REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.2466-2467 OF 2015
(ARISING OUT OF SLP (CIVIL) NOS.25568-25569 OF 2014)

UNION OF INDIA & ORS. …APPELLANTS

VERSUS

DILEEP KUMAR SINGH …RESPONDENT

J U D G M E N T

R.F.Nariman, J.

1. Leave granted.

2. These appeals raise an interesting question as to the interpretation of a proviso contained in Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short the "1995 Act").

3. The facts giving rise to these appeals are as follows:-

On 1st January, 1998, the respondent was enlisted in the CRPF as Assistant Commandant. While on duty, on 19th October, 2001, he sustained grievous injuries in his spinal cord and legs while he was out on a visit checking night guards. Thereafter, he was provided with specialized treatment in various hospitals, but nothing worked and, ultimately, a medical board in its report dated 22nd July, 2004 categorized the respondent as PEE-5, i.e., a person who is permanently incapacitated and stated that he has 100% disability and recommended that he be relieved from service on medical grounds. On 27th October, 2004, a show cause notice was served on the respondent along with a copy of the report of the medical board with a direction to submit his representation, if any, against the proposed invalidation from service on medical grounds. Instead of representing against the show cause notice, the respondent filed writ petition No.30278/2004 challenging the said show cause notice. By an interim order passed on 19th January, 2005, the appellants were directed not to pass any order pursuant to the report given by the medical board against the respondent.

4. Pursuant to an order modifying the stay application, by an order dated 1st July, 2011, the respondent was relieved from service and given invalidation pension as admissible under Rule 38 of the CCS (Pension) Rules of 1972. The respondent filed a second writ petition No.42101 of 2011 challenging the aforesaid order.

5. By the impugned judgment dated 8th January, 2014, the Allahabad High Court held on a construction of Section 47 of the said Act that a Notification dated 10th September, 2002 issued under Section 47 insofar as the CRPF is concerned, (exempting the CRPF from the rigours of Section 47) would have to be read with reference to the field occupied by Section 47(2) only. Thus, the High Court made it clear that the exemption provision would apply only to promotion and not to continuing the respondent in service. As a consequence, the order dated 1st July, 2011, was set aside and the Union was directed to treat the petitioner in service and to adjust him against any suitable post or against a supernumerary post until a suitable post is available or until he attains the age of superannuation, whichever is earlier.

6. Mr. P.S. Patwalia, learned Additional Solicitor General, appearing on behalf of the Union of India has placed the 1995 Act before us. He referred to Section 33, Section 47 and Section 73 and submitted that the penultimate proviso to Section 47 would apply to the entire Section and not merely to sub-section (2) thereof as is clear from the language of the proviso which uses the words "this Section" and not "this sub-section". He further submitted that since there is no ambiguity in the provision, no resort can be taken to Section 73(3) and 73(4) which refers to the proviso in Section 47 as "the proviso to sub-section (2) of Section 47". He further submitted that the scheme of the Act would be disturbed by the impugned judgment inasmuch as Section 33 and Section 47 cover the same ground – Section 33 being applicable pre-appointment and Section 47 being applicable after appointment. He cited **Mohd. Shahabuddin v. State of Bihar & Ors.**, (2010) 4 SCC 653 at paragraph 179, which judgment refers to the literal rule of construction and **S.R. Bommai v. Union of India**, (1994) 3 SCC 1 at paragraphs 238 and 239, for the proposition that courts cannot supply a *cassus omissus*.

7. Mr. Mahabir Singh, learned senior counsel for the respondent, has argued before us that the impugned judgment is correct inasmuch as the 1995 Act is a beneficial legislation meant to help disabled persons and an expansive construction is, therefore, in order.

8. He argued that Sections 47 and 73 have to be harmoniously construed and so construed, Section 73 throws light on Section 47 and makes the proviso apply only to sub-section (2) thereof. He argued that in no circumstance can a disabled person, once he acquires a disability during his service, be terminated as it would go against the purpose of the Act. Further, he argued that the exemption notification dated 10th September, 2002 would not apply on facts as the disability was incurred prior to the notification. He also argued that there was discrimination against the respondent in that others with disabilities did not get their service terminated.

