



**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL No.13783/2015**

**UNION OF INDIA & ORS.**

**...APPELLANTS**

**VERSUS**

**BALI RAM NO.850808321**

**...RESPONDENT**

**JUDGMENT**

**DIPANKAR DATTA, J.**

**THE APPEAL**

1. We are called upon to examine in this appeal by special leave preferred by the Union of India, the Director General, Central Reserve Police Force<sup>1</sup> and two other officers<sup>2</sup> of the CRPF, the legality and correctness of the judgment and order dated 23<sup>rd</sup> December 2014<sup>3</sup> of a Division Bench of the High Court of Himachal Pradesh<sup>4</sup> dismissing the appellants' intra-court appeal [Letters Patent Appeal No. 25 of 2009<sup>5</sup>],

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<sup>1</sup> CRPF

<sup>2</sup> appellants

<sup>3</sup> impugned judgment

<sup>4</sup> High Court

<sup>5</sup> LPA

which was laid by them to challenge the judgment and order of a Single Judge dated 11<sup>th</sup> August 2008 allowing the respondent's writ petition<sup>6</sup> directing that he be reinstated in service with all consequential benefits.

## **FACTS**

- 2.** The facts are simple and undisputed.
- 3.** Respondent was enrolled in the CRPF as a Constable (Driver) in 1985, upon being found medically fit at the material time. He continued in service until 1996, when he developed an ophthalmic condition. A medical examination conducted at the Government Hospital, Jammu, revealed that the respondent was suffering from Disseminated Choroiditis and Retinal Atrophic Patches with Macular Involvement, resulting in complete blindness in the left eye and partial impairment of vision in the right eye.
- 4.** In view of the respondent's medical condition, the Chief Medical Officer, Station Hospital, CRPF, Jammu, recommended that his case be placed before the Departmental Rehabilitation Board. Upon assessment, the respondent was found unfit to perform driving as well as combatant duties and was, accordingly, referred to the Medical Invalidation Board in 1997. The Medical Board constituted at the Base Hospital, CRPF, Hyderabad, conducted a medical examination of the respondent and

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<sup>6</sup> Civil Writ Petition No. 1371 of 2005

concluded that he was permanently incapacitated and unfit for further service in any capacity in the CRPF.

5. Pursuant thereto, a notice was served on the respondent calling upon him to submit a representation, if any, against the proposed action of medical invalidation. In response, the respondent submitted an application seeking grant of full financial and service benefits upon his invalidation from service. Thereafter, by an order dated 11<sup>th</sup> March, 1998, the respondent was medically invalidated from service. Subsequently, on 15<sup>th</sup> October, 2000, the respondent submitted a further representation seeking redressal of his grievance; however, the same came to be rejected by the competent authority.
6. Aggrieved thereby, the respondent approached the High Court with a writ petition<sup>7</sup>. The High Court disposed of the same on 5<sup>th</sup> January, 2005 with a direction to the appellants to consider and decide the grievance expressed in the legal notice submitted on behalf of the respondent, on or before 15<sup>th</sup> February, 2005. Pursuant thereto, the appellants reconsidered the matter but once again rejected the respondent's claim *vide* an order dated 27<sup>th</sup> June, 2005, holding that the ailment suffered by him was neither attributable to nor aggravated by service conditions. It was further held that the respondent was entitled only to a lump-sum payment of Rs. 15,000/- in accordance with the applicable rules, as his disability was not found to be attributable to his service.

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<sup>7</sup> Civil Writ Petition No. 206 of 2003

7. Thereafter, the respondent instituted the writ petition, out of which this appeal arises. He prayed for directions to grant invalid / disability pension on account of 100% disability from the date of his discharge together with consequential benefits and interest @ 18% per annum and to constitute a fresh Medical Board for assessment of his disability; and to declare the orders of medical invalidation and rejection of his prayers as null and void.

#### **PROCEEDINGS BEFORE THE SINGLE JUDGE**

8. The Single Judge heard the contesting parties on affidavits. In allowing the writ petition on contest, *vide* the judgment and order dated 11<sup>th</sup> August, 2008, the Single Judge travelled beyond the pleadings and the prayers of the respondent by not limiting the scrutiny to examining the correctness of the order of medical invalidation and / or his entitlement to invalid / disability pension; instead, the Single Judge invoked the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995<sup>8</sup> to secure the appellants' statutory duty in the light of the decisions of this Court in ***Kunal Singh v Union of India***<sup>9</sup> and ***Bhagwan Dass v Punjab State Electricity Board***<sup>10</sup>. Specific findings were returned by the Single Judge that the appellants had acted in breach of Section 47 of the PwD Act.

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<sup>8</sup> PwD Act

<sup>9</sup> (2003) 4 SCC 524

<sup>10</sup> (2008) 1 SCC 579

9. The operative directions given by the Single Judge read as follows:

"In view of the aforesaid observations and reasoning, Annexure P-2 dated 11.3.1998, Annexure P-6 dated December, 2000 and Annexure P-9 dated 27.6.2005, respectively are quashed and set aside. The petitioner will be deemed in service and he is entitled to all the annual increments till the date of his retirement. The amount of terminal benefits which has been paid in (sic, to) him shall be adjusted against the amount of his salary from 11.3.1998 till date the (sic, he) will continue in service till the date of his superannuation according to the service record. He is directed to be reinstated and all due payments, after adjustments as directed, should be made to him within ten weeks from the date of presentation of the copy of the judgment before respondent No.2. the writ petition is allowed with costs, which are quantified at Rs.3,000/-."

