

Before Ajay Tewari, J.

PUNJAB NATIONAL BANK — *Petitioner*

versus

**COMMISSIONER, PERSON WITH DISABILITIES, SOCIAL
JUSTICE AND EMPOWERMENT DEPARTMENT AND
ANOTHER** — *Respondents*

CWP No. 16095 of 2015

August 06, 2015

Constitution of India, 1950 — Art.226 — Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995 — Ss. 47 and 62 — Respondent No.2, an employee of a bank met with an accident and became 100 % disabled — Petitioner bank declared him disentitled for salary and allowances on the principle of “no work, no pay” — Respondent No.2 filed complaint before Commissioner under the Act, who allowed the claim of employee — In writ jurisdiction, High Court held that to be entitled for salary and allowances, it is not necessary that disability should be suffered during the course of duties — As per Section 47, it is enough that disability was suffered during service, and the words “during service” cannot be interpreted restrictively.

Further held, in view of statutory framework, the court held that Commissioner under the Act had jurisdiction to try the complaint.

Held, that learned counsel has argued that this benefit could be granted to the petitioner only if he had suffered disability during the course of his duties. I am afraid, once the legislature has used the word 'during service' this beneficial legislation cannot be restrictively interpreted to say that the word service means duties.

(Para 3 and 4)

Further held, that the second argument raised by the learned counsel is that the Commissioner-respondent No.1 does not have the power to pass such an order.

Section 62 of the Act, 1995 is to the following effect:-

“62. Commissioner to look into complaints with respect to matters relating to deprivation of rights of persons with disabilities - Without prejudice to the provisions of

section 61 the Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to---

- (a) Deprivation of rights of persons with disabilities;
- (b) Non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights of persons with disabilities, and take up the matter with the appropriate authorities.”

(Para 5)

Further held, that thereafter under the Act, 1995 the following rules have been promulgated and Rule 42 of the Act, 1995 is to the following effect:-

“42. Procedure to be followed by Chief Commissioner.—

(1) A complaint containing the following particulars shall be presented by the complainant in person or by his agent to the Chief Commissioner for Persons with Disabilities or be sent by registered post addressed to the Chief Commissioner:—

- (a) The name, description and the address of the complainant;
- (b) The name, description and the address of the opposite party or parties, as the case may be, so far as they can be ascertained;
- (c) The facts relating to complaint and when and where it arose;
- (d) Documents in support of the allegations contained in the complaint;
- (e) The relief which the complainant claims.

(2) The Chief Commissioner on receipt of a complaint shall refer a copy of the complaint to the opposite party/parties mentioned in the complaint directing him to give his version of the case within a period of thirty

days or such extended period not exceeding fifteen days as may be granted by the Chief Commissioner.

(3) On the date of hearing or any other date to which hearing could be adjourned, it shall be obligatory on the parties or their agents to appear before the Chief Commissioner.

(4) Where the complainant or his agent fails to appear before the Chief Commissioner on such days, the Chief Commissioner may in his discretion either dismiss the complaint on default or decide it on merits.

(5) Where the opposite party or his agent fails to appear on the date of hearing the Chief Commissioner may take such necessary action under section 63 of the Act as he deems fit for summoning and enforcing the attendance of the opposite party.

(6) The Chief Commissioner may dispose of the complaint ex parte, if necessary.

(7) The Chief Commissioner may on such terms as he deems fit and at any stage of the proceedings, adjourn the hearing of the complaint.

(8) The complaint shall be decided, as far as possible, within a period of three months from the date of notice received by the opposite party.”

In view of this statutory frame-work, the argument that the respondent No.1 did not have the jurisdiction to try the complaint has to be rejected

(Para 6 and 7)

Madan Gupta, Advocate, *for the petitioner.*

AJAY TEWARI, J. (ORAL)

(1) By this petition the petitioner-bank has challenged the order of respondent No.1 dated 23.02.2015 whereby the respondent No.1 directed them to make the payment of salary to the respondent No.2.

(2) Brief facts of the case are that the respondent No.2 joined the office of petitioner-bank as Agriculture Officer in Junior Management Grade Scale-I on 18.11.2008 and was confirmed on 02.12.2010. On 09.07.2011 the petitioner met with an accident whereby he suffered spinal injury and became 100% disabled. Thereafter on his

disability the petitioner passed the order (Annexure P-2) declaring him disentitled for salary and allowance on the principle of “no work no pay” but retain his services of the bank. It was at that stage the respondent No.2 filed a complaint with the respondent No.1 claiming that under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short '**the Act, 1995**') the entire salary and other perks have to be released. Section 47 of the Act, 1995 is as under:-

“47. Non-discrimination in Government employments.

(1) No establishment shall dispense with or reduce in rank, an employee who acquires 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.”

(3) Learned counsel has argued that this benefit could be granted to the petitioner only if he had suffered disability during the course of his duties.

(4) I am afraid, once the legislature has used the word 'during service' this beneficial legislation cannot be restrictively interpreted to say that the word service means duties.

(5) The second argument raised by the learned counsel is that the Commissioner-respondent No.1 does not have the power to pass such an order.

Section 62 of the Act, 1995 is to the following effect:-

“62. Commissioner to look into complaints with respect to matters relating to deprivation of rights of persons with

disabilities - Without prejudice to the provisions of section 61 the Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to--

(a) Deprivation of rights of persons with disabilities;

(b) Non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights of persons with disabilities, and take up the matter with the appropriate authorities.”

(6) Thereafter under the Act, 1995 the following rules have been promulgated and Rule 42 of the Act, 1995 is to the following effect:-

“42. Procedure to be followed by Chief Commissioner.—

(1) A complaint containing the following particulars shall be presented by the complainant in person or by his agent to the Chief Commissioner for Persons with Disabilities or be sent by registered post addressed to the Chief Commissioner:—

(a) The name, description and the address of the complainant;

(b) The name, description and the address of the opposite party or parties, as the case may be, so far as they can be ascertained;

(c) The facts relating to complaint and when and where it arose;

(d) Documents in support of the allegations contained in the complaint;

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(8) The complaint shall be decided, as far as possible, within a period of three months from the date of notice received by the opposite party.”

(7) In view of this statutory frame-work, the argument that the respondent No.1 did not have the jurisdiction to try the complaint has to be rejected.

(8) Learned counsel further states that the judgment passed in the case of **Rupender Singh versus State of Haryana and others**¹ has been wrongly relied upon because in that case the said Rupender Singh had suffered the disability during his duty.

(9) I have gone through the aforesaid judgment and that judgment nowhere lays down that only a person who suffered disability during his duty is to be entitled to the benefit.

(10) Consequently, the petition is dismissed.

(11) Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

P.S. Bajwa

¹ 2007 (3) S.C.T. 13