



2025:AHC-LKO:58600

A.F.R.

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - A No. - 7815 of 2024

Laljee

.....Petitioner(s)

Versus

State Of U.P. Thru. Prin. Secy. Secondary
Education Lko And 6 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Satyanshu Ojha
Counsel for Respondent(s)	:	C.S.C., Raj Kr Singh Suryavanshi

Court No. - 4

HON'BLE ABDUL MOIN, J.

1. Rejoinder affidavit filed today is taken on record.
2. Heard learned counsel for the petitioner, Shri Saharsh, learned Additional Chief Standing Counsel for the respondents no. 1, 2, 3 & 5 and Shri R K Singh Suryavanshi, learned counsel for the respondent no. 4.
3. Despite notice being issued to respondents no. 6 and 7, none responds on their behalf. As per office report dated 24.10.2024, the notice is deemed sufficient.
4. The contention of learned counsel for the petitioner is that after he had been appointed as Assistant Teacher in the year 2013 he suffered a brain stroke on 2.8.2016 which rendered him unable to carry out his duties. After attaining some semblance of fitness, the petitioner claims to have submitted his joining on 20.8.2024 but he has not been permitted to join.
5. In the meanwhile the respondents formed a committee to examine the case of the petitioner which has submitted its report dated 9.10.2024, a copy of which is annexure SCA-8 to the short counter affidavit, per which it has been indicated that as the petitioner is unable to carry out teaching work on account of not being able to write or to speak, as such teaching work cannot

be taken from him and he cannot be permitted to join.

6. The argument of learned counsel for the petitioner is that medical leave is still outstanding and the respondents may be directed to sanction medical leave and further certain benefits flow out of the provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and Rights of Persons with Disabilities Act, 2016 per which the respondents may consider the petitioner for being appointed on an equivalent post.

7. In this regard learned counsel for the petitioner has placed reliance on judgement of Hon'ble Supreme Court in the case of **Ch. Joseph vs The Telangana State Road Transport Corporation & other, 2025 LiveLaw (SC) 763** to contend that Hon'ble Supreme Court has considered the applicability of the Act, 1995 and has laid down the principles to be followed where an employee has acquired disability during his employment.

8. Learned counsel for the petitioner states that although in the said judgement, Hon'ble Supreme Court has considered Section 47 of the Act, 1995 yet now the said section is pari materia to section 20(4) of the Act, 2016 and thus it is prayed that the respondents be directed to consider the petitioner for alternative employment and also to pay arrears of salary with effect from 1.10.2021 after sanctioning the same as medical leave with pay.

9. On the other hand, learned counsel for the respondents on the basis of the averments contained in the counter affidavit have argued that the petitioner remained absent from the institution since 1.10.2021 and after a period of 3 years made representation on 30.8.2024 for the purpose of being permitted to join which has not found favour with the respondents on account of he having absented himself.

10. Moreover, as per the report of the committee dated 9.10.2024, a copy of which is annexure 8 to the short counter affidavit, the petitioner, on account of his medical condition has not been found fit for any teaching work and consequently he cannot be permitted to join on account of being unable to speak, read and write.

11. Having heard learned counsel for the parties and having perused the record it emerges that admittedly the petitioner had been appointed as an Assistant Teacher in the year 2013 and was working under the respondents no. 6 and 7 when he suffered a brain stroke on 2.8.2016 which rendered him unable to carry out his duties. Though he submitted his joining on 20.8.2024 but he has not been permitted to join on account of report of the committee per which the petitioner is incapable of doing any teaching work.

12. Despite the claim of the petitioner of he having suffered brain stroke and medical prescriptions of the said fact have been annexed in the writ petition, no medical board has been constituted by the respondents to examine the petitioner.

13. In this regard, it would be apt to consider the provisions of Section 20 of the Act, 2016, which for the sake of convenience is reproduced below:

"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."