**THE IMPUGNED JUDGMENT**

10. Appellants, however, did not accept the judgment and order of the Single Judge with grace; instead, they preferred the LPA wherein an interim order of stay resulted in suspension of the directions of the Single Judge. The Division Bench of the High Court took nearly seven years to decide the LPA. After tracing the history as well as the object and purpose the PwD Act was intended to serve and upon considering the decisions of this Court in ***Dharamvir Singh v. Union of India***<sup>11</sup>, ***Kunal Singh*** (supra), ***National Federation of Blind v. Union Public Service Commission***<sup>12</sup> and ***Javed Abidi v. Union of India***<sup>13</sup>, the Division Bench reasoned that mere grant of invalid / disability pension was no ground to deny the protection of Section 47 of the PwD Act to the respondent. While holding the appellants to be at fault in breaching Section 47 of the PwD Act and recording that the findings of the Single

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<sup>11</sup> (2013) 7 SCC 316

<sup>12</sup> (1993) 2 SCC 411

<sup>13</sup> (1999) 1 SCC 467

Judge did not suffer from any infirmity, the LPA stood dismissed *vide* the impugned judgement.

### **PROCEEDINGS BEFORE THIS COURT**

- 11.** Appellants did not let the matter to rest; they set out to defeat the verdicts delivered by the High Court by applying before this Court for special leave to appeal under Article 136 of the Constitution with an application for condonation of delay.
- 12.** On 23<sup>rd</sup> November, 2015, a coordinate Bench condoned the delay, granted leave and stayed implementation of the impugned judgment.
- 13.** The civil appeal, having awaited its turn across Benches for a decade, now awaits its quietus before us. So does the respondent, who has awaited justice for more than two decades.

### **CONTENTIONS ON BEHALF OF THE APPELLANTS**

- 14.** Mr. Banerjee, learned Additional Solicitor General, for the appellants urged several grounds to assail the impugned judgment and prayed for its reversal.
- 15.** First, Mr. Banerjee asserted that, in the present case, the respondent was found to have completely lost vision in one eye and was suffering from partial loss of vision in the other. At the relevant time, he was serving as a driver in the CRPF. In view of his medical condition, he was rendered wholly unsuitable for driving duties. Moreover, he was also found unfit to perform any function of a combatant. These findings stand duly affirmed by the Medical Board constituted at the Base

Hospital, CRPF, Hyderabad, which concluded that the respondent was permanently incapacitated for further service in any capacity in the CRPF. Thus, the question of retaining the respondent in the service of the CRPF did not arise and regard being had to his ophthalmic condition and the nature of disability acquired by him, the respondent could not have been accommodated on an alternate post. He sought to impress upon us that the appellants not being at fault, the Division Bench seized of the LPA was expected to correct the egregious exercise of jurisdiction by the Single Judge in ordering reinstatement of the respondent on an alternate post which it erroneously failed to do.

- 16.** Mr. Banerjee invited our attention to the relevant averment that post medical invalidation, the respondent was granted whatever financial benefits he was entitled to under the prevailing rules/circulars including monthly pension.
- 17.** Secondly, Mr. Banerjee submitted that the Single Judge erroneously placed reliance upon Section 47 of the PwD Act. Such reliance, he contended, was wholly misplaced in view of the notification dated 10<sup>th</sup> September, 2002<sup>14</sup> issued by the Ministry of Social Justice and Empowerment, Government of India in exercise of the powers conferred by the proviso to Section 47 of the PwD Act, whereby all categories of combatant personnel of the Central Para Military Forces<sup>15</sup>,

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<sup>14</sup> NOTIFICATION

<sup>15</sup> CPMF

including the CRPF, were exempted from the application of the said provision.

- 18.** Relying on the decision of this Court in ***Union of India v. Dileep Kumar Singh***<sup>16</sup>, Mr. Banerjee contended that the validity of the NOTIFICATION was upheld therein. This Court, it was highlighted, had recognized that the exemption granted under the proviso to Section 47 was justified having regard to the nature of duties performed by personnel of the CRPF and the other armed forces, where type of work discharged by the personnel is an important consideration and continuation in service may not always be feasible in the event of disability.
- 19.** Thirdly, Mr. Banerjee contended that the doctrine of waiver is clearly attracted in the facts of the present case. It was submitted that at no stage did the respondent seek any relief founded upon Section 47 of the PwD, Act, nor did he ever pray for reinstatement in service; instead, he accepted pension and other benefits extended to him. In all his representations, as well as the writ petition filed by him in 2005, the respondent confined his claim to the grant of 100% invalid / disability pension and other consequential benefits. Having consciously elected to pursue only such relief, the respondent cannot subsequently seek, nor could the Court grant, relief of reinstatement and continuation in service founded upon a statutory provision that was neither invoked by him nor attracted in the given factual scenario.

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<sup>16</sup> (2015) 4 SCC 421



**20.** In the alternative, Mr. Banerjee submitted that much water having flown under the bridge since the impugned judgment was rendered and the respondent, by now, having attained the age of superannuation, question of his reinstatement in service does not arise. While appealing to our conscience, he urged that the directions made by the Single Judge, since affirmed by the Division Bench, if allowed to stand, would impose a substantial financial burden upon the State exchequer (in excess of Rs.82 lakh on account of salary and allowances only). He, therefore, prayed that the impugned judgment be suitably modified in the interests of justice and equity in such manner we consider just and proper.

#### **CONTENTIONS ON BEHALF OF THE RESPONDENT**

- 21.** Mr. Dhawan, learned counsel appearing for the respondent, assiduously opposed the submissions advanced by Mr. Banerjee.
- 22.** Mr. Dhawan urged that the PwD Act, 1995, and in particular Section 47 thereof, is a social welfare legislation intended to protect employees who acquire a disability during service. Relying on ***Kunal Singh*** (supra), he submitted that Section 47 casts a statutory obligation on the employer to protect an employee acquiring disability during service.
- 23.** According to Mr. Dhawan, the respondent was fully entitled to the protection afforded by Section 47 at the time of his invalidation from service, as the order of medical invalidation was passed on 11<sup>th</sup> March,

1998 whereas the NOTIFICATION exempting combatant personnel of the CRPF and other CPMFs from the application of Section 47 came to be issued only on 10<sup>th</sup> September, 2002. It was contended that the NOTIFICATION operates prospectively and contains no indication of any retrospective application. Therefore, the order of invalidation was in the teeth of Section 47 of the PwD Act.