9. We have heard learned counsel for the parties. The Preamble of the 1995 Act states as follows:-

"An Act to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region

Whereas the Meeting to Launch the Asian and Pacific Decade of Disabled Persons 1993—2002 convened by the Economic and Social Commission for Asia and Pacific held at Beijing on 1st to 5th December, 1992, adopted the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region;

And Whereas India is a signatory to the said Proclamation;

And Whereas it is considered necessary to implement the Proclamation aforesaid."

10. Sections 33, 47 and 73(3) & (4) are set out hereinbelow:

"33. Reservation of posts.—Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering from—

(*i*) blindness or low vision;

(*ii*) hearing impairment;

(*iii*) locomotor disability or cerebral palsy,

in the posts identified for each disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

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.

73. Power of appropriate Government to make rules.—

(3) Every notification made by the Central Government under the proviso to Section 33, proviso to sub-section (2) of Section 47, every scheme framed by it under Section 27, Section 30, sub-section (1) of Section 38, Section 42, Section 43, Section 67, Section 68 and every rule made by it under sub-section (1), shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of

thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, notification or scheme, both Houses agree that the rule, notification or scheme should not be made, the rule, notification or scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule, notification or scheme, as the case may be.

(4) Every notification made by the State Government under the proviso to Section 33, proviso to sub-section (2) of Section 47, every scheme made by it under Section 27, Section 30, sub-section (1) of Section 38, Section 42, Section 43, Section 67, Section 68, and every rule made by it under sub-section (1), shall be laid, as soon as may be after it is made, before each House of State Legislature, where it consists of two Houses or where such legislature consists of one House before that House."

11. There is no doubt whatsoever that Mr. Mahabir Singh is right in saying that this is a beneficial legislation passed pursuant to a proclamation on the full participation and equality of people with disabilities in the Asian and Pacific region to which India is a signatory. However, we find that for the

reasons given hereinafter the impugned judgment cannot be sustained.

12. It will be noticed that Section 47 proviso speaks of "this Section". The literal rule applied to this proviso would make it clear that it would apply to the entire Section, for otherwise the words used would have been "this sub-section". Quite apart from this, the language of this proviso is similar to the language of the proviso contained in Section 33. Both provisions speak of an exemption being granted having regard to the "type of work" carried on in any establishment. It is clear that given the "type of work" carried on by the armed forces or the CRPF before us, persons who have disabilities may not have any reservation for them at all pre-appointment, if exempted, for the simple reason that persons suffering with disabilities (which as defined under Section 2(t) means a person suffering from not less than 40% of any disability as certified by a medical authority) may be persons wholly unfit for service required in the defence of the country. It is obvious that, if at the appointment stage, persons with disabilities need not have vacancies in posts reserved for them, equally after suffering a disability during service, a person

may for the self-same reason not be able to perform what is required of him in the defence of the nation, thereby justifying his discharge from service.

13. The context of the provision is "type of work". It is clear that given this context, there is no rationale for exemption so far as "promotion" is concerned but no exemption so far as "dispensation" is concerned.

14. One argument that weighed with the High Court was that under the second proviso to sub-section (1), if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post. From this it was sought to be inferred that under no circumstance can an employee who acquires disability during his service have his service dispensed with. This reasoning is fallacious for the reason that sub-section (1) deals with dispensing with service as well as reduction in rank. The argument that an employee's services can never be dispensed with under Section 47(1) having due regard to the second proviso thereof fails to take into account that there is no such requirement as far as reduction in rank is concerned. If an exemption can be given so far as reduction in rank is

concerned, then there is no reason why such exemption cannot be given so far as dispensing with service is concerned, as both are contained in Section 47(1) of the Act.

15. We now come to what appealed to the High Court and was argued most vehemently before us. It was stated that Section 73(3) & (4) made it clear that the proviso is only a proviso to sub-section (2) of Section 47 and that therefore it must be read only as such. To this again there are two answers.