14. As per provisions of Section 20(4) of the Act, 2016 no government employer can dispense with or reduce in rank an employee who acquired disability during his or her service. The proviso to Section 20(4) of the Act, 2016 provides that if an employee after acquiring disability is not suitable for the post he is holding, he shall be shifted to some other post with same pay scale and benefits.

15. The second proviso to subsection (4) of Section 20 of the Act, 2016 provides that if it is not possible to adjust the employee against any post he can be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation whichever is earlier.

16. Thus from perusal of the provisions of the Act, 2016 it is apparent that where an employee acquires a disability during his service, his services are not to be dispensed with rather efforts are to be made by the employer for shifting him to a suitable post and in the absence thereto, to continue him on supernumerary post until a suitable post is available.

17. Hon'ble Supreme Court while considering the provisions of the Act, 1995 in the case of **Ch. Joseph (supra)** has held as under:

"33. This principle was further extended in Mohamed Ibrahim v. The Chairman and Managing Director & Ors, wherein one of us (Aravind Kumar, J.) was party to the judgment. The Court held that even if colour blindness does not fall within the statutory definition of "disability" under Section 2(i) or "persons with disability" under Section 2(t) of the Rights of Persons with Disabilities Act, 2016, the employer is still bound to provide reasonable accommodation and cannot terminate employment without exploring alternate roles. This Court observed:

"19. The Act contains a general non-discriminatory provision:

'3. Equality and non-discrimination.

(1) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.

(2) The appropriate Government shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment.

(3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.

(4) No person shall be deprived of his or her personal liberty only on the ground of disability.

(5) The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities."

20. The twin conditions of falling within defined categories, and also a threshold condition of a minimum percentage, of such disabilities, in fact are a barrier. The facts of this case demonstrate that the appellant is fit, in all senses of the term, to discharge the duties attached to the post he applied and was selected for. Yet, he is denied the position, for being "disabled" as he is colour blind. At the same time, he does not fit the category of PWD under the lexicon of the universe contained within the Act. These challenges traditional understandings of what constitute "disabilities". The court has to, therefore, travel beyond the provisions of the Act and discern a principle which can be rationally applied.

21. In Jeeja Ghosh v. Union of India, [2016] 4 SCR 638. this court observed:

"40. In international human rights law, equality is founded upon two complementary principles: non-discrimination and reasonable differentiation. The principle of non-discrimination seeks to ensure that all persons can equally enjoy and exercise all their rights and freedoms. Discrimination occurs due to arbitrary denial of opportunities for equal participation. For example, when public facilities and services are set on standards out of the reach of persons with disabilities, it leads to exclusion and denial of rights. Equality not only implies preventing discrimination (example, the protection of individuals against unfavourable treatment by introducing antidiscrimination laws), but goes beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action and reasonable accommodation."

22. Ravinder Kumar Dhariwal v. Union of India, 2021 (13) SCR 823 highlighted on the right to equality and underlined the two aspects: formal equality and substantive equality. It stated that substantive equality aims at producing equality of outcomes, and in the context of the case, observed that the "principle of reasonable accommodation is one of the means for achieving substantive equality, pursuant to which disabled individuals must be reasonably accommodated based on their individual capacities." The court recollected Vikas Kumar v. Union Public Service Commission, 2021 (12) SCR 311, which held as follows: "The principle of reasonable accommodation acknowledges that if disability" should be remedied and opportunities are "to be affirmatively created for facilitating the development of the disabled. Reasonable accommodation is founded in the norm of inclusion. Exclusion results in the negation of individual dignity and worth or they can choose the route of reasonable accommodation, where each individual's dignity and worth is respected."

23. It was also noted that provisions of Chapters VII and VIII of the Act are in furtherance of the principle of reasonable

accommodation which is a component of the guarantee of equality. This has been recognised by a line of precedent. This court, in multiple cases has held that the principle of reasonable differentiation, recognising the different needs of persons with disabilities is a facet of the principle of equality.

