

*Before K. Kannan, J.*

**ROSHNI DEVI—Petitioner**

*versus*

**HARYANA VIDYUT PRASARAN NIGAM (HVPN)  
AND OTHERS—Respondents**

**CWP No. 5436 of 2009**

March 6, 2012

*A. Constitution of India, 1950 - Art. 226 - Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1955 - Ss. 2(i), 2(q) & 47 - Employee had fallen mentally ill during the course of his service - Medical fitness examined by Medical Board - Not found fit for service - Retired from service on the application of his wife for premature retirement - Termination was made without properly apprising the employee of the provisions*

*of the 1955 Act - Act protected continuance in service and there ought to have been an effort to readjust the employee in some other type of activity which could have been still suitable - Maxim "lex ignorantia non excusat" (ignorance of law is no excuse) - Exception made to the rule - Order passed under the special circumstances - Employer directed to consider the claim for compassionate assistance on account of the employee's physical fitness.*

*Held*, that several social welfare legislations that are brought will become meaningless if we were to apply the legal maxim *lex ignorantia non excusat* (ignorance of law is no excuse) and in the Indian context where illiteracy is prevalent in a large measure, there is a duty on the part of the employer to counsel suitably on the rights of an employee, who is physically or mentally vulnerable.

(Para 5)

*Further held*, that it may not be possible to set the clock back at this length of time for the employer to reconsider the decision when an option for premature retirement had been given even without reference to the provisions of the Act. This ought to allow for making an exception and I would direct the respondents to consider the petitioner's claim for compassionate assistance as though the retirement had been made by the establishment on account of his physical unfitness. After all, the Rules relating to compassionate assistance does provide for granting appointment in a situation where the employment has ceased by medical unfitness in terms of clause 5 of the 1995 State Scheme. The respondents have not filed 2003 State instructions before the Court for me to examine how the consideration could be undertaken for compassionate assistance. The petitioner can forward a request for compassionate assistance either for herself or any other dependent within two weeks from the date of receipt of copy of this order. On such a request being made, the respondents shall consider the issue of compassionate assistance in the manner provided under the relevant Rules within a period of 6 weeks from the date of receipt of the communication. If there is no vacancy within the quota reserved for compassionate assistance, the same is directed to be included in the list of pending cases for consideration within the time which the Rules allow for. If there is no vacancy to which the dependent could be adjusted, at least

ex gratia financial assistance shall be considered. Since this direction comes through an order of Court, the issue of delay from the date of termination of the employee for the year 2002 shall not be applied against the petitioner. This order has been passed under the special circumstances where I find the termination was made without properly apprising the employee of the provisions of the 1995 Act.

(Para 6)

***B. Constitution of India, 1950 - Art. 226 - Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1955 - Ss. 2(i), 2(q) & 47 - Directions issued to issue appropriate guidelines - No employer shall terminate the services of an employee who has become mentally ill during the service, without due consideration of suitability of the employee to any other post and without properly counselling the employee about his rights - Wherever compassionate assistance scheme exists that contains provision for giving employment to any dependent to such employee, the employer shall counsel the dependent for appropriate application in that regard and adjust such dependent for suitable employment.***

*Held*, the copy of this judgment is directed to be circulated to the Central Ministry of Social Justice & Empowerment as well as to the and State Co-ordination Committees constituted under the 1995 Act for them to issue appropriate guidelines to the Departments of Labour, Human Resources Development and the State Agencies dealing with empowerment of persons with disabilities that no employer shall terminate the services of an employee who has become mentally ill during the service, without due consideration of suitability of the employee to any other post and without properly counselling the employee about his rights. It is also further directed that wherever compassionate assistance scheme exists that contains provision for giving employment to any dependent to such employee, the employer shall counsel the dependent for appropriate application in that regard and adjust such dependent for suitable employment.

(Para 7)

Ram Niwas Sharma, Advocate, *for the petitioner*.

None for the respondents.

**K. KANNAN, J.**

(1) The petitioner, is the wife of one Vijay Sudarshan Sharma, who had been working in the 1st respondent organization- Haryana Vidyut Prasaran Nigam (HVPN). During the course of his (petitioner's husband) service, he had fallen mentally ill and after prolonged treatment when his situation did not seem to improve, his medical fitness was considered by the Medical Board and having been not found fit for service, the petitioner's husband was retired on an application made by her. The order of termination of service is seen to have followed a request from the petitioner herself seeking for premature retirement for her husband on account of a chronic mental illness. The order the premature retirement was made on 10.07.2002 (Annexure P-6).

