

Court No. - 50

Case :- WRIT - A No. - 18224 of 2024

Petitioner :- Muhammad Naeem

Respondent :- State Of Uttar Pradesh And 3 Others

Counsel for Petitioner :- Santosh Kumar Mishra

Counsel for Respondent :- C.S.C.,Sheo Ram Singh

Hon'ble Ajay Bhanot,J.

1. The petitioner is a bus driver in the respondent Corporation.
2. By means of the impugned order dated 04.10.2024 the petitioner's claim for allocation of light duties on account of his disability has been declined. The impugned order records that there is no light duty available for drivers in the respondent Corporation apart from the normal job of driving buses.
3. The petitioner suffered a disability during his service period. The petitioner had made a representation on 28.03.2022 before the respondent authorities regarding his disability and consequent inability to undertake rigorous work. The said claim of the petitioner and his request for allocation of light duties began to be processed by the respondent Corporation from the aforesaid date. The competent authority of the Corporation by communication dated 28.03.2022 requested the Chief Medical Officer, Hamirpur to medically examine the petitioner and draw up

a report regarding his disability. A medical board constituted by the CMO, Hamirpur comprising of three specialist doctors examined the petitioner. The report of the said medical board which was countersigned by the CMO, Hamirpur on 04.04.2022 opined that the petitioner suffered from 40% disability.

4. Consequent to the aforesaid opinion of the medical board a disability certificate was issued by the competent authority to the petitioner on 04.04.2022. The disability certificate issued by the competent medical authorities dated 04.04.2022 records that the petitioner is a case of locomotor disability and he has 40% permanent disability in relation to Left Arm, Left Leg as per the guidelines (Guidelines for the purpose of assessing the extent of specified disability in a person included under the RPwD Act, 2016 notified by Government of India vide S.O. 76(E) dated 04/01/2018).

5. The CMO, Hamirpur in his letter/medical opinion dated 25.04.2022 addressed to the competent authority of the respondent Corporation stated that the disability of the petitioner was temporary and a cure was possible. However, the said letter categorically recommended that the petitioner would be unable to perform the duties of driver and hence should be allocated light work.

6. Yet again the respondent Corporation directed the

petitioner to face a medical board. The petitioner had appeared before the medical board which was comprised of three specialist doctors nominated by the CMO, Lucknow. The opinion of the medical board dated 05.05.2023 which was duly countersigned by the CMO, Lucknow reiterated the said disability suffered by the petitioner and advised light duties in view of the same.

7. The petitioner claims that despite repeated medical confirmations of his disability and in the teeth of medical advice the authorities of respondent Corporation did not assign light duties to the petitioner. Being thus aggrieved the petitioner approached this Court by instituting Writ A No. 12227 of 2024 (Muhammad Naeem Vs. State of U.P.). This Court by order dated 14.08.2024 passed the following orders:

"5. In view of the above, this petition stands disposed of with direction to the petitioner to move an appropriate application within four weeks from today before the competent authority-respondent no.4 and in the event any such application is filed the competent authority shall dispose of the same within a period of six weeks from the date of production of certified copy of this order by means of reasoned and speaking order."

8. The application of the petitioner has now been rejected by the impugned order dated 04.10.2024.

9. This Court by order dated 20.02.2025 directed the

constitution of medical board to examine the medical condition/disability of the petitioner and submit a report. The medical board constituted by the CMO, Lucknow was comprised of three specialist doctors from King George's Medical University, Lucknow. After independent examination of the petitioner the said medical board in its report dated 12.03.2025 recorded that the petitioner suffers from a locomotor disability to the extent of 40% as contemplated in the Rights of Persons with Disabilities Act, 2016. In effect the medical board only reiterated the opinion of the earlier boards.

10. The petitioner is a person with disability under the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as the "Disabilities Act") and his rights are governed and regulated by the Disabilities Act. The objects sought to be achieved by the legislature while enacting the Disabilities Act are disclosed in the Rights of Persons with Disabilities Bill, 2014. The relevant objections sought to be achieved by the enactment are extracted hereunder:

"4 (ii) the persons with disabilities enjoy various rights such as right to equality, life with dignity, respect for his or her integrity etc. equally with others;

(iii) duties and responsibilities of the appropriate Government have been enumerated."

11. Some of the relevant definitions under the Disabilities Act are discussed below. Section 2(r) and Section 2(s) respectively define person with benchmark disability, person with disability, while Section 2(i) defines establishment. The said provisions are reproduced below:

"2 (i) "establishment" includes a Government establishment and private establishment;

(r) "person with benchmark disability" means a person with not less than forty percent 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:

(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;

12. The respondent authorities clearly come within the ambit of the "establishment" under the Disabilities Act.

13. The disabilities covered under the Disabilities Act are detailed in Schedule I to the Act. The relevant parts of the provision state thus:

"1. Physical disability.— A. Locomotor disability (a person's inability to execute distinctive activities associated with movement of self and objects resulting from affliction of musculoskeletal or nervous system or both), including— (a) "leprosy cured person"

means a person who has been cured of leprosy but is suffering from— (i) loss of sensation in hands or feet as well as loss of sensation and paresis in the eye and eye-lid but with no manifest deformity;

(ii) manifest deformity and paresis but having sufficient mobility in their hands and feet to enable them to engage in normal economic activity;

(iii) extreme physical deformity as well as advanced age which prevents him/her from undertaking any gainful occupation, and the expression "leprosy cured" shall construed accordingly."