**24.** Mr. Dhawan further submitted that the respondent had, at no stage, waived his statutory rights under Section 47 of the PwD Act. It was contended that the respondent, having lost his vision, was not even aware of the protection available to him under the said provision and, consequently, confined his claims to seeking invalid / disability pension and other service benefits admissible under the applicable rules. It was further urged that the appellants never informed the respondent of his entitlement under Section 47 of the PwD Act, despite being under an obligation to act fairly. He submitted that this lack of awareness on the part of the respondent was rightly noticed by the Single Judge in the judgment dated 11<sup>th</sup> August, 2008, which also granted the protection of Section 47 of the PwD Act in ordering relief.

**25.** Next, Mr. Dhawan argued that to constitute waiver, there has to be an intentional relinquishment of a known right; and the respondent being wholly unaware of the right guaranteed to him under Section 47, no question of relinquishment of a known right did arise. In these circumstances, he argued that no inference of waiver can be drawn against the respondent.

- 26.** That apart, it was Mr. Dhawan's contention that the plea of waiver was never raised either in the LPA or in the grounds of appeal presented before this Court. Submission was made that a plea taken for the first time in course of hearing ought not to be entertained.
- 27.** Finally, Mr. Dhawan submitted that the appellants having breached the statutory duty imposed by Section 47 of the PwD Act cannot and should not be heard to urge that the Single Judge overreached in protecting the respondent.
- 28.** On the aforesaid grounds, Mr. Dhawan prayed for dismissal of the civil appeal.

#### **QUESTION**

- 29.** These being the rival contentions, we are tasked to decide the following question:

Whether the Single Judge rightly enforced the appellants' duty under Section 47 of the PwD Act by making the directions noted above in paragraph 9 and also as to whether the Division Bench was grossly wrong in not reversing such directions?

#### **ANALYSIS AND REASONS**

- 30.** Learned counsel for the parties have been heard and the impugned judgment as well as the judgment of the Single Judge perused together with the other materials on record.
- 31.** Section 47 of the PwD Act being at the centre of debate, it is required to be noted. It reads:

**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.

**32.** The answer to the question formulated by us seems to squarely lie in

***Kunal Singh*** (supra), rendered more than two decades back, where this Court held that the PwD Act imposes a positive obligation on the employer to shift the disabled employee and not wait for him to ask for such shifting.

**33.** However, without truncating the adjudicatory process by merely relying on ***Kunal Singh*** (supra), we propose to deal with each of Mr. Banerjee's objections while rendering our decision before we finally draw guidance from ***Kunal Singh*** (supra) and the other precedents in the field.

**34.** In course of hearing, we had noticed complete absence of pleadings and prayers in the writ petition in relation to invocation of the PwD Act by the respondent. At the same time, we do not find any ground raised by the appellants either in their LPA before the Division Bench or in the civil appeal before us to the effect that the Single Judge travelled beyond the pleadings and the prayers in the writ petition. Since no

ground has been raised, it is open to us not to dilate on this aspect any further. However, we feel it necessary to lay down the yardstick to be applied where the pleadings are skeletal and prayers deficient, yet, the material on record establishes that denial of wider relief would perpetuate injustice merely for want of proper legal assistance.

**A. Absence of requisite pleadings and specific prayers – when not fatal?**

- 35.** The Supreme Court in multiple rulings has cautioned that in exercising writ jurisdiction under Article 226 of the Constitution, the High Courts must confine themselves to the pleadings and the prayer clauses; and granting relief beyond what is prayed for is not permissible in law. One may profitably refer to the decision in ***Bharat Amratlal Kothari v. Dosukhan Samadkhan Sindhi***<sup>17</sup> in this regard.
- 36.** The Code of Civil Procedure, 1908<sup>18</sup>, which is applicable to suits, envisions under Order VII that the court cannot traverse beyond the pleadings and make out a case which was never pleaded, such principle having originated from the fundamental legal maxim *secundum allegata et probata*, i.e., the court will arrive at its decision on the basis of the claims and proof led by the parties. Law is, again, well-settled that when a point is not traceable in the pleas set out either in a plaint or a written statement, findings rendered on such point by the court would be unsustainable as that would amount to an altogether new

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<sup>17</sup> (2010) 1 SCC 234

<sup>18</sup> CPC

case being made out for the party. The underlying reason is that of fairness. The opponent must know the case he/it has to meet. He / it cannot be taken by surprise at the hearing. To grant unclaimed relief without putting him / it on notice would obviously result in violation of natural justice and, therefore, the court ought to desist from doing so.

- 37.** However, the rule that requires the parties to be strictly confined to the pleadings and the prayer clauses is not an inflexible rule insofar as exercise of writ jurisdiction is concerned.
- 38.** Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. Even the law bends before justice. The entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness (see: **S. Nagaraj v. State of Karnataka**<sup>19</sup>).
- 39.** *Ex facie*, Article 226 which is couched in comprehensive phraseology confers wide power on the high courts to reach injustice wherever it is found. Apart from writs, the high courts may issue orders or directions in the nature of writs enabling them to mould the reliefs to meet the peculiar and complicated requirements of this country (see: **Dwarka Nath v ITO**<sup>20</sup>).
- 40.** Article 226 confers a power that is plenary, equitable and discretionary, and is not one bound by the rigidities of law. Even in the contractual field, an arbitrary State action could be liable to judicial review (see:

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<sup>19</sup> 1993 Supp (4) SCC 595

