

IN THE HON'BLE HIGH COURT OF KARNATAKA AT BANGALORE

(Original Jurisdiction)

W. P. NO. 11351/2020

IN THE MATTER OF:

PSBB Learning Leadership Academy

...Petitioner

AND

Mrs. Barnali Rout & Anr.

...Respondents

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Place: Bangalore

Date:

Counsel for Respondent No. 1

(1)

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STATEMENT OF OBJECTIONS ON BEHALF OF THE RESPONDENT NO. 1

The Respondent No.1 most respectfully submits as follows:

1. The Petitioner has filed this writ petition under Articles 226 and 227 of the Constitution of India, praying for this Hon'ble Court to issue a writ of certiorari quashing the impugned order dated 12.06.2020 passed by the Respondent No. 2 in Case No. 21/2019-20 and praying for the Respondents to be directed to pay costs of this petition. The petition is completely baseless and no legal grounds are made out for quashing or interference with the impugned order passed by Respondent No.2 Commissioner.
2. The Respondent No. 1 is a primary school teacher, suffering from 90% disability. The Respondent No. 1 was an employee of the Petitioner from 08.07.2008 to 31.05.2015. She performed her duties in a diligent, timely and satisfactory manner, and was always greatly appreciated by her students and colleagues.
3. On 22.08.2013, one Ms. Diya Pai, a class VI student attempted to commit suicide and threatened to jump off the windowsill of a classroom at the Petitioner's premises. The Respondent No. 1, putting the safety of her

student ahead of her own safety, took prompt action to try and save the student. The Petitioner itself has acknowledged that the Respondent No. 1 lost her footing and fell to the ground while attempting to save the student. That the Respondent No. 1 courageously and selflessly risked her life to save the student has also been recorded in multiple newspaper and media reports published on this incident.

4. Due to this injury, the Respondent No. 1 acquired a permanent 90% PP1 loco-motor disability and has become traumatically paraplegic. It is stated that this situation would never have arisen if the Petitioner institution had implemented adequate safeguards and precautionary measures. The Petitioner institution did not even have grills installed on the first-floor windows, which is a basic and reasonable safeguard that any primary school with young children may be expected to have as a precaution. In addition to that, the Petitioner continued to act in a negligent manner even after the Respondent No. 1 fell from the window. The Petitioner institution failed to follow any proper medical protocol by recklessly transporting the Respondent No. 1 to the hospital in a teacher's vehicle, making her sit upright in her injured state, instead of calling an ambulance and ensuring that no further damage is caused to the Respondent No. 1's spinal injury. Neither was there a qualified doctor or nurse at the Petitioner's premises who attended to the Respondent No. 1 immediately after the fall.
5. At that time, the Petitioner gave assurances to the Respondent No. 1 that it would take care of all her medical expenses and would keep the Respondent No. 1's teaching position open until she was medically fit and ready to resume working. On 23.08.2013, the then Chairman of the Petitioner institution, Mr. Sharad Agarwal, met the Respondent No. 1's husband at Fortis Hospital and assured him that the Respondent No. 1 need not worry about medical expenses or future loss of income, as the Petitioner would take care of the same. It was only due to these assurances that the

Respondent No. 1 refrained from filing any case of negligence against the Petitioner at that time or even approaching the Respondent no.2 Commissioner or any other authorities.

6. Therefore, it is completely malicious and false for the Petitioner to now twist the facts and allege that it was the Respondent No. 1 who acted in a negligent or reckless manner, in violation of the alleged SOP. In fact, there was no SOP (Standard Operating Procedure) in place at the time of the accident and no prior drills or training sessions had been conducted by the Petitioner for the staff or students on the procedure to be followed in case of such an emergency. This again highlights the Petitioner's negligence in handling safety and emergency situations in the school and endangering the lives of its students and staff.

7. It is submitted that the Petitioner's claims of having conducted an internal inquiry into the accident are also false as the Respondent No. 1's statement was not recorded in this alleged inquiry and neither was she informed about the findings of this alleged inquiry at any point of time after the incident. There can be no doubt that the Respondent No. 1 risked climbing onto the windowsill only with the *bona fide* and laudable intention of saving the student's life. The Petitioner's present claims, attributing blame for the accident to the Respondent No. 1 after she tried to save a student's life, are nothing but an attempt by the Petitioner to escape its own liability for negligence.

I. **MEDICAL EXPENSES OF RESPONDENT NO.1**

8. It is submitted that, after the accident, the Respondent No. 1 was hospitalized at Fortis Hospital, Bannerghatta Road for a period of one month from 22.08.2013 to 22.09.2013. The medical expenses incurred for this period of hospitalization amounted to Rs. 6,03,603/- (Rupees Six Lakhs

Three Thousand Six Hundred and Three Only). This amount was reimbursed by the Petitioner to the Respondent No. 1 on 06.11.2013.