24. The significant impact of Vikash Kumar (supra) is that the case dealt with a person with a chronic neurological condition resulting in Writer's Cramp, experiencing extreme difficulty in writing. He was denied a scribe for the civil services exam by the UPSC, because he did not come within the definition of person with benchmark disability (40% or more of a specified disability). This court, rejected this stand, and held him to be a person with disability. It was also stated that the provision of scribe to him fell within the scope of reasonable accommodation. The Court said:

"... the accommodation which the law mandates is 'reasonable' because it has to be tailored to the requirements of each condition of disability. The expectations which every disabled person has are unique to the nature of the disability and the character of the impediments which are encountered as its consequence..."

25. The appellant is, for all purposes, treated as a person with disability, but does not fall within the categories defined in the Act, nor does he possess the requisite benchmark eligibility condition. The objective material on the record shows that the colour vision impairment is mild. Yet, TANGEDCO's concerns cannot be characterised as unreasonable. However, TANGEDCO is under an obligation to work under the framework of "reasonable accommodation", which is defined by Section 2(y) as follows:

"(y) "reasonable accommodation" means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights

equally with others;.."

26. Reasonable accommodation thus, is "appropriate modification and adjustments" that should be taken by the employer, in the present case, without that duty being imposed with "disproportionate or undue burden".

34. Similarly, in Ravinder Kumar Dhariwal v. Union of India and others, the Court reaffirmed that reasonable accommodation is a means to achieve substantive equality, and obligates the employer to assess each case individually, based on the employee's residual functional ability and not just on formal disability classifications.

35. When a disability is acquired in the course of service, the legal framework must respond not with exclusion but with adjustment. The duty of a public employer is not merely to discharge functionaries, but to preserve human potential where it continues to exist. The law does not permit the severance of service by the stroke of a medical certificate without first exhausting the possibility of meaningful redeployment. Such obligation is not rooted in compassion, but in constitutional discipline and statutory expectation."

[emphasis by Court]

18. Although no medical board had been formed, from perusal of the report of the committee dated 9.10.2024, it emerges that the said committee had been formed in pursuance of letter dated 4.10.2024 as sent by the District Inspector of Schools to the Chief Medical Officer, Barabanki, a copy of which is annexure 7 to the short counter affidavit, for sending a senior physician for evaluation of the petitioner. The committee's report dated 9.10.2024 would indicate that the senior physician appointed by the Chief Medical Officer, Barabanki was also the part of the committee. The decision of the committee also indicates that opinion has been given by the senior physician and the other members of the committee whereby as per the medical certificate produced by the petitioner he has not been found fit for doing teaching work. Thus it is apparent that even the

respondents on the basis of the said report of the committee are of the view that teaching work cannot be assigned to the petitioner yet at the same time considering the provisions of 20(4) of the Act 2016, alternative post has to be identified for the petitioner. This is also as per the law laid down by Hon'ble Supreme Court in the case of **Ch. Joseph (supra)**.

19. Keeping in view the aforesaid discussion, writ petition is **disposed of** with direction to the District Inspector of Schools Barabanki i.e. the respondent no. 5 to act in consonance with the provisions of the Act, 2016 and the law laid down by Hon'ble Supreme Court in the case of **Ch. Joseph (supra)** by identifying a suitable post for the petitioner with the same pay scale and service benefits. If it is not possible to adjust him on any post he be kept on a supernumerary post till a suitable post is available or he attains the age of superannuation whichever is earlier.

20. Let action in this regard be taken by the respondent no. 5 within a period of 4 weeks from the date of receipt of a certified copy of this order.

21. The other benefits as flow out from the order being passed by the District Inspector of Schools in pursuance of this judgement would be accorded to the petitioner within next six weeks of the order passed by the District Inspector of Schools.

22. The period from the date of absence of the petitioner till an order is passed in pursuance of this judgement of alternative appointment, shall be regularized by the respondents as per rules.

(Abdul Moin,J.)

September 22, 2025
J. K. Dinkar