



RAJASTHAN HIGH COURT

सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 9277/2021

Sunil Kumar Gupta S/o Shri Nemi Chand Gupta, Aged About 53
Years, R/o Anurudh Nagar, Bharatpur (Rajasthan)

-----Petitioner

Versus

1. State of Rajasthan, Through Secretary, Government of Rajasthan, Rural Development and Panchayati Raj Department, Secretariat, Rajasthan, Jaipur.
2. Chief Executive Officer, Zila Parishad, Bharatpur, Rajasthan.
3. Commissioner Agriculture, Agriculture Department, Government Of Rajasthan, Pant Krishi Bhawan, Jaipur, Rajasthan.

-----Respondents

For Petitioner(s) : Mr. C.P. Sharma assisted by
Mr. Saddik Khan

For Respondent(s) : Mr. B.S. Chhaba, AAG assisted by
Mr. Aniket Beniwal,
Dr. Sajit Jakhar.

Mr. Kesar Singh Shekhawat, AGC
assisted by
Mr. Aditya Sharma

HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL

Judgment / Order

ORDER RESERVED ON : : 03.07.2025

ORDER PRONOUNCED ON : : 09.07.2025

At the outset, learned counsel for the petitioner confines this writ petition qua the prayer no.(a) and (d) and does not press the remaining prayers.

The undisputed relevant facts are in a very narrow compass.



The petitioner was appointed as Junior Engineer in the respondent no.3-Department on 01.07.1995 and was promoted as Assistant Engineer. During his service, on 16.11.2013, he suffered a brain hemorrhage resulting into paralysis in right side of the body. Since then, he is bedridden. Under an interim order of this Court dated 20.03.2025, the petitioner was examined by a Medical Board, which, as per its certificate dated 02.04.2025, found him to be suffering from 80% disability. In view of aforesaid, it is not disputed by either of the parties that the petitioner has been rendered disabled to discharge his official duty and as of now, he is unable to do official work of any nature.

This writ petition is filed by the petitioner alleging that despite availability of the protection to him under Section 20(4) of the Rights of Persons with Disabilities Act, 2016 (for short, 'the Act of 2016'), the respondents have not paid him salary and other service benefits for the period from 12.04.2018 to 30.06.2018 and thereafter from 19.01.2019 till date.

Learned counsel for the petitioner Shri C.P. Sharma, inviting attention of this Court towards provisions of Section 20(4) of the Act of 2016, would canvass that since, the petitioner has incurred disability during his service and is rendered unable to discharge his official duty as Assistant Engineer or any other duty, he is entitled for the salary and other service benefits till he is able to do so or till he attains the age of superannuation. He further submits that he is also entitled for all the retiral benefits after attaining the age of superannuation. He, therefore, prays that the writ petition be allowed in terms thereof.





Per contra, Shri Basant Singh Chhaba, learned Additional Advocate General appearing for the respondents, opposing the prayer, made two fold submissions. Firstly, relying upon second proviso to sub-section (4) of Section 20, he submits that the benefit under Section 20(4) is available only to the employee who is partially disabled and not in the cases wherein, he/she is completely disabled as he cannot be adjusted against any suitable post. He submits that since, in the instant case, indisputably, the petitioner is rendered completely disable to discharge any work, he is not entitled for the salary or other service benefits. His second submission is based on availability of alternative remedy. Inviting attention of this Court towards the provisions of Section 23 of the Act of 2016, he submits that any person aggrieved with the non-compliance of the provisions of Section 20, may file a complaint with the Grievance Redressal Officer who is under an obligation to take up the matter with the establishment for corrective action. Shri Chhaba submits that under sub-section (4) of Section 23, if the aggrieved person is not satisfied with the action taken on the complaint, he may approach the District Level Committee on disability which has been constituted by the State Government vide order dated 09.01.2020, a copy whereof has been submitted for perusal of this Court. Further, the learned AAG submits that under Section 80 of the Act of 2016, the State Commissioner is also empowered to take care of grievance of the petitioner who has been bestowed with same powers as that of a civil court under Section 82 of the Act. Learned counsel submits that since, the petitioner has filed this writ petition without exhausting the aforesaid alternative remedies, it is not



maintainable. He, therefore, prays for dismissal of the writ petition.

Heard. Considered.