(2) The petitioner served a notice in the year 2008 complaining that the termination of service was bad in law, since the mental disability had occurred during the course of his employment and he ought to have been assigned to some other duty which could have still made possible his continuation in employment, in terms of protection granted under Section 47 of the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995 (hereinafter called, 'the 1995 Act'). The petitioner also sought in the alternative for being considered for compassionate appointment for her son in terms of the scheme which had been issued on 31.08.1995(Annexure P-7), under the terms of which, the facility of compassionate appointment to a dependent of the employee was to be extended also to persons, who had been declared medically unfit/blind/handicapped by the special Medical Board or retired on or before attaining the age of 55 years in the case of class-1, II and III officer and 54 in the case of class IV employees. The notice had not been responded and, therefore, the present writ petition has been filed.

(3) The contention of the respondent in defence is that the order of premature retirement itself was made only on the request of the petitioner and the same could not be reopened on the protection given under the Act under Section 47 at a belated time after nearly 6 years after his retirement. According to the respondents, they had never forced the petitioner's husband to retire from service during all the time when he was undergoing treatment for his mental disorder. It was not as if the petitioner's illiteracy was exploited by the respondent for foisting premature retirement on the petitioner's husband. On the other hand, the petitioner had come to office

on several occasions with the brother of the employee named Suraj Bhan Sharma and he had even given a letter on 09.11.1996 setting out the circumstances under which he could not be attending the office. On a plea made for compassionate appointment, the response was that it was not a case of retirement made by the Nigam but a case of voluntary retirement and as such, the case was not covered under the instructions of the year 2003.

(4) The “disability” as defined under Section 2(i) includes through sub clauses (vi) and (vii), mental retardation and mental illness as well. Section 2(q) states that the mental illness would mean any mental disorder other than mentally retardation. To this extent, it is clear that the protection under Section 47 of the Act 1995 would certainly be attracted and no establishment could dispense with or reduce in rank of an employee who acquired disability during his service. There is no attempt anywhere by the respondents to contend that the mental illness of the petitioner’s husband was congenital or he had at any time been mentally ill even before he was taken into employment. It is, therefore, correct that the petitioner contends that an employee could not have been terminated from service only on the ground of mental illness. At the same time, it is also relevant to see that the person, who is unfit to continue for any kind of job that may be existing in an establishment, could not have been forced to continue in duty. When the order of termination was effected on 10.07.2002, it is necessary to examine whether such termination was only at the request of the petitioner or her husband was seeking for being relieved from duty on account of the fact that there was no duty to which he could have been assigned any work among the employer’s work force. In the letter issued on 24.10.2000 by the Executive Engineer, HVPNL, Narwana, to the Director, PGI, Rohtak, it reads that the wife of the official had intimated the office that her husband had been under chronic mental sickness and before further action is taken in the office, the employee was required to be examined. The reference to the letter of the petitioner could be seen in the light of the petitioner’s letter to the Director, PGI, Rohtak, around the same time on 17.10.2000. Her letter reads like this:-

“That my husband Mr. Vijay Sudershan Sharma S/o Sh. Devi Ram Sharma, resident of Village & Post Office Kakrod (Jind) is working in Haryana Vidut Vitran Nigam, as Draftsman (Mech.) at T/L construction division Narwana since 1980.

That my husband is suffering from mental disease since a long time.

That he is no able to perform his duties.

That we have got treatment of my husband many times at P.G.I., Rohtak, Maan Singh Hospital Jaipur and many other places. But the position of my husband is same.

That I am uneducated house wife and no other source of income of my family.

So, I want to take premature retirement of my husband on medical ground for which medically non-certificate is needed.”

There is a clear reference that she wanted her husband to take premature retirement. When the letter had been issued by the employer to the Director, the request for a checkup was made in the context of examining whether the employec could be retired. What really transpired between the request for a checkup by the employer till when the order was passed on 10.07.2002 is not known. In the order of determination of service, it was not a case of treating the case of the employee as one of voluntary retirement. The order of retirement would require to be reproduced to examine how the employer considered the termination of service:-

“As reported by S.E./Const. O &M, HVPN, Rohtak Shri Vijay Sudarshan, D/Man presently posted under XEN/Const. O&M, Division, HVPN, Narwana is neither on leave and nor joined his duties since 1.06.1997 to date as he is suffering from Schizophrenic disorder as per Deptt. of Physchiary Pt. B.D. Sharma, PGIMS, Rohtak letter No.PSY/20/1/324, dated 24.02.2001 and as such he is not fit to perform his official duties and declared medically unfit by the Medical Board Rohtak. The said office has requested through his SE/Const., O &M Rohtak Memo No.Ch-2/PC-2, dated 02.11.01 for his premature retirement w.e.f. 24.01.2001 A.N.

