

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.332 OF 2019**

**DISTRICT : SANGLI**

Smt. Laxmi Mukund Kamble. )  
Ex-Head Cook in the Office of Superintendent of )  
Police, Sangli and R/o. Rukminibai Women's )  
Housing Society, Behind Sanjay Nagar Bus Stop, )  
Sanjay Nagar, Sangli – 416 416. )...**Applicant**

**Versus**

1. The Superintendent of Police. )  
Sangli. )  
2. The State of Maharashtra. )  
Through Principal Secretary, )  
Home Department, Mantralaya, )  
Mumbai – 400 032. )...**Respondents**

**Mr. A.V. Bandiwadekar, Advocate for Applicant.**

**Mrs. A.B. Kololgi, Presenting Officer for Respondents.**

**CORAM : A.P. KURHEKAR, MEMBER-J**

**DATE : 23.07.2019**

**JUDGMENT**

1. The Applicant has challenged the impugned order dated 14.01.2019 whereby she has been declared permanently physically incapacitated for

further service and retired on medical ground under Rule 68 of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules 1982' for brevity) and prayed for declaration for entitlement to the benefit of Section 20 of 'Rights of Persons with Disabilities Act, 2016' (hereinafter referred to as 'Disabilities Act 2016' for brevity).

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

The Applicant was appointed in Government service on the post of Cook in 1999. She was promoted to the post of Head Cook in 2008. In 2014 to 2016, she could not attain duty as she was suffering from 'Right Hemiparesis'. She was, therefore, referred for medical examination by Medical Board, Government Medical College and Hospital, Miraj. The Medical Board examined her and issued Certificate on 26.12.2018 declaring her totally unfit for service and diagnosed the disease as 'Right Hemiparesis'. On the basis of Medical Certificate, the Respondent No.1 – Superintendent of Police passed the impugned order dated 14.01.2019 thereby retiring her on medical ground invoking Rule 68 of 'Pension Rules 1982' w.e.f.26.12.2018. The Applicant has challenged the order dated 14.01.2019 contending that the same is in contravention of Section 20 of 'Disabilities Act 2016'. She contends that she cannot be dispensed with from service and entitled to protection under the provisions of 'Disabilities Act 2016'. As such, she deemed to be in service and entitled to Pay and Allowances till she attained the age of superannuation. The impugned order dated 14.01.2019 for retirement on medical ground and to grant invalid pension is, therefore, not sustainable in law and prayed to set aside the same.

3. The Respondent No.1 resisted the application by filing Affidavit-in-reply *inter-alia* denying the entitlement of the Applicant to the relief claimed. The Respondent sought to justify the impugned order dated 14.01.2019

contending that the Medical Board declared the Applicant permanently incapacitated for service, and therefore, invoking Rule 68 of 'Pension Rules 1982', the Applicant stands retired on medical ground. As regard the applicability of provisions of Section 20 of 'Disabilities Act 2016', the Respondent contends that the creation of supernumerary post or to keep the Applicant on supernumerary post is not within his powers. Thus, the Respondent sought to justify the impugned action and prayed to dismiss the O.A.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant vehemently urged that the Respondent No.1 had completely ignored the provisions of Section 20 of 'Disabilities Act 2016' which are in *pari materia* with Section 47 of 'Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as 'Persons with Disabilities Act 1995' for brevity). He submits that the impugned action is in defiance of the provisions of these Acts and liable to be set aside. In this behalf, he referred to the decisions of Hon'ble Supreme Court ***in (2003) 4 SCC 524 (Kunal Singh Vs. Union of India)*** and also pointed out that, in similar situation, the benefit of Section 47 of 'Persons with Disabilities Act 1995' has been extended by this Tribunal in decision in ***O.A.741/2007 (Surendra Malge Vs. Director and Inspector General of Police, M.S.) decided on 06.01.2009, O.A.1160/2011 (Ashok Pawar Vs. State of Maharashtra) decided on 23.04.2011, O.A.916/2018 (Dr. Suhas V. Ganu Vs. State of Maharashtra & Anr.) decided on 09.05.2019 and O.A.176/2017 (Balasaheb N. Wakchaure Vs. The Commissioner of Police, Mumbai & Anr.) decided on 14.06.2019.***

5. Whereas, the learned P.O. sought to justify the impugned order contending that it is in consonance with Rules 68 and 72 of 'Pension Rules 1982'.

6. The question posed whether the Applicant is entitled to protection of Section 20 of 'Disabilities Act 2016' and the answer is in affirmative in view of settled legal position. Here, it would be appropriate to reproduce Section 20, which is as follows :-

**"20. (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 acquitting 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."