As already observed, the facts are not in dispute that while in service, the petitioner has incurred disability which has rendered him completely incapable to discharge his official duty or work of any nature with the respondents. In such circumstances, Section 20(4) of the Act of 2016 comes into play which reads as under:

"20. Non-discrimination in employment:-

(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 any 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."

The aforesaid provisions, in no uncertain terms, provide that no action prejudicial to a government servant shall be taken by any government establishment who acquires a disability during his/her service. It further provides that if an employee after acquiring disability is not suitable for the post he was holding, he shall be shifted to some other post with the same pay scale and service benefits and if it is not possible to adjust the employee





against any post, he may be kept on supernumerary post until a suitable post is available for or until he attains the age of superannuation, whichever is earlier. It is also clear from the aforesaid provisions that the same are applicable irrespective of whether the employee is partially disabled or completely disabled.

The second proviso unequivocally provides that if he is able to do any kind of work, he will be adjusted against such post with the same pay scale and service benefits otherwise, he has to be kept on a supernumerary post till he attains the age of superannuation. There is nothing in the second proviso to warrant a finding that only a partially disabled employee is entitled for the protection under Section 20(4) of the Act of 2016 and not the completely disabled employee. In view of the aforesaid, the first contention raised by the learned AAG does not merit acceptance and the petitioner is held to be entitled for benefit under Section 20(4) of the Act of 2016.

In the case of **Bhagwan Dass & Anr. vs. Punjab State Electricity Board-AIR 2008 SC 990**, the employee, while in service became totally blind on 17.1.1994 and resultantly, could not attend the duty whereupon, a charge sheet was issued to him initiating disciplinary proceeding for gross misconduct on account of remaining absent without leave from January 18, 1994 till 13.9.1994 despite issuance of notices. Thereafter, the appellant-employee requested the respondent-Board, vide letter dated 17.07.1996, to retire him from service explaining the reason for his absence from duty and requesting to employ his wife in his place. However, later on, the charge sheet against the appellant



was withdrawn and he was retired from service despite observation of the Director of the Board that "with regard to cited subject, it is made clear that there are instructions of the Board on which blind employee is not liable to be retired."

Thereafter, the appellant filed an affidavit before the concerned officers pleading therein that he had no knowledge that there was no need for retirement of those who were disabled during service and he sought retirement unknowingly. However, the affidavit failed to evoke any response. The writ petition filed by him along with his son did not find favour with the High Court. However, in the appeal, their Lordships have, appreciating the provisions of Section 47 of the Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995, which are pari materia with the provisions of Section 20(4) of the Act of 2016, held as under:

"12. From the materials brought before the court by none other than the respondent-Board it is manifest that notwithstanding the clear and definite legislative mandate some Officers of the Board took the view that it was not right to continue a blind, useless man on the Board's rolls and to pay him monthly salary in return of no service. They accordingly persuaded each other that the appellant had himself asked for retirement from service and, therefore, he was not entitled to the protection of the Act. The only material on the basis of which the Officers of the Board took the stand that the appellant had himself made a request for retirement on medical grounds was his letter dated July 17, 1996. The letter was written when a charge sheet was issued to him and in the letter he was trying to explain his absence from duty. In this letter he requested to be retired but at the same time asked that his wife should be given a suitable job in his place.





In our view it is impossible to read that letter as a voluntary offer for retirement.

13. Appellant No.1 was a Class IV employee, a Lineman. He completely lost his vision. He was not aware of any protection that the law afforded him and apparently believed that the blindness would cause him to lose his job, the source of livelihood of his family. The enormous mental pressure under which he would have been at that time is not difficult to imagine. In those circumstances it was the duty of the Superior Officers to explain to him the correct legal position and to tell him about his legal rights. Instead of doing that they threw him out of service by picking up a sentence from his letter, completely out of context. The action of the concerned Officers of the Board, to our mind, was deprecable.

14. We understand that the concerned Officers were acting in what they believed to be the best interests of the Board. Still under the old mind-set it would appear to them just not right that the Board should spend good money on someone who was no longer of any use. But they were quite wrong, seen from any angle. From the narrow point of view the officers were duty-bound to follow the law and it was not open to them to allow their bias to defeat the lawful rights of the disabled employee. From the larger point of view the officers failed to realise that the disabled too are equal citizens of the country and have as much share in its resources as any other citizen. The denial of their rights would not only be unjust and unfair to them and their families but would create larger and graver problems for the society at large. What the law permits to them is no charity or largesse but their right as equal citizens of the country.