On the basis of disability certificate issued by the Medical Board, Rohtak and as the case is recommended by the SE/XEN concerned and also in view of the request submitted by Sh. Vijay Sudarshan D/ Man, the premature retirement of the official is hereby accepted w.c.f. 24.02.2001 under Rule 2.2 (B) of CSR Vol.II and in view of existing instructions of HVPN. However, if any stage the same shall be recovered from his pension forthwith.”

Even in the order retiring the petitioner, it is stated that the premature retirement has been done on the basis of disability certificate issued by the Medical Board and on the basis of a request of the Superintending Engineer (SE/Const., O&M, Rohtak) and also in view of the request made by the employee for premature retirement. It cannot, therefore, be seen that the employer terminated the services because of employee's illness without minding the provisions of Section 47 of the 1995 Act. The request has emanated from the employee through his wife. Consequently I cannot find that the order of termination is bad and that it would require to be quashed in the manner sought for in the writ petition.

(5) It was perhaps possible that the employer must have apprised the petitioner or her husband properly that the Act protected continuance in service and there ought to have been an effort to readjust the petitioner's husband in some other type of activity which would have been still suitable. It is not clear from the record brought before me that the employer undertook such an exercise. Several social welfare legislations that are brought will become meaningless if we were to apply the legal maxim *lex ignorantia non excusat* (ignorance of law is no excuse) and in the Indian context where illiteracy is prevalent in a large measure, there is a duty on the part of the employer to counsel suitably on the rights of an employee, who is physically or mentally vulnerable. In this case, although the brother of the employee had at some point of time made a request that the employee be sent for medical examination, all the subsequent communications have been made by the petitioner. She has merely put thumb impressions in several communications and it is obvious that she was being led by others in the request for premature retirement. If it were a case of voluntary retirement, the issue of compassionate appointment does not arise. Since the official records show that it was a case of voluntary retirement, it was only logical that they had also denied any consideration for compensate assistance. However, I would find that the premature retirement had come about in a situation where the petitioner had not been properly counselled and the employer did not do what it ought to have done under the 1995 Act.

(6) It may not be possible to set the clock back at this length of time for the employer to reconsider the decision when an option for premature retirement had been given even without reference to the provisions of the Act. This ought to allow for making an exception and I would direct the respondents to consider the petitioner's claim for compassionate assistance

as though the retirement had been made by the establishment on account of his physical unfitness. After all, the Rules relating to compassionate assistance does provide for granting appointment in a situation where the employment has ceased by medical unfitness in terms of clause 5 of the 1995 State Scheme. The respondents have not filed 2003 State instructions before the Court for me to examine how the consideration could be undertaken for compassionate assistance. The petitioner can forward a request for compassionate assistance either for herself or any other dependent within two weeks from the date of receipt of copy of this order. On such a request being made, the respondents shall consider the issue of compassionate assistance in the manner provided under the relevant Rules within a period of 6 weeks from the date of receipt of the communication. If there is no vacancy within the quota reserved for compassionate assistance, the same is directed to be included in the list of pending cases for consideration within the time which the Rules allow for. If there is no vacancy to which the dependent could be adjusted, at least *ex gratia* financial assistance shall be considered. Since this direction comes through an order of Court, the issue of delay from the date of termination of the employee for the year 2002 shall not be applied against the petitioner. This order has been passed under the special circumstances where I find the termination was made without properly apprising the employee of the provisions of the 1995 Act.

(7) The copy of this judgment is directed to be circulated to the Central Ministry of Social Justice & Empowerment as well as to the and State Co-ordination Committees constituted under the 1995 Act for them to issue appropriate guidelines to the Departments of Labour, Human Resources Development and the State Agencies dealing with empowerment of persons with disabilities that no employer shall terminate the services of an employee who has become mentally ill during the service, without due consideration of suitability of the employee to any other post and without properly counselling the employee about his rights. It is also further directed that wherever compassionate assistance scheme exists that contains provision for giving employment to any dependent to such employee, the employer shall counsel the dependent for appropriate application in that regard and adjust such dependent for suitable employment.

(8) The writ petition is disposed off with the above directions.