per the first proviso to Section 47.

5. Leave applied on medical certificate in connection with disability should not be refused or revoked without reference to a Medical Authority, whose advice shall be binding. The ceiling on maximum permissible leave laid down in Rule 12 may not be applied to leave on medical certificate applied in connection with the disability. Any leave debited for the period after a Government servant is declared incapacitated shall be remitted back into his/her leave account.

6. For a government servant who is unable to submit an application or medical certificate on account of disability, an application/medical certificate submitted by a family member may be accepted. The provisions relating to examination of disabled Government servants and the Medical Authorities competent to issue such certificates are also being amended.

7. Necessary amendments to the Central Civil Services (Leave) Rules, 1972 are being notified separately.”

4. The aforesaid memorandum dated 25th February, 2015 was further reviewed in the year 2016 where the rights of persons with disabilities were not in any way diluted rather expanded the rights of such persons. It mandates that the State-employer must create conditions in which the barriers posed by disability can be overcome.

5. I have noticed that a plea has been taken that the respondents did not accept his joining report or leave application as he did not report to the joining authority in person. He expressed his willingness to join his duties by submitting an application to the authority concerned. But it was refused on the pretext that the petitioner was not physically appeared before the concerned authority which is not at all expected. The conduct of the concerned officer is not in consonance with the object the legislatures wanted to achieve. Keeping in mind the objectives of Rights of Persons with Disabilities Act, 2016, the respondents should realize the challenge

the petitioner has been facing and accommodate him with humane approach. Any failure to meet the needs of disabled person will definitely breach the norms of reasonable accommodation.

6. The rights of Persons with Disabilities Act, 2016 (for short, RPwD Act, 2016) came into effect to achieve the object conferring certain special rights of persons with disabilities and for matters connected therewith or incidental thereto.

7. The RPwD Act, 2016 is a “paradigm shift” as observed by a three Judge Bench of the Hon’ble Supreme Court recently in *Vikash Kumar Vrs. Union Pulbic Service Commission & Ors., (2021) 5 SCC 370*. On an overview of the scheme of 2016 Act, the Hon’ble Supreme Court discussed important facets and the objects the law makers intended to achieve in the manner as under: [SCC pp 400, 401,403 paras 45,46,47,48,49,50 and 55]

“G.2. Scheme of the 2016 Act

45. *The 2016 RPwD Act was a landmark legislation which repealed the 1995 Act and brought Indian legislation on disability in line with the United Nations Convention on the Rights of Persons with Disabilities (“UNCRPD”). Under the old regime, disability was simply characterised as a medical condition devoid of any understanding of how disability is produced by social structures that cater to able-bodied persons and hamper and deny equal participation of persons with disabilities in the society. Section 2(t) of the 1995 Act defined a “person with disability” in the following terms:*

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

46. *The 2016 RPwD Act has a more inclusive definition of “persons with disability” evidencing a shift from a stigmatising medical model of disability under the 1995 Act to a social model of*

disability which recognises that it is the societal and physical constraints that are at the heart of exclusion of persons with disabilities from full and effective participation in society. Section 2(s) of the 2016 RPwD Act [which we have analysed in paras 35-37 above] provides:

*“2. (s) “**person with disability**” means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;”*

47. A barrier is defined under Section 2(c) of the 2016 RPwD Act in the following terms:

*“2. (c) “**barrier**” means any factor including communicational, cultural, economic, environmental, institutional, political, social, attitudinal or structural factors which hampers the full and effective participation of persons with disabilities in society;”*

48. Under the 1995 Act, only seven kinds of disabilities were recognised. Section 2(i) listed the following disabilities:

*“2. (i) “**disability**” means—*

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

49. The 2016 RPwD Act now recognises 21 “specified disabilities” and enables the Central Government to add further categories of disability. The 2016 Act also makes special provisions for persons with benchmark disability under Chapters VI and VII of the Act. A person with benchmark disability is defined under Section 2(r) of the 2016 Act [analysed in para 34 above] as:

*“2. (r) “**person with benchmark disability**” means a person with not less than forty per cent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority.”*

50. It is clear from the scheme of the 2016 RPwD Act that “person with disability” and “person with benchmark disability” are treated as separate categories of individuals having different rights and protections. A third category of individuals “persons with disability having high support needs” has also been defined under the 2016 RPwD Act.

<i>51. xxx</i>	<i>xxx</i>	<i>xxx</i>
<i>52. xxx</i>	<i>xxx</i>	<i>xxx</i>
<i>53. xxx</i>	<i>xxx</i>	<i>xxx</i>
<i>54. xxx</i>	<i>xxx</i>	<i>xxx</i>

55. The 2016 RPwD Act is fundamentally premised on the recognition that there are many ways to be, none more “normal” or “better” than the other. It seeks to provide the disabled a sense of comfort and empowerment in their difference. Recognising the state of affairs created by centuries of sequestering and discrimination that this discrete and insular minority has faced for no fault on its part, the 2016 RPwD Act aims to provide them an even platform to thrive, to flourish and offer their unique contribution to the world. It is based on the simple idea with profound implications that each of us has: “unique powers to share with the world and make it interesting and richer.” By opening doors for them and attenuating the barriers thwarting the realisation of their full potential, it seeks to ensure that they are no longer treated as second class citizens.”

8. Keeping in mind the aforesaid objects and purposes of RPwD Act, 2016, I direct that:

(i) the respondents are to pay all the cumulative dues such as salary, allowances, etc. which were payable to the petitioner under his service conditions within a period of three month from today;

(ii) the salary and allowances payable to the petitioner shall be released from this month and regularize his service conditions by way of recalling all the earlier orders passed by TSECL treating his absence from duty as unauthorized absence. Those unauthorized absence period, according to the TSECL, shall be regularized and that would not have any bearing to the service of the petitioner;

(iii) if it is found that the petitioner is eligible to perform his duty, then, he may be permitted to undertake such duties. Further, if the petitioner is found to be unfit to perform the nature of duties, which he was

performing before being disabled, then, he should be assigned/adjusted with such suitable duties which he would be able to discharge;

(iv) if the petitioner is found incapable of performing any kind of duties, then, the respondents are under obligation and shall pay all service benefits including the promotion to the petitioner by creating a supernumerary post until a suitable post is available or he attains the age of superannuation;

(v) the respondents shall utilize capacity of the petitioner by providing an environment around him and ensure reasonable accommodation by way of making appropriate modifications and adjustments in the spirit of the discussions and observations made here-in-above;

(vi) the petitioner shall appear before the constituted Medical Board of the State Government within 7(seven) days from today. The Medical Board shall examine and issue necessary certificate mentioning the extent of his disability in consonance with the RPwD Act; and

(vii) it is not advisable to send the petitioner to the Medical Board time and again.

9. With the aforesaid observations and directions, the instant writ petition stands allowed and disposed.

A copy of this judgment and order shall be furnished to the petitioner in course of the day. Further, the Registry is directed to forward a similar copy to the constituted Medical Board of the State Government.

JUDGE