<sup>20</sup> AIR 1966 SC 81

***ABL International Ltd. v Export Credit Guarantee Corporation of India*<sup>21</sup>**).

- 41.** Although in exercise of writ jurisdiction the high courts are guided by the principles flowing from the CPC, they are not bound by it (see: ***Puran Singh v. State of Punjab***<sup>22</sup>). Undoubtedly, the high courts' writ jurisdiction under Article 226 is wider than the jurisdiction of the civil courts.
- 42.** Thus, read and understood, we consider Article 226 to be a reservoir of equity which is meant to secure justice to the party aggrieved by omission or failure to perform a duty by an authority within the meaning of Article 12 of the Constitution. Rather than being stifled by technical pleas raised by such authority to resist its exercise, in an exceptional case, the high court may do what the justice of the case demands. There could be several exceptional cases warranting such treatment but for the present, we wish to outline only one.
- 43.** One of the exceptions is when the court is convinced that the petitioner is legally entitled to more than what has been claimed, but might have claimed less due to ignorance or *bona fide* mistake or inelegant drafting of the writ petition by his lawyer. Since substantive justice cannot be allowed to be trumped by technicalities, if the record before the high court clearly evinces entitlement of the suitor to a wider relief than what is claimed, the opponent is put on notice and he/it has no

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<sup>21</sup> (2004) 3 SCC 553

<sup>22</sup> (1996) 2 SCC 205

answer, much less adequate answer, and thereby, no prejudice is caused to him/it, and it is found that the opponent is seeking to use a procedural technicality as a shield for its own statutory breach, the court in an appropriate case may, in its discretion, grant such relief as the suitor is found entitled.

- 44.** However, there is a need to sound a word of caution. While the high courts are expected to stick to the pleadings and the prayers, and not wander beyond, by observing the rule of discipline that exists to prevent judicial overreach and surprise, the exception to the rule of doing justice despite deficient pleadings in a writ petition ought to be sparingly invoked and judiciously applied where the law and the record disclose a clear entitlement of the suitor and the court is convinced that upholding the plea raised by the opponent, based on technicality, would defeat the right. A judge who ignores both the rule and the exception, ends up either shackled by technicality or exposes himself to be accused of judicial activism.

**B. What is Waiver? When can such plea be successfully pursued?**

- 45.** The meaning of 'waiver' has been explained by this Court in numerous decisions. Reference to the same would add to the length of this judgment and, hence, we refrain from adverting to the same.
- 46.** The essence, however, of all such decisions is that waiver, in law, is an intentional relinquishment of a known right or advantage, benefit, claim or privilege by a person which, except for such waiver, he would have enjoyed. As per the precedents, waiver must have three



elements. To constitute waiver, what is required to be proved by the party raising the plea is that (i) a person (the other party to the *lis* against whom waiver is claimed) has a right; (ii) such person has clear knowledge of that right; and (iii) despite the knowledge (of an existing right), that person has voluntarily and consciously given up that right. Mere silence or inaction or delay to enforce the existing right does not constitute waiver, since there must be a clear conduct revealing that the right has been given up.

- 47.** It is important to remember that waiver of a statutory right is generally disfavoured particularly when the statute is for public welfare or the waiver would be contrary to public policy.
- 48.** We may only refer to the decision in ***Krishan Lal v. State of J & K***<sup>23</sup>, where this Court was considering whether the requirement of giving copy of the proceeding of the inquiry mandated by Section 17(5) of the provisions of the Jammu and Kashmir (Government Servants) Prevention of Corruption Act, 1962 is for the benefit of the individual concerned or serves a public purpose. Having noted the legal position that a mandatory provision can be waived if the same is aimed to safeguard the interest of an individual and such provision has not been conceived in the public interest, it was held that if it be the former then the same can be waived; if it be the latter, it cannot be.

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<sup>23</sup> (1994) 4 SCC 422

### **DID THE RESPONDENT WAIVE HIS RIGHT?**

- 49.** Viewing the objection of waiver raised by Mr. Banerjee in the prism of the aforesaid settled position in law, we have no doubt that it is unworthy of consideration and liable to be rejected without much ado. Whether or not a party has waived his right has to flow from his conduct and is, essentially, a question of fact. We have not been able to find either in the LPA or in this appeal, any point of waiver having been pleaded by the appellants. Without a pleading, a plea of waiver need not be adjudicated.
- 50.** The Single Judge, recorded a finding of fact accepting the respondent's version that he had no knowledge of Section 47, PwD Act conferring a right on him to be continued in service notwithstanding his impairment of vision. In the LPA, no challenge was laid to such finding. Appellants neither disputed before the Single Judge nor before the Division Bench that the respondent's disability was not covered by the beneficial provisions of the enactment. It has also not been disputed before this Court. In such a situation, to attract waiver, what was required of the appellants was to demonstrate that the respondent was aware of his right under Section 47, yet, he elected to give it up while preferring to receive invalid/disability pension. However, there is no material on record to suggest that the respondent had been informed by the appellants of a right available to him under the PwD Act and that he relinquished his claim for enforcement of such right. Therefore, the

second and the third elements to constitute a waiver are absent in the present case.

**51.** On the contrary, paragraphs 2 (c)<sup>24</sup> of the LPA and 5 (C)<sup>25</sup> & (F)<sup>26</sup> of this civil appeal make the insensitive approach of the appellants too obtrusive not to attract attention.

**52.** The objection founded on waiver is thoroughly misconceived and is, thus, overruled.

### **EFFECT OF THE NOTIFICATION**

**53.** According to Mr. Banerjee, the NOTIFICATION was misread by the Single Judge as well as by the Division Bench. We disagree.

**54.** The NOTIFICATION upon which the appellants place heavy reliance, exempting combatant personnel of the CPMF from the application of Section 47 of the Act, was issued only on 10<sup>th</sup> September, 2002. The NOTIFICATION, for the sake of completeness of discussion, is reproduced hereunder:

“In exercise of the powers conferred by proviso to Section 47 of The Persons With Disabilities (Equal Opportunities, Protection of Rights And Full Participation) Act, 1995 (1 of 1996) the Central Government having

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<sup>24</sup> (c) That the Hon’ble Single Judge has erred in directing the present appellants to reinstate the respondent in service against the supernumerary post in the face of the fact that the respondent had turned blind and his services could not have been utilized anywhere in the department. He was completely disabled and cannot be paid salary while sitting idle. The respondent has rightly been granted pension @ Rs.1275/- p.m.