9. Thereafter, in August 2014, the Respondent No. 1 was medically advised to undergo specialized treatment which was only available in the United States, at the Kennedy Krieger Institute in Baltimore. The Respondent No. 1's husband informed the Petitioner management about this requirement to get treatment in USA and the Petitioner promised to take care of these medical expenses. It has been falsely stated in the petition that the Respondent No. 1 went "incommunicado for almost a year" after receiving reimbursement for the Fortis Hospital bills. The email correspondence between the Respondent No. 1's husband and the Petitioner institution, in respect of the Respondent No. 1's medical condition and employment, has been produced by the Petitioner itself in Annexure J, which shows emails from the Respondent No. 1's husband to the Petitioner dated 05.08.2014, 08.08.2014, 03.01.2015, and 17.03.2015.

10. It is submitted that the medical treatment expenses of the Respondent No. 1 in the US at the Kennedy Krieger Institute in Baltimore, US for neuro rehabilitation treatment which she attended from 12th August 2014 to 11th September 2014 amounted to almost Rs. 16,25,984/- (Rupees Sixteen Lakhs Twenty Five Thousand Nine Hundred and Eighty Four Only).

(A copy of the medicals bills raised at Kennedy Krieger Institute and the ticket invoices are annexed herein and is marked as ANNEXURE-R/1 (collectively))

11. Over and above this after she came back from the US, she was undergoing treatment and rehabilitation therapy which was costing her close to Rs. 50,000/- to Rs. 60,000/- per month. In all she has incurred close to Rs. 24,48,000/- (until 28.08.2019) towards her treatment for the incident that occurred at the Petitioner's school, during the time that the Respondent

No.1 was employed by the Petitioner and while she was discharging her duties as a teacher.

(A copy of some of the bills of the Respondent No. 1 are annexed herein and is marked as **ANNEXURE-R/2**)

12. The Petitioner was well aware that the Respondent No. 1 and her family were financially strained by this point of time and that they were relying on the Petitioner's promise of reimbursement when they undertook the trip to the United States for this specialized treatment in August 2014. However, despite its promise, the Petitioner has failed to reimburse the Respondent No. 1 for the medical expenses incurred in the United States, which amounted to Rs. 16,25,984/- (Rupees Sixteen Lakhs Twenty-Five Thousand Nine Hundred and Eighty-Four Only). In addition to this, the Respondent No. 1 has incurred other expenses for physiotherapy sessions, medical check-ups and equipment, and home assistance, amounting to Rs. 24,48,000/- (Rupees Twenty-Four Lakhs and Forty-Eight Thousand Only), as on August 2019. None of these amounts have been reimbursed by the Petitioner despite multiple requests made by the Respondent No. 1. Thus the total amount incurred by the Respondent No.1. Including the initial expenses of Rs. 6,03,603/- is more than Rs. 30,00,000/- (Rupees Thirty Lakhs only). Only the initial amount of Rs. 6,03,603/- which was incurred in 2013 at Fortis Hospital when the accident took place, was paid by the Petitioner management.

13. In light of this, the sum of Rs. 10,00,000/-, which the Respondent No. 2 has directed the Petitioner to pay to the Respondent No.1, is not at all arbitrary or baseless. In fact, the impugned order takes into account Rs. 6,03,603/- paid by the Petitioner and directs it to make an additional payment of Rs. 10,00,000/- which is much lesser than the actual expenses incurred by the Respondent No.1 and hence is not at all unreasonable.

II. PAYMENT OF SALARY AND REINSTATEMENT IN
EMPLOYMENT

14. It is submitted that after the Respondent No.1 was seriously injured and incurred a permanent disability while trying to save a child in the Petitioner's school where she was employed, the Petitioner suddenly terminated her from her employment in 2015. This termination is invalid and amounts to discriminating against the Respondent no.1 due to her acquiring disability during her employment, and also in violation of all rules and procedure even under the provisions of the Karnataka Education Act 1983
15. It is submitted that the Petitioner made a payment of Rs. 11,62,079/- to the Respondent No. 1 which is made up of the following amounts:
- (i) Rs. 6,03,603/- towards the Petitioner's medical expenses incurred at Fortis Hospital
 - (ii) Rs. 5,58,476/- paid towards the Respondent No.1's salary till 31st May 2015.
16. When the Respondent No.1 went through the accident, till 2015 she was undergoing intensive treatment and all during that time, the Respondent No.1 and her husband were in touch with the Petitioner management. The Respondent No.1's husband repeatedly kept requesting the Petitioner in his emails that the Respondent No.1 would like to get back to her teaching job, which she would be able to do if reasonable accommodation is provided to her and transport facilities are provided to her. The Petitioner all along promised the Respondent No.1 and her husband that the Petitioner management would not terminate her and that her job would be protected.
17. However, the Petitioner only paid her salary till 31st May 2015. Thereafter when the Respondent No.1 in 2015 started enquiring if she could come back and resume her teaching job with some reasonable accommodations, the Petitioner refused to respond and thereafter suddenly informed the