16. It is well settled that the provisions of a statute must be read harmoniously together. However, if this is not possible then it is settled law that where there is a conflict between two Sections, and you cannot reconcile the two, you have to determine which is the leading provision and which the subordinate provision, and which must give way to the other. This statement of the law is to be found in **Institute of Patent Agents & Ors. v. Joseph Lockwood,** 1894 A.C. 347 at 360. Lord Herschell, L.C., stated this, as follows:-

> "Well, there is a conflict sometimes between two sections to be found in the same Act. You have to

try and reconcile them as best you may. If you cannot, you have to determine which is the leading provision and which the subordinate provision, and which must give way to the other."

17. This Judgment has been subsequently followed by the High Court of Australia in **Project Blue Sky Inc. v. Australian Broadcasting Authority,** 153 ALR 490, in the following terms:

> "A legislative instrument must be construed on the prima facie basis that its provisions are intended to give effect to harmonious goals. Where conflict appears to arise from the language of particular provisions, the conflict must be alleviated, so far as possible, by adjusting the meaning of the competing provisions to achieve that result which will best give effect to the purpose and language of those provisions while maintaining the unity of all the statutory provisions. Reconciling conflict provisions will often require the court "to determine which is the leading provision and which the subordinate provision, and which must give way to the other". Only by determining the hierarchy of the provisions will it be possible in many cases to give each provision the meaning which best gives effect to its purpose and language while maintaining the unity of the statutory scheme." (at pages 509-510)

18. Under similar circumstances, in **Smt. Laxmi Devi** v. **Sethani Mukand Kanwar and Two Others,** 1965 (1) SCR 726, a question arose as to how one would harmonise Section 2(d) with Section 5 of the Transfer of Property Act. The effect of

Section 2(d), which is a saving clause, is that the provisions of the Transfer of Property Act will apply to transfers by operation of law. Whereas Section 5 of the Transfer of Property Act defines transfer of property as intended to take in transfers effected by acts of parties. Auction sales, being transfers effected by operation of law would, therefore, be within the purview of Section 100 (latter part) read with Section 2(d). (Section 100 provides that no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge.) Section 2(d) was held to prevail over Section 5 because it is a "positive provision" which is "clear". This Court held:

> "This position, however, has become somewhat complicated by reason of the provisions contained in s.5 of the Transfer of Property Act. Section 5 provides, inter alia, that in the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons. In other words, in terms, the definition of the expression "transfer of property" as used in all the sections of the Transfer of Property Act is intended to take in transfers effected by acts of parties inter vivos, and an auction-sale clearly is not such an act. Section 5 would, therefore, appear to exclude auction sales

from the purview of s.100 altogether. This result would appear to be consistent with the provision in the preamble of the Act which says that the Transfer of Property Act was enacted because it was thought expedient to define and amend certain parts of the law relating to the transfer of property by act of parties. That is the position which emerges from the reading of s.5 coupled with the preamble; and that naturally raises the question as to how to reconcile these two inconsistent positions.

In our opinion, the positive provision contained in s. 2(d) must prevail over the definition of "transfer of property" prescribed by s.5. No doubt, the purpose of the definition is to indicate the class of transfers to which the provisions of the Transfer of Property Act are intended to be applied; but a definition of this kind cannot over-ride the clear and positive direction contained in the specific words used by s. 2(d). As we have already seen, the result of the saving clause enacted by s. 2(d) is to emphasise the fact that the provisions of s.57 and those contained in Chapter IV must apply to transfer by operation of law. Such a positive provision cannot be made to yield to what may appear to be the effect of the definition prescribed by s.5, and so, we are inclined to hold that notwithstanding the definition prescribed by s.5, the latter part of s.100 must be deemed to include auction sales." (at page 733)

19. A reference to these two judgments makes it clear that Section 47 is the "leading provision" and Section 73 is the "subordinate provision". Further, Section 47 is a positive and clear provision. This is because, Section 47 is the substantive

provision exempting the subject matter of Section 47 as a whole as opposed to Section 73 which is only a machinery provision by which notifications made under Section 47 are to be laid before each House of Parliament.