<sup>25</sup> (C) Because the Hon’ble High Court erred in not (sic) Union of India & Ors. V/s Dileep Kumar Singh (Civil Appeal Nos. 2466-67/2015) decided on 26.02.2015, approving the application of exemption notification to Central Para Military Forces like CRPF etc. for promotion as well as continuing in service. Further even if it is held that the GOI notification is prospective in nature still would the humble court be justified to pass order’s that the individual be allowed to serve in the force till superannuation or till supernummary (sic, supernumerary) post is created.

<sup>26</sup> (F) Because the High Court failed to appreciate that the respondent is paid admissible terminal benefits namely pension @ Rs. 1275/- per month for life, DCRG Rs. 24,832/-, GIS Rs. 5,746/-, Leave encashment Rs. 11,207/-, GPF Rs. 37,048/-, Risk Fund Rs. 15,000/-.

regard to the type of work carried on hereby exempt all categories of posts of 'combatant personnel' only of the Central Para Military Forces (CPMFs), namely, Central Reserve Police Force (CRPF), Border Security Force (BSF) Indo-Tibetan Border Police (ITBP), Central Industrial Security Force (CISF) and Assam Rifles from the provisions of the said section."

- 55.** Three principles of law, which are well-settled, must inform us. First, delegated legislation is ordinarily prospective in nature and a right or liability created for the first time cannot be given retrospective effect (see: ***Federation of Indian Mineral Industries v. Union of India***<sup>27</sup>); secondly, unless and until there is a clear intention expressed in the notification issued in pursuance of delegated power that it would also apply retrospectively, the same cannot be given a retrospective effect and would always operate prospectively (see: ***Union of India v. Kartick Chandra Mondal***<sup>28</sup>); and thirdly, an exemption notification which takes out cases from the purview of a beneficial legislation has to be strictly construed (see: ***Mohinder Lal v. Saroj Kumari Verma***<sup>29</sup>).
- 56.** The rule deducible from ***Federation of Indian Mineral Industries*** (supra) would govern all delegated legislation including an exemption notification because (i) we find absence of any distinction carved out by such rule between "imposition of duty" and "removal of duty" and (ii) the law may not be read in a manner providing one rule for liability and another for immunity.

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<sup>27</sup> (2017) 16 SCC 186

<sup>28</sup> (2010) 2 SCC 422

<sup>29</sup> (2000) 2 SCC 6

- 57.** Turning attention now to the terms of the NOTIFICATION, it is clear from a bare perusal thereof that neither by express words nor by necessary implication was it made to apply retrospectively from the date the PwD Act was enforced. Also, the PwD Act being a beneficial legislation, any notification exempting an establishment from the duty imposed by Section 47 has to be strictly construed to protect the interests of disabled employees who acquire disability while in service.
- 58.** We, therefore, hold that so long as the proviso is not invoked by the appropriate Government for exempting an establishment from the provision of sub-section (1) of Section 47, the employer has a duty to offer an alternate post and the employee a right to be accommodated; however, once a notification is issued in terms of the proviso below sub-section (2) of Section 47 exempting an establishment from the provisions of the section, not only does the duty of the employer cease from the date the same takes effect, the employee would lose the statutory protection of continuity in service.
- 59.** In our considered opinion, issuance of the NOTIFICATION on 10<sup>th</sup> September, 2002 aids the respondent more than advancing the cause of the appellants. It shows that even the Government of India in the appropriate ministry felt the need to carve the CMPFs out of the coverage of Section 47 seven years after the enactment of the PwD Act, meaning thereby that the said provision applied with full force to the CMPFs and covered them between 1995 and 10<sup>th</sup> September, 2002.

**60.** Therefore, the NOTIFICATION has no bearing on the legality of the order of medical invalidation. Respondent's medical invalidation *vide* order dated 11<sup>th</sup> March, 1998 was made at a point of time when Section 47 of the PwD Act operated without any strings attached and the appellants were bound by its categorical mandate. The said order being *ultra vires* Section 47 read with Articles 14 and 21 of the Constitution as on date the same was made, the subsequent issuance of the NOTIFICATION cannot have retrospective effect so as to legitimise an act that is *void ab initio*. The right of the respondent crystallised on the date of ouster; and a later exemption from the statutory mandate cannot efface the breach already committed.

**61.** The case of ***Dileep Kumar*** (supra) relied upon by Mr. Banerjee would also not be helpful to advance the appellants' case. In ***Dileep Kumar*** (supra), the respondent therein was relieved from service in 2011 after issuance of the NOTIFICATION in 2002. It is in this context that this Court interpreted the proviso to Section 47 of the PwD Act, held the order of invalidation from service valid and, consequently, allowed the appeal of the appellants therein. Therefore, it is clear that ***Dileep Kumar*** (supra) is clearly distinguishable on facts.

#### **OTHER PRECEDENTS TOUCHING SECTION 47, PwD ACT**

**62. *Kunal Singh*** (supra) happens to be the first decision on the contours of Section 47, PwD Act.

**63.** Appellant therein was recruited as a Constable in the Special Service Bureau<sup>30</sup>. During the course of his service, he sustained an injury to his left leg, which ultimately necessitated its amputation. A Medical Board at Kullu thereafter assessed his condition and declared him permanently incapacitated for further service. On the basis of the said medical opinion, the Commandant, Group Centre, SSB, Shamshi (Kullu), passed an order dated 20<sup>th</sup> November, 1998 invalidating the appellant from service. Challenge laid to the said order before the High Court by way of a writ petition, failed. The High Court dismissed the petition holding that since the appellant had been invalidated from service on the basis of the Medical Board's opinion, there was no scope for his continuance in service. Aggrieved thereby, the appellant approached this Court. It is pertinent to note, particularly in the context of the present case and the discussion above regarding the absence of specific pleadings, that this Court in **Kunal Singh** (supra) expressly recorded that no argument on Section 47 of the PwD Act had been advanced before the High Court. The said contention was raised for the first time before this Court. Nevertheless, this Court proceeded to entertain and adjudicate the issue, ultimately granting relief on the basis of Section 47 of the PwD Act.