7. Material to note that Section 20 of 'Disabilities Act 2016' is in *pari materia* with Section 47 of 'Persons with Disabilities Act 1995'.

8. The 'Persons with Disabilities Act 1995' has been repealed in the wake of enforcement of the 'Disabilities Act 2016'. The definition of "Persons with

Disability” as defined in Section 2(s) of ‘Disabilities Act 2016’, which is as follows :-

**“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 of society equally with others”.

9. The perusal of Medical Certificate dated 26.12.2018 reveals that the Applicant was declared permanently incapacitated for service being infected with Right Hemiparesis. This being the position, the Applicant is squarely covered by the definition of “Persons with Disability” defined in Section 2(s) of ‘Disabilities Act 2016’. It is not in dispute that the Applicant has acquired disability during employment as Head Cook.

10. In fact, the ambit and scope of Section 47 of ‘Act 1995’ is no more *res-integra* in view of the decision of Hon’ble Supreme Court in **Kunal Singh’s** case (cited supra) as well as the decisions rendered by this Tribunal relying on the Judgment in **Kunal Singh’s** case in O.A.741/2007 and O.A.1160/2010. The learned Advocate for the Applicant has tendered the copies of orders and has pointed out that the Judgment in O.A.741/2007 has been confirmed by Hon’ble High Court in Writ petition No.7920/2009 decided on 19.11.2009.

11. At this juncture, firstly, it would be apposite to see Para Nos.9, 10, 11 and 12 of the Judgment of Hon’ble Supreme Court in **Kunal Singh’s** case, wherein the scope and applicability of Section 47 of ‘Act 1995’ has been considered in following words :-

**“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 non derogant 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."*

12. 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.

13. Material to note that the Judgment of this Tribunal in O.A.741/2007 was challenged before the Hon'ble High Court in Writ Petition No.7920/2009 and the Judgment of the Tribunal granting benefit of Section 47 of 'Persons with Disabilities Act 1995' stands confirmed. Here, it would be appropriate to reproduce Paras 6 & 7 of the Judgment of Hon'ble High Court, which is 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.”*

14. Thereafter again, similar issue was posed for consideration in O.A.No.1160/2010. In that case, the Applicant Ashok Pawar was working as Head Constable. On 07.08.2006 during night shift as Bit Marshal while he was riding motor-cycle met with an accident and suffered severe head injury. He was referred for medical examination and having found him permanently disabled and unfit for continuation in service, invalid pension was granted under ‘Rules 1982’. The Applicant challenged the said decision before this Tribunal contending that he is entitled to protection of Section 47 of ‘Act 1995’. Accordingly, in view of the law laid down by Hon’ble Supreme Court in **Kunal Singh’s** case, the O.A. was allowed with a finding that Section 47 of ‘Act



1995' will prevail over 'Rules 1982' and all service benefits were ordered to be given to the Applicant till he attained the age of superannuation.

15. Now turning to the facts of the present case, the stand taken by Respondent No.1 that the creation of supernumerary post or to keep the Applicant on supernumerary post till he attains the age of superannuation is not within his powers, and therefore, he did not take any steps has to be rejected and statutory protection available to the employee who has permanently incapacitated on account of disability cannot be denied. The Respondent No.1 was under obligation to refer the matter to the Government and to seek further direction. However, ignoring the provisions of 'Disabilities Act 2016', he passed the order of retirement of the Applicant on medical ground.

16. As held by Hon'ble Supreme Court in ***Kunal Singh's*** case that even grant of invalid pension on the basis of State Pension Rules cannot be ground to deny the protection mandatorily made available to the persons coming under the provision of Section 47 of 'Persons with Disabilities Act 1995' which is in *pari materia* with Section 20 of 'Disabilities Act 2016'. Suffice to say, once the person is found acquired disability during his employment, he should be shifted to some other post with pay scale and if it is not possible to do so, he need to be kept on supernumerary post till he attends the age of superannuation. This being law of land, it has to be followed.

17. The necessary corollary of aforesaid discussion leads me to sum-up that the impugned order dated 14.01.2019 retiring the Applicant on account of physical disability is violative of Section 20(4) of 'Disabilities Act 2016' and liable to be set aside. Hence, the following order.

**ORDER**

- (A) The Original Application is allowed.
- (B) The impugned order dated 14.01.2019 is hereby quashed and set aside.
- (C) The Applicant is declared entitled for the benefit of Section 20 of 'Disabilities Act 2016' and the Respondents are directed to accord necessary consequential service benefits to the Applicant.
- (D) No order as to costs.

Sd/-

**(A.P. KURHEKAR)**  
**Member-J**

Mumbai

Date : 23.07.2019

Dictation taken by :

S.K. Wamanse.

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