20. Equally, it is settled law that a proviso does not travel beyond the provision to which it is a proviso. Therefore, the golden rule is to read the whole Section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction. This is laid down in **Dwarka Prasad** v. **Dwarka Das Saraf,** (1976) 1 SCC 128, as follows:-

> "18. We may mention in fairness to Counsel that the following, among other decisions, were cited at the Bar bearing on the uses of provisos in statutes: *CIT* v.*Indo-Mercantile Bank Ltd,* [AIR 1959 SC 713 : 1959 Supp (2) SCR 256, 266 : (1959) 36 ITR 1] ; *Ram Narain Sons Ltd.* v. *Asstt. CST* [AIR 1955 SC 765 : (1955) 2 SCR 483, 493 : (1955) 6 STC 627] ; *Thompson* v. *Dibdin* [(1912) AC 533, 541 : 81 LJKB 918 : 28 TLR 490] ; *Rex* v. *Dibdin* [1910 Pro Div 57, 119, 125] and *Tahsildar Singh* v.*State of U.P.* [AIR 1959 SC 1012 : 1959 Supp (2) SCR 875, 893 : 1959 Cri LJ 1231] . The law is trite. A proviso must be limited to the subject-matter of the enacting clause. It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a

> separate or independent enactment. "Words are dependent on the principal enacting words to which they are tacked as a proviso. They cannot be read as divorced from their context" (*Thompson* v. *Dibdin*, 1912 AC 533). If the rule of construction is that prima facie a proviso should be limited in its operation to the subject-matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction."

21. Viewed at in this light also, one is to read Section 47 as a whole and being read as a whole it is clear from the proviso that it would apply to "type of work" carried on in any establishment and would, therefore, apply to both dispensing with service including reduction in rank as well as promotion.

22. Another interesting facet is brought out by the marginal note of Section 47 and Chapter VIII in which Section 47 falls. Chapter VIII has as its heading "non-discrimination". Equally, the marginal note of Section 47 is "non-discrimination in government employments". It is clear that the idea of Section

47 is not to discriminate against employees who acquire disability during service. It is settled law that discrimination cannot be viewed in the abstract – the doctrine of classification is an important adjunct to the doctrine of discrimination. It is clear, therefore, that if there is an intelligible differentia having a rational relation to the object sought to be achieved, a provision will not be held to be discriminatory. It is clear that an exemption provision is based on such a classification and exempting any establishment from not dispensing with service or reduction in rank or not granting promotions has a rational relation to the object sought to be achieved, namely, that the "type of work" carried on in an establishment may be such that a disabled employee's services may have to be dispensed with and/or promotion denied.

23. Shri Mahabir Singh cited **United India Insurance Co. Ltd. v. Lehru & Ors.**, (2003) 3 SCC 338 at page 345 for the proposition that in a beneficial legislation what the legislature gives for the benefit of those covered by it, the court cannot take away. We are of the view that this authority will not apply for the basic reason that we are construing an exemption

provision in a beneficial legislation. We have already held that the exemption provision will cover the entirety of the field of Section 47. In what facts and circumstances the Government exercises its discretion taking into account the type of work in an establishment is obviously to be guided by the object for which the beneficial legislation is enacted together with balancing the need for exempting some establishments from a part or the whole of the provisions of the Act. On a true construction, it is clear that the legislation has "given" the Government the power to exempt any establishment from the rigours of the Act not only qua promotion but also qua termination from service and reduction of rank as has been held above.

24. Learned counsel also cited before us **Kunal Singh v. Union of India & Anr.**, (2003) 4 SCC 524. This judgment decided that the benefit of Section 47 would be available to a person as an additional benefit even though he may get certain other benefits under the service Rules applicable to him. No question as to the proviso to Section 47 arose before the court

in that case and for the purposes of the present controversy, the ratio of that decision will have little or no bearing.