**64.** In **Kunal Singh** (supra), this Court held that the language, scheme, and contents of Section 47 of the PwD Act render the provision mandatory in nature and cast a statutory obligation upon the employer

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<sup>30</sup> SSB

not to dispense with the services of, or reduce in rank, an employee who acquires a disability during the course of service. The disability suffered by the appellant therein squarely fell within the ambit of the PwD Act, since it was acquired while in service. Consequently, this Court held that the appellant was entitled to the protection and benefits envisaged under Section 47 of the PwD Act. This Court further observed that, once an employee acquires a disability during service, it is incumbent upon the employer to shift such employee to another post carrying the same pay scale and service benefits. In the event that no suitable post is immediately available, the employee is required to be retained on a supernumerary post until a suitable post becomes available or until he attains the age of superannuation, whichever is earlier.

**65.** Relevant paragraphs from ***Kunal Singh*** (supra) are reproduced hereunder:

**9.** Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that a person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of the section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The section further provides 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; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service.

**10.** The argument of the learned counsel for the respondent on the basis of the definition given in Section 2(t) of the Act that benefit of Section 47 is not available to the appellant as he has suffered permanent invalidity cannot be accepted. Because, the appellant was an employee, who has acquired "disability" within the meaning of Section 2(i) of the Act and not a person with disability.

**11.** We have to notice one more aspect in relation to the appellant getting invalidity pension as per Rule 38 of the CCS Pension Rules. The Act is a special legislation dealing with persons with disabilities to provide equal opportunities, protection of rights and full participation to them. It being a special enactment, doctrine of *generalia specialibus non derogant* would apply. Hence Rule 38 of the Central Civil Services (Pension) Rules cannot override Section 47 of the Act. Further, Section 72 of the Act also supports the case of the appellant, which reads:

*"72. Act to be in addition to and not in derogation of any other law.—The provisions of this Act, or the rules made thereunder shall be in addition to, and not in derogation of any other law for the time being in force or any rules, order or any instructions issued thereunder, enacted or issued for the benefit of persons with disabilities."*

**12.** Merely because under Rule 38 of the CCS (Pension) Rules, 1972, the appellant got invalidity pension is no ground to deny the protection mandatorily made available to the appellant under Section 47 of the Act. Once it is held that the appellant has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay scale and service benefits; if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation, whichever is earlier. It appears no such efforts were made by the respondents. They have proceeded to hold that he was permanently incapacitated to continue in service without considering the effect of other provisions of Section 47 of the Act.

(emphasis ours)

- 66.** The decision in ***Bhagwan Dass*** (supra) is the next decision providing guidance.
- 67.** Appellant therein was an employee of the Punjab State Electricity Board<sup>31</sup>. During the course of his service, he lost his eyesight completely on 17<sup>th</sup> January, 1994 and consequently became totally blind. Thereafter, he remained absent from duty without authorization from 18<sup>th</sup> January, 1994 to 21<sup>st</sup> March, 1997. Although the Board repeatedly directed him to report for duty, he failed to do so, leading to the issuance of a charge-sheet against him. Subsequently, by a letter dated 17<sup>th</sup> July, 1996, the appellant explained that his absence was attributable to the sudden loss of vision. He further sought retirement from service and requested that a suitable appointment be provided to his wife in his place and stead. Following a series of internal communications, wherein it was concluded that the appellant was not interested in availing the protection under Section 47 of the PwD Act, the Board relieved him from service vide Office Order dated 13<sup>th</sup> January, 1999 with effect from 21<sup>st</sup> March, 1997 and directed him to submit a leave application covering the period of his absence. Thereafter, the appellant submitted representations challenging the action of the Board, contending that he was unaware of the relevant service rules and of the protection available to employees who acquire

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<sup>31</sup> Board

a disability during service. He, accordingly, sought reinstatement. As no relief was forthcoming and the severance was completed by payment of his terminal dues, the appellant approached the High Court by way of a writ petition seeking the benefit of Section 47 of the PwD Act and, in the alternative, appointment of his son in his place. The High Court dismissed the writ petition, primarily addressing the alternative prayer for compassionate appointment, without undertaking any discussion on the applicability of Section 47 of the PwD Act. Aggrieved thereby, the appellant preferred an appeal before this Court.

- 68.** This Court held that the action of the Board in relieving the appellant from service vide Office Order dated 13<sup>th</sup> January, 1999 was illegal and unsustainable in law, and that the appellant was entitled to the protection afforded under Section 47 of the PwD Act. In arriving at this conclusion, this Court placed reliance on its earlier decision in **Kunal Singh** (supra). It was further observed that, following the onset of his disability, the appellant was unaware of the legal protections available to him and was labouring under the mistaken belief that retirement from service was the only course open to him. In such circumstances, it was incumbent upon the senior officers of the Board to apprise him of the statutory safeguards available under Section 47 of the PwD Act rather than proceed on the assumption that he had voluntarily chosen to forgo them. Accordingly, this Court held that the appellant must be deemed to have continued in service until the date of his

superannuation and directed his reinstatement with all consequential service and monetary benefits.

**69.** Reference in this regard may also be profitably made to a decision of recent origin of this Court in ***Ravinder Kumar Dhariwal v. Union of India***<sup>32</sup>.