15. In light of the discussions made above, the action of the Board in terminating the service of the disabled employee (appellant No.1) with effect from March 21, 1997 must be held to be bad and illegal. In view of the provisions of Section 47 of the Act, the appellant must be deemed to be in service





and he would be entitled to all service benefits including annual increments and promotions etc. till the date of his retirement. The amount of terminal benefits paid to him should be adjusted against the amount of his salary from March 22, 1997 till date. If any balance remains, that should be adjusted in easy monthly installments from his future salary. The appellant shall continue in service till his date of superannuation according to the service records. He should be reinstated and all due payments, after adjustments as directed, should be made to him within six weeks from the date of presentation of a copy of the judgment before the Secretary of the Board.

16. In the result the appeal is allowed with costs quantified at Rs.5,000/-."

Thus, in the aforesaid case, the Hon'ble Apex Court, while deprecating the action of the respondent-Board in maneuvering the appellant to tender his resignation without informing of his valuable right available under Section 47 of the Act, held him entitled for the protection under Section 47.

A coordinate Bench of this Court has, in the case of **Ummed Singh vs. State of Rajasthan-2019 (4) RLW 3386**, involving identical controversy, held as under:

"3. I have considered the submissions. Section 20 (4) of the Act of 2016 reads as under:-

"(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.”

4. From the perusal of the aforesaid it is apparent that the Parliament while enacting the said Act and the aforesaid section essentially intended that no government establishment would dispense with services of an employee who acquires disability during his service and have also provided what has to be done if the employee is found to be not suitable to perform his duties it proceeds to even come to the extent of directing to keep such a disabled employee on a supernumerary post.

5. A supernumerary post may be created for a suitable person in any of the existing grade. It is essentially created for accommodating a permanent officer thus it is a post meant for that disabled employee alone. Hence, even if the employee is not able to perform any work he will be deemed to be treated as worker against the said supernumerary post and his salary will be drawn from that post has to be equivalent to that which he was holding prior to his acquiring disability the post would thus get extinguished on the day when the said disabled person attains superannuation.

6. Accordingly, it is directed that the petitioner shall be deemed to be continuous in service against a supernumerary post equivalent to that of a driver and his salary shall be drawn against the said post and paid to him each month till he attains superannuation whereafter he will be paid pension in terms of the Rules of 1996. It has already come on record that the petitioner was drawing salary from 2015 upto February 2017 after he had acquired the disability and thus this Court does not find any reasons coming forward for not allowing the petitioner to draw salary till he attains superannuation. No reasons have come forward for stopping the salary of the petitioner from March 2017.

7. In view of the above, the contentions of the learned Additional Advocate General to keep the petitioner as





voluntarily retired is not made out and the same is rejected. It is further directed taking into consideration all the aspects that the petitioner would be entitled to all medical facilities and reimbursement of treatment expenses as are available to an employee in service. Taking into consideration the acute condition of the petitioner, it is directed that the department shall deposit his monthly salary and also make his reimbursements of treatment expenditure each month without fail and deposited the same in his bank account which shall be obtained from his relatives after due verification. Similar view has been taken by this Court is akin to what has been allowed by the Supreme Court in the cases of Bhagwan Das & Anr. Versus Punjab State Electricity Board, AIR 2008 Supreme Court 990, Kunal Singh Versus Union of India & Anr., AIR 2003 Supreme Court 1623 and Tulcha Ram Versus The State of Rajasthan & Ors. (S.B. C.W.P. No.4862/1998), decided on 25.03.2017.

8. Accordingly the writ petition is allowed.”

Therefore, view of this Court that the petitioner is entitled for the salary and other service benefits under Section 20(4) of the Act of 2016 stands fortified from the aforesaid precedents.

The second limb of submission of learned counsel for the respondents as to non maintainability of the writ petition on the ground of availability of efficacious and alternative remedy to the petitioner, is misconceived and deserves to be rejected.