14. Section 20 of the Disabilities Act prohibits discrimination against a person with disability in any government establishment in any manner relating to employment. The provision being relevant is extracted hereunder:

"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."

15. Section 21 of the Disabilities Act contemplates the an equal opportunity policy to be followed by all establishments and the provision is reproduced hereunder:

"21. Equal opportunity policy.—(1) Every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Government.

(2) Every establishment shall register a copy of the said policy with the Chief Commissioner or the State Commissioner, as the case may be."

16. Section 33 of the Disabilities Act obligates the government to identify the posts in the establishment which can be held by respective categories of persons with benchmark disabilities. Section 33 speaks thus:

"33. Identification of posts for reservation.—The appropriate Government shall— (i) identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34; (ii) constitute an expert committee

with representation of persons with benchmark disabilities for identification of such posts; and (iii) undertake periodic review of the identified posts at an interval not exceeding three years."

17. Section 33 of the Disabilities Act pivots the implementation of the said enactment in the respondent Corporation. The process under Section 33 contemplates that the identified post aligns with the respective disability in a manner that holder of the post can discharge the duties attached to the post without being impeded by the disability. When the respective disability ceases to be a factor in the efficient execution of the identified post, the person with disability realizes his/her true potentialities and the legislative object of the Disabilities Act is fully realized. The said identification of posts for persons with disabilities is indispensable for the creation of a discrimination free work environment for persons with disabilities.

18. Failure of the respondents to identify posts which can be held by respective categories of persons with disabilities will not only violate Section 33 of the Disabilities Act which is a mandatory provision of law, but will have a further cascading effect. Non compliance of Section 33 of the Disabilities Act will also create a discriminatory regime against persons with disabilities, which is contrary to the avowed object of the Disabilities Act. The said omission of the respondents will flagrantly

transgress Section 20 of the Disabilities Act. Further more the absence of clearly identified posts for persons with disabilities, will negate the equal opportunity which is contemplated in Section 21 of the Disabilities Act. In short the scheme of equality in employment for persons with disabilities under the Disabilities Act will be subverted if the mandate of Section 33 is frustrated.

19. The pleadings and materials in the record establish that the petitioner has been suffering from physical disability in the nature of locomotor disability to the extent of 40% from March 2022, which is depicted in the said disability is depicted in the Disability Certificate issued under the Disabilities Act. The said disability comes within the ambit of "locomotor disability" defined in Schedule I of the Disabilities Act. The petitioner had first made a representation to the respondent Corporation on 28.03.2022 for being allocated duties commensurate with his disabilities. It is also undisputed that the petitioner was not given light duties nor paid his salary since March 2022. The correspondences of the department not only disclose non application of mind, but also display callous attitude to the plight of an employee who is suffering from disability, and a disconcerting disregard for the law.

20. The impugned order neglects to consider relevant facts and document which attest the disability of the petitioner

and disclose the recommendations of competent authorities. The said action of the respondent employers subverts the intent of Rights of Persons with Disabilities Act, 2016 and is contrary to the provisions of the enactment.

21. The impugned order had invalidated the claim of the petitioner for light duties on the footing that there exists no provision for grant of light duties to drivers in the Corporation. The aforesaid assertions in the impugned order are in the teeth of the provisions of Rights of Persons with Disabilities Act, 2016. As discussed earlier an imperative duty is cast upon the respondents to identify posts to be held by respective categories of persons with disabilities. The rights of persons with disabilities cannot be transgressed on account of the failure of the respondent authorities to comply with the said provisions of the Disabilities Act. The respondent authorities cannot take advantage of their omissions to deny rights vested in the petitioner by law.

22. The impugned order dated 04.10.2024 is liable to be set aside and is set aside.

23. The matter is remitted to the respondent authorities with the following directions:

I. The respondents are directed to permit the petitioner to

continue on the post with light duties which he has joined pursuant to directions issued by this Court. The petitioner shall be regularly paid his salary as and when it becomes due.

II. The respondents are directed to pay the arrears salary of the petitioner from March, 2022 till his salary was released last. The petitioner shall be entitled to interest @ 7% for the period of unpaid arrears of salary. The amount shall be paid within four months of the date of receipt of a certified copy this order.

III. The Managing Director, U.P. State Road Transport Corporation, Lucknow shall ensure that all officers are duly sensitized to the rights of persons with disabilities under the Disabilities Act and the legislative intent of the Disabilities Act is brought to fruition by faithful implementation of the Rights of Persons with Disabilities Act, 2016 in the respondent Corporation. To this end the following shall be executed within a period of six months:

A) Appropriate orders shall be issued and training be conducted by the competent authority.

B) Regular audits shall be conducted to oversee status of implementation of the disabilities in the respondent-Corporation.

IV. In the event of failure to pay the amount of arrears of

salary and interest as directed above the respondents shall pay further penalty of Rs. 50,000/-. The Managing Director, UPSRTC shall fix responsibility for non payment of the said amount and may direct recovery of the amount from the concerned officers.

24. The writ petition is allowed.

Order Date :- 9.7.2025

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