**70.** In the said case, the appellant was serving as an Assistant Commandant in the CRPF. It was alleged that on 18<sup>th</sup> April, 2010, in the presence of the Deputy Inspector General of Police<sup>33</sup>, he stated that he was obsessed with either killing or being killed and further threatened that he could shoot. Pursuant thereto, a complaint was lodged by the DIGP, leading to the initiation of departmental proceedings against the appellant. A charge memorandum was issued and six articles of charge were framed against him. Subsequently, he was placed under suspension with effect from 8<sup>th</sup> October, 2010. The departmental enquiry culminated in a report dated 3<sup>rd</sup> October, 2013 submitted by the Enquiry Officer. Pursuant thereto, a notice dated 7<sup>th</sup> August, 2015 was issued to the appellant calling upon him to respond to the findings recorded therein. Parallely, from the year 2009 onwards, the appellant had been suffering from obsessive compulsive disorder<sup>34</sup> and secondary major depression, for which he underwent psychiatric treatment at various medical institutions. He was ultimately referred to Dr. Ram Manohar Lohia Hospital, New Delhi, where he was

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<sup>32</sup> (2023) 2 SCC 209

<sup>33</sup> DIGP

<sup>34</sup> OCD

certified as suffering from a permanent disability assessed between 40% and 70%. Consequent thereto, he was declared medically unfit for duty and placed in the S5(P) medical category. Aggrieved by the notice dated 7<sup>th</sup> August, 2015, the appellant approached the High Court by way of a writ petition. The writ petition was allowed and the CRPF directed to reconsider the appellant's case in light of the protections available under Section 47 of the PwD Act. An intra-court appeal was thereafter preferred by the respondents. The Division Bench partly allowed the appeal and restored the departmental proceedings to the stage of recording of evidence, so as to afford the appellant an opportunity to establish his claim of mental disability.

**71.** Aggrieved thereby, a special leave petition came to be filed by the appellant which was allowed and the departmental enquiry was set aside. For the purposes of the present discussion, it is unnecessary to delve into the entirety of the reasoning adopted by this Court in ***Ravinder Kumar Dhariwal*** (supra). It would suffice to advert to those observations and findings that bear upon the interpretation and application of Section 47 of the PwD Act, which are directly relevant to the issues arising in the present case.

**72.** Relevant paragraphs from the said decision are reproduced hereinunder:

**36. \*\*\*** While Sections 44 to 46 impose positive obligations on the State to reasonably accommodate persons with disabilities, Section 47 imposes both positive and negative obligations on the Government. Sub-sections (1) and (2) of Section 47 state that the government employer must not terminate, demote or deny

promotion on the ground of disability. The proviso provides a positive obligation on the employer that if the post is not suitable to the employee after acquiring disability, then he could be shifted to another post with the same pay and service benefits. However, if it is not possible to adjust the employee against any post, then he may be kept on a supernumerary post until he obtains superannuation.

**37.** Article 14 of the Indian Constitution states that “[t]he State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”. The right to equality under the Indian Constitution has two facets — formal equality and substantive equality. While formal equality means that every person, irrespective of their attributes must be treated equally and must not be discriminated against; substantive equality is aimed at producing equality of outcomes through different modes of affirmative action. 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. Disability, as a social construct, precedes the medical condition of an individual. The sense of disability is introduced because of the absence of access to facilities.

**38.** This Court in *Vikash Kumar v. UPSC* [*Vikash Kumar v. UPSC*, (2021) 5 SCC 370 : (2021) 2 SCC (L&S) 1], recognised the social construction of disability and the necessity to provide reasonable accommodation to such persons to comply with the full purport of the equality provisions under the Constitution. One of us (D.Y. Chandrachud, J.) writing for the three-Judge Bench observed: (SCC p. 405, para 62)

“62. The principle of reasonable accommodation acknowledges that if disability as a social construct has to be remedied, conditions have 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. Under this route, the ‘powerful and the majority adapt their own rules and practices, within the limits of reason and short of undue hardship, to permit realisation of these ends’. [Reasonable Accommodation in A Multicultural Society, Address to the Canadian Bar Association Continuing Legal Education Committee and the National Constitutional and Human Rights Law Section, 7-4-1995, Calgary, Alberta at 1.]”

**39.** \*\*\*

**40.** The facets of non-discrimination that guide the PwD Act are threefold: (i) right to formal equality, where no person shall be discriminated based on her disability; (ii) affirmative action in pursuance of substantive equality under Section 33; and (iii) reasonable accommodation of persons with disabilities such as provided under Section 47. There may be no specific provision in the PwD Act—unlike the RPwD Act—which provides persons with disability the right of non-discrimination. However, since the principle

of substantive equality (of providing equal outcomes through affirmative action and reasonable accommodation) is premised on the principle of non-discrimination, there is no reason to hold that the principle of non-discrimination, of treating every person equally irrespective of her disability does not guide the entire statute.

(emphasis ours)

### **THE BRASS TACKS**

- 73.** Having thus noticed the facts and the law, the test is simple: did the facts and circumstances warrant the relief granted by the Single Judge?
- 74.** The statutory mandate of Section 47, PwD Act is too peremptory to be ignored. The title of the PwD Act says it all. It is an enactment for persons with disabilities intended to guarantee them equal opportunities and full participation apart from protection of rights. Section 47, importantly, starts with “No”. Negative words in a statute convey a clear prohibition. It is a legislative device to make a statute imperative. An employee like the respondent, while retaining the status of a public servant, is entitled to security of service. A physical disability that he acquires while in service rendering him unfit for the work assigned to him has to be dealt with by the employer in the manner ordained by Section 47. Either he is shifted to some other post carrying same pay and service benefits, or, if it is not possible, the employer is under a duty to adjust him on any other post. If that too is not possible, a supernumerary post has to be created for him which, for all intents and purposes, would be personal to him.