Neither the provisions of Section 23, nor the provisions of Section 80 offer the petitioner an alternative and efficacious remedy so as to non-suit him. Section 23(2) provides that if any complaint is filed by any aggrieved person with the Grievance Redressal Officer, he shall investigate it and shall take up the matter with the establishment for corrective action. It does not





reflect that such Grievance Redressal Officer has been bestowed with any jurisdiction or power to deliver any verdict in the matter and to get it enforced. He can only take up the matter with the establishment for the corrective action. Although sub-section (4) of Section 23 gives an opportunity to the aggrieved person, if dissatisfied with the action taken on his/her complaint made under Section 23(2), to approach the District Level Committee on disability; but, while, the Act of 2016 is silent on the power and jurisdiction of the District Level Committee on disability, the order dated 09.01.2020 issued by the State Government and relied upon by the learned counsel for the respondents, also does not postulate any authority vested with the Committee to pass any order or direction on the complaint of the aggrieved person obliging the establishment to comply with the same. Under this order, it can only make suggestions to the District Officer on the appeal. Similarly, Section 80 of the Act of 2016 also does not reflect any authority of the State Commissioner to issue any direction to the establishment to ensure compliance of Section 20(4) or any mechanism to get it enforced. Reliance placed on Section 82 by the learned Additional Advocate General is misconceived and misplaced. It simply provides that for the purpose of discharging his function under the Act, the State Commissioner shall have the same powers as that of a Civil Court while trying a suit in respect of matters enumerated thereunder such as summoning and enforcing the attendance of witnesses, discovery and production of a document, requisitioning any public record or copy thereof from any Court or office, receiving





affidavits and issuing commissions for the examination of witnesses or public documents.

In the aforesaid circumstances, the remedy available under Section 83 or under Section 80 is found neither efficacious, nor alternative for the redressal of the grievance of the petitioner.

Moreover, not to entertain a writ petition in view of availability of an alternative remedy is a self imposed restriction by the writ Courts and it is not an absolute bar to the exercise of this discretionary and equitable remedy. In the instant case, as already observed, the petitioner has incurred disability during the course of employment and has not been paid salary or any other service benefits except clearing the medical bills for the last more than five and a half years. Instead of ensuring compliance of the salutary provisions contained under Section 20(4) of the Act of 2016, the petitioner has been dragged into this litigation which is pending consideration for the last almost four years. In view thereof, even otherwise also, this Court is not inclined to relegate the petitioner to any other illusory remedy.

The aspect of maintainability of the writ petition can be examined from another angle as well. The action/omission on the part of the respondents in not making payment of salary and other service benefits for the last about five and half years to the petitioner, who is completely disabled and confined to bed, despite his eligibility and entitlement for the same under Section 20(4) of the Act of 2016 definitely amounts to violation of his fundamental right to live with dignity which is one of the facets of right to life and liberty guaranteed under Article 21 of the Constitution of





India. For this reason also, this Court finds the writ petition to be maintainable.

Resultantly, the writ petition is allowed with cost. The respondents are directed to release due salary and other service benefits to the petitioner. The arrears of salary and other benefits shall be released within a period of four weeks from today with interest @ 6% per annum failing which the interest shall be leviable at the rate of 9% per annum after expiry of the period of four weeks and the Officer(s) responsible for delay would bear the enhanced interest component. The respondents are further directed to pay to the petitioner salary on month to month basis regularly and other service benefits in terms of Section 20(4) of the Act of 2016 and in case of his retirement, he shall be released all retiral benefits. The cost is quantified as Rs.25,000 which shall be paid by the respondents to the petitioner within a period of four weeks from today.

The aforesaid case is a classic case reflecting the insensitivity and apathy of the respondents towards the plight of a disabled person who has been denied benefit under the Act of 2016 by the respondents for last about five and a half year without any justification which frustrates the laud object of the enactment of the Rights of Persons with Disabilities Act, 2016.

In the aforesaid factual context, this Court deems it just and proper to issue a direction to the Chief Secretary, Government of Rajasthan to issue necessary instruction/circular to all the Government Departments to identify such disabled employees, if





any, and to extend them benefit of Section 20(4) of the Act of 2016 in its letter and spirit, immediately.

The Additional Advocate General shall place copy of such instruction/circular on record for perusal of this Court.

List the matter on 11.08.2025 to see compliance.

(MAHENDAR KUMAR GOYAL),J

RS/S-311

