

File No.777/11

Applicant Md. Asharafuddin is present. Shri Brajesh Kumar, Executive Office is present on behalf of Nagar Parishad, Supaul.

The complaint of the applicant is about payment of disability salary.

Applicant, Head Assistant-cum-Accountant of Supaul Nagar Parishad Supaul suffered heart stroke and paralysis and consequently he is not able to perform the normal duties of the post. In view of the provisions of section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 he approached the Nagar Parishad for payment of salary of the post of Head Assistant-cum-Accountant. Nagar Parishad took legal opinion from its Advocate. He gave an adverse opinion holding that the Act is not applicable to Nagar Parishad. In coming to the said conclusion he relied on the definition of 'appropriate government' under section 2(a) of the Act.

The opinion of the Advocate overlooks the definition of 'establishment under section 2(k) of the Act and is in the teeth of the mandate of section 47 of the Act.

Section 47 may be quoted in extenso as under:-

"47. Non-discrimination in Government employment – (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."

The term 'Establishment' has been defined in section 2(k) as under:-

(k) "establishment" means a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) and includes Departments of a Government;"

From bare reading of the above it is clear that the mandate of law contained in section 47 extends to all establishments, and under section 2(a) of the Act, the 'establishment' includes local authority among other things. As per section 47, every establishment is required to adjust an employee against any other post if he is not able to perform the duties of the post he has been holding, as a result of the disability, and where no such post is available, he has to be kept on supernumerary post until a suitable post is available, or he attends the

age of superannuation, whichever is earlier; but in no case can he be denied pay as admissible to the post held by him.

It would thus follow that the Nagar Parishad has no option but to continue paying him the salary of the post of Head Assistant-cum-Accountant to the applicant. If, in the opinion of the Nagar Parishad, the applicant is unable to perform the duties of the post held to him, he may be adjusted against any other available post, and if no post is available to him, against a supernumerary post which may be created co-terminus with the applicant's superannuation which is three years away as of now.

The legal position was explained to Shri Brajesh Kumar, the Executive Officer. He stated that Nagar Parishad has sought guidance from the Department. While seeking guidelines from the Department may be part of the Rules of Business and process, the Commission would observe that Department cannot sit over or act contrary to the mandate of law as embodied in section 47 of the Act. Further, since the question of livelihood and, therefore, protection of human rights of the applicant is involved the Department would do well to issue instructions favourable to the applicant at the earliest.

Put up this file for further orders on 19.06.2012.

Copy of the order may be sent to Principal Secretary, Urban Development & Housing Department as well as Executive Officer, Nagar Parishad, Supaul for compliance.

Copy may also be sent to the applicant.

Date: 08.05.2012

Justice S.N. Jha
Chairperson