**75.** The PwD Act came into force in the year 1995, whereas the respondent was medically invalidated from service in 1998. The NOTIFICATION saw the light of the day as late as in 2002. The duty imposed by the PwD Act being mandatory and not discretionary, the law did not leave the appellants with an option to discharge their duty at their convenience. Appellants were required to find a chair for the respondent, and not wait for the respondent to beg for one. By not offering alternate posting, the appellants failed in their role as a model employer and converted a welfare provision into a dead letter.

**76.** The point as to whether or not the impaired vision from which the respondent suffered was attributable to and / or aggravated by service in the CRPF need not detain us for long. Nothing has been brought on record by the appellants to suggest that the respondent had been suffering from an ophthalmic condition since his enrolment in the CRPF. Medical fitness of the respondent must have been assessed at the time of his enrolment and appointment as a driver. Had he been found short of the required standards, we wonder whether the recruitment process would have resulted in an appointment in the first place. Even if it is assumed that the ophthalmic condition was neither attributable to nor aggravated by service in the CRPF, nothing turns on it. Parliament did not limit Section 47 to disabilities attributable to service; the protection is unqualified and unconditional. It operates irrespective of how the disability was acquired. The relevant question is not hypothetical fitness at appointment, but whether the appellants



explored alternatives before ending the respondent's service. More than ten years of unblemished driving followed by an acquired ophthalmic condition, indeed, provided a case for accommodation or alternate posting, not medical invalidation. Service jurisprudence distinguishes between initial disqualification and subsequent disability, and the law ought to lean towards retention over ouster from service unless, of course, ouster becomes inevitable.

**77.** It would not be inapt to dwell on another aspect, before we conclude.

It is intriguing that the CRPF, being a force constituted under the Central Reserve Police Force Act, 1949<sup>35</sup> and functioning under the administrative control of the Ministry of Home Affairs, Government of India, failed to respond in time. Being an instrumentality of the State, it was expected to be fully cognizant of the provisions of the PwD Act and the statutory protection conferred upon the respondent under Section 47 thereof. In such circumstances, we find it difficult to comprehend how the order of medical invalidation came to be passed in the first place, particularly when at the relevant point in time no notification exempting the CRPF from the operation of the PwD Act had been issued. The action of the appellants, therefore, appears to have been taken in disregard of the statutory mandate then in force.

**78.** We are, thus, not persuaded to accept Mr. Banerjee's contention that the provisions of the PwD Act are inapplicable on facts and in the circumstances of the present case.

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<sup>35</sup> Act No. 66 of 1949

**79.** For all the reasons aforesaid, we are unhesitatingly of the opinion that the Single Judge was perfectly justified in finding the appellants to be remiss. Therefore, we are of the considered opinion that the civil appeal is devoid of merit and is liable to be dismissed.

**THE RELIEF**

**80.** By an interim order passed in the present proceedings on 20<sup>th</sup> May, 2026, we directed Mr. Banerjee to place on record the quantum of salary and allowances that the respondent would have drawn had he continued in service till his superannuation. Pursuant thereto, a calculation sheet has been furnished by the appellants. As per the said calculation, which we do not doubt for a moment, had the respondent remained in service until the date of his superannuation, the total salary and allowances payable to him would be an amount of Rs.82,80,195/- excluding any adjustment on account of the invalidation pension received by him. The calculation further indicates that had the respondent continued in service only up to 10<sup>th</sup> September 2002, i.e., the date on which the NOTIFICATION came into force, the salary and allowances payable to him would amount to a meagre Rs. 2,66,180/-. We see no reason to accept Mr. Banerjee's prayer that the respondent is entitled, if at all, to such sum till the NOTIFICATION was issued.

**81.** Pertinently, the respondent is now a sexagenarian. Consequently, the question of his reinstatement in service does not arise and the relief granted to the respondent by the Single Judge warrants suitable

modification. We are conscious that an award of full back wages would impose a substantial burden on the State exchequer, but the fault for the mess rests solely on the appellants. We have noticed that the quantum of post medical invalidation benefits given to the respondent is a pittance. He has been made to suffer the pangs of deferred justice and economic destitution despite the favourable verdict of the Single Judge dating back to 11<sup>th</sup> August, 2008. Respondent having suffered visual impairment, the possibility of his gainful employment as a driver stood foreclosed. Given the nature of his disability, we presume that his other employment prospects were also rendered bleak. No evidence of the respondent's gainful employment has been placed on record. Appellants, having failed to provide an alternate post commensurate with the respondent's disability as mandated by Section 47, PwD Act, cannot be permitted to take shelter behind the principle of 'no work, no pay'. The situation of non-employment of the respondent is entirely the appellants' creation. Respondent is, thus, entitled to full back wages and the appellants must bear the consequences of their own inaction. The preambular promise of the Constitution cannot remain symbolic. Restitution of status with full back wages, interest and costs for the indignity of delay are the minimum we ought to order.

- 82.** We, therefore, deem it appropriate to suitably modify the order of the Single Judge by awarding to the respondent an amount of Rs.1,25,00,000/- (Rupees one crore twenty five lakh only), inclusive

of back wages, interest and costs of the present proceedings. Ordered accordingly. The said amount shall be electronically transferred to the respondent's savings bank account by the appellants within a period of eight weeks from the date of this judgment. Advocate-on-record for the respondent may inform the particulars of his savings bank account to the advocate-on-record for the appellants within seven days to facilitate compliance of this order.

- 83.** Since the respondent is visually impaired, we direct the Member-Secretary, State Legal Services Authority, Himachal Pradesh or the Member-Secretary, District Legal Services Authority, Kangra, if that is more convenient, to appropriately guide the respondent for safe investment of a part of the amount received in a fixed deposit account of a nationalised bank attracting maximum interest with facility of credit of monthly interest in his savings bank account as well as to oversee his future medical needs.

### **CONCLUSION**

- 84.** The civil appeal is dismissed on the aforesaid terms.
- 85.** Connected application(s), if pending, shall stand disposed of.

.....J.  
(Dipankar Datta)

.....J.  
(Augustine George Masih)

**New Delhi;  
July 13, 2026.**