

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 1057 of 2023 (S.B.)

Nilesh Pandurang Musale,
Aged 37, R/o Plot No.17, Hingna Road,
Hanuman Mandir, SRPF Camp, Gr.4,
Saptak Nagar, Nagpur-440 016.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary, Home Department,
Mantralaya, Mumbai-440 032.
- 2) The Commandant, State Reserve Police Force,
Gr.13, Visora Tah. Wadsa (Desaiganj), Dist. Gadchiroli.
- 3) The Director General of Police,
Maharashtra State, Kulaba, Mumbai-440 032.
- 4) The Additional Director General of Police,
Campus Area of SRP Gr. VIII, Goregaon,
Mumbai.

Respondents.

Shri D.S. Sawarkar, Advocate for the applicant.
Shri V.A. Kulkarni, learned P.O. for respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 15/02/2024.

J U D G M E N T

Heard Shri D.S. Sawarkar, learned counsel for the applicant and Shri V.A. Kulkarni, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant was appointed on the post of Police Constable. He was deputed for Bandobast duty at Hedgewar Smarak, Nagpur on 09/06/2022. Unfortunately, an accident took place while he was returning from the duty. The applicant has intimated to colleague Police Constable on duty. He was admitted in the Orange City Hospital, Nagpur. The applicant was indoor patient from 09/06/2022 to 30/06/2022. After the discharge, he is unable to do his regular duty. The Indira Gandhi Government Medical College and Hospital (IGMC), Nagpur has issued disability Certificate. As per this Certificate, the applicant has sustained 80% disability. The applicant cannot discharge his regular duty as a Police Constable. The respondents have not provided any other employment of light work. The respondents have stopped the salary of the applicant. The respondents have not provided any accommodation. Therefore, the applicant approached to this Tribunal for the following reliefs –

“(7) (i) quash and set aside the order dated 31st March, 2023 vide Annexure-A9.

ii) Give direction to the respondent to keep applicant in service either on same post or supernumerary post till the age of superannuation or till fit for duty.

iii) give direction to draw the salary w.e.f. February 2023.

iv) give direction to provide govt. quarter at Nagpur H.Qtr.

8) Interim order prayed for :- *The applicant is praying for interim relief and give direction to draw the salary immediate w.e.f. February 2023 as his family facing financial crises and struggling for survive."*

3. The O.A. is strongly opposed by the respondents. As per the reply, the applicant not applied any leave, but on humanitarian ground the respondents have granted leaves to the applicant which were in balance as per the G.R. dated 10/10/2017. There is no any leave balance and therefore the salary of applicant is stopped. Hence, the O.A. is liable to be dismissed.

4. During the course of submission, the learned counsel for applicant has pointed out the Section 20 of the Rights of Persons with Disabilities Act,2016 (49 of 2016) and submitted it is the duty of the respondents to provide any suitable post to the applicant and pay the salary. If the post is not available, then supernumerary post shall be created and the salary of the applicant shall be protected.

5. There is no dispute that the applicant has sustained 80% disability and as per the Certificate issued by the IGMC, Nagpur dated 04/09/2023 (P-79) the applicant is unable to discharge his duty as a Police Constable. Therefore, it is the duty of respondents to provide suitable job / duty to the applicant and the pay of applicant should have been protected in view of the Section 20 of the Rights of Persons

with Disabilities Act, 2016 (49 of 2016). The Section 20 of the said Act is reproduced below -

“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.

This clause seeks to prohibit every establishment to discriminate any person with disability in any matter relating to employment. (Notes on Clauses).”

6. The learned counsel for applicant has pointed out the decision of the M.A.T., Principal Bench, Mumbai in O.A. No.122/2023 (P-80), decided on 09/06/2023. This Tribunal has recorded its findings in para nos.8,12 and 16 . Those are reproduced below –

*“(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.*

(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.

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.”

7. This Tribunal also decided the O.A.No.943/2022 on 24/01/2024 and this Tribunal directed the concerned department to

provide suitable employment to the employee who is unable to discharge their duties and also directed to protect the pay though the lighter / lower post is granted.

8. During the course of submission, the learned counsel for applicant has submitted that the respondents have provided residential quarter. Therefore, prayer clause (iv) is satisfied. Hence, the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The respondents are directed to provide alternate lighter work / job to the applicant as per the Section 20 of the Rights of Persons with Disabilities Act,2016 (49 of 2016) by protecting his pay scale of his original post.
- (iii) The respondents are directed to pay the salary to the applicant from the month of February,2023 which is withheld as per the order dated 31/03/2023 within a period of three months from the date of this order.
- (iv) No order as to costs.

Dated :- 15/02/2024.

**(Justice M.G. Giratkar)
Vice Chairman.**

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 15/02/2024.