25. We now come to two other contentions raised by Mr. Mahabir Singh. According to him, the exemption notification dated 10th September, 2002 will not apply for the reason that the accident took place prior to 2002. It is clear that the exemption notification will apply to all cases in which an employee's services are dispensed with. The relevant date, therefore, is the date of dispensing with service and not the date on which the disability is incurred, for Section 47 prohibits an establishment from dispensing with the service of an employee who acquires disability during his service. Since service was dispensed with on 1st July, 2011 (that is long after the date of the exemption notification), the notification will, obviously, apply.

26. The plea of discrimination sought to be made by Mr. Mahabir Singh is based on an averment made in the reply affidavit on behalf of the petitioner (respondent herein) in the Supreme Court. The averment is as follows:

"Further the contention of the petitioners that the disabled persons are not being retained in service is absolutely wrong because the persons disabled due to militant action etc. are retained and not being invalidated from service in accordance to Para 9(a) (i) of Standing Order No.7/99 of CRPF. Many disabled persons has been retained or re-instated in CRPF and other armed forces after enactment of the Act of 1995 and amendment of rule 20(2) of the C.C.S. (Leave) Rules 1972 as well as the judgment passed by this Honorable Court reported in 2003(2) ESC (SC) Kunal Singh Vs. U.O.I.. Even the CRPF itself has retained such disabled officer Shri Pratap Singh, Deputy Commandant till superannuation and retained Shri Y.N. Ray and Sameer Shrivastava who became disabled in the rank of Assistant Commandant and granted regular promotion and at present they are Commandant. Two other officers Sh. R.K. Singh and Sh. P.R. Mishra have also been retained in service despite their disability. Similarly the B.S.F. also has not only retained Shri Surinder Singh but had promoted him up to his present rank of Second in Command. The Indian Army has retained similarly wheel chair bound physically disabled (paraplegic) Officer S.K. Rajdan and promoted him to the rank of Major General and Indian Air Force also retained its wheel chair bound disabled (paraplegic) trainee cadet Harjot Singh."

27. In the rejoinder affidavit filed by the appellants this averment is denied in the following terms:-

"The contents of para 5 (G-H) of reply are wrong, misconceived and hence denied. It is submitted that Central Para Military forces perform a critical role in maintaining internal security and guarding of national borders. By very nature, the job

requirements are “technical’ in nature requiring a high level of physical fitness and abilities. CRPF is exempted from the provisions of Section 47 of the Act. The Respondent does not come within the purview of Standing Order 7/99 and has been declared 100% permanently incapacitated for further service, he was dealt as per procedure laid down in Section VIII of CRPF medical manual. There is difference between NOT FIT FOR NORMAL ACTIVE DUTY AND 100% PERMANENT INCAPACITATION FOR FURTHER SERVICE. Since the Respondent comes under second category, he was dealt with as per procedure laid down in section VIII of CRPF Medical Manual. However, it is respectfully submitted that full Bench decision of Allahabad High Court in the case of Union of India Vs. Mohd. Yasin Ansari [(2006) 3 UPBEBC 2508] has held that a person in the armed forces even with lower degree of disability cannot be retained in services.”

28. Apart from the plea of the disabled officers mentioned being vague, for no particulars are given as to the extent of their disability, the Union has made it clear that Standing Order No.7/99 will not apply and that since the job requirements demand a high level of fitness and ability CRPF is exempted from the provisions of Section 47 of the Act. Not only has this plea not been raised before the High Court, but the plea raised before us is lacking in particulars and has to be dismissed for this reason also.

29. We make it clear that the respondent, who has been occupying official accommodation, will vacate such accommodation by 30th June, 2015. Mr. Patwalia has assured us that, given the facts of this case, no penal charges will be collected from him till the date on which he vacates the said accommodation.

30. The appeals are, therefore, allowed. The judgment of the Allahabad High Court is set aside. There will be no order as to costs.

……..……..J.
(T.S. Thakur)

……..……..J.
(R.F. Nariman)

New Delhi,
February 26, 2015.