Respondent no.1 that she should resign and thereafter the Petitioner would allow her to continue in a retainer mode for 6 months. This was not acceptable to the Respondent no.1. when she refused to resign, the Petitioner vide email dated 14.5.2015 terminated her by stating that she had not attended school and hence she was being terminated. There is no mention in this alleged termination letter about the accident and her disability acquired during her employment while carrying out her duties.

18. It is submitted that this alleged termination is also in violation of the provisions of Section 92 the Karnataka Education Act 1983 which states that no teacher or other employee of a private educational institution shall be dismissed, removed or reduced in rank except in accordance with the conditions of service governing her and after an inquiry in which she has been informed of the charges against her and given a reasonable opportunity of being heard in respect of the said charges, and where it is proposed after such inquiry to impose on her such penalty, it may impose such penalty on the basis of the evidence adduced during such inquiry. This requirement is also mandated under The Karnataka Private Educational Institutions (Discipline and Control) Act 1975.

19. In the instant case no charges were issued to the Respondent No.1 and no inquiry was conducted and hence such termination is illegal and invalid. The Petitioner never issued a formal letter terminating her employment, and neither did the Petitioner make final settlements in respect of statutory dues such as gratuity, PF, etc. The Respondent No.1 was constantly in touch with the Petitioner management and trying to request it to allow her to resume her teaching with providing her some accommodations for her disability. When finally there was no response from the Petitioner the Respondent no.1 filed a complaint with the Respondent No.2 as she was being discriminated due to her disability, and the RPD Act provides remedies for the same.

20. Further, it is submitted that the Petitioner itself in its response dated 23.12.2019 to the Respondent No. 2 has stated that it is willing to provide the Respondent No.1 a job as Administrative Support Staff, and hence continue her employment but not at the same rank.

(A copy of the letter dated 23.12.2019 is annexed herein and is marked as **ANNEXURE – R/3**)

21. The Petitioner's offer to employ the Respondent No. 1 as Administrative Support Staff at Rs. 15,000/- per month also amounts to discrimination because this offer of employment is for a lower position and salary compared to the position occupied by the Respondent No. 1 before she acquired the disability in August 2013. At the time of the accident, the Respondent No. 1 was employed as a permanent teaching staff with a salary of Rs. 20,918/- which was later increased to Rs. 24,915/- per month.

22. It is stated that the Petitioner must offer her the same position or an equivalent position, since demoting the Petitioner from her previous position on account of her having acquired a disability would be discriminatory and violative of Section 3 of the Rights of Persons with Disabilities Act, 2016 (henceforth, 'the Act'). The Petitioner's contention; that providing Respondent No. 1 her old job with the same salary "would be unfair to the other teachers doing more work for the same salary" and that it "will be inequitable and lead to poor morale", is completely untenable in law.

23. The impugned order of the Respondent No.2 directing that the Petitioner continue and give the salaries of the Respondent no.1 and continue her in employment in her same position is as per the requirements of the provisions of the RPD Act and to ensure that the rights of the Respondent no.1 are protected, and she is not discriminated on account of her disability and hence deserves to be upheld.

III. APPLICATION OF THE RPD ACT TO PRIVATE EMPLOYERS

24. It is submitted that the averments of the Petitioner that the RPD Act does not apply to private employers is false and baseless. There are many provisions of the RPD Act which show that it covers private employers and establishments. The relevant sections are as follows:

- (i) "establishment" under Section 2 (i) is defined as including a Government establishment and private establishment.
- (ii) Reasonable accommodation: in section 2 (y) 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 and exercise of rights equally with other.
- (iii) Section 3 (3): This section states that no person with disability shall be discrimination on the ground of disability unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim
- (iv) Chapter III on Education covers all educational institutions funded or recognized by appropriate governments and local authorities. This would cover the Petitioner institution which is recognized by the government.
- (v) Section 20 of the RPD Act provides for non-discrimination in employment. Section 20(3) specifically states that no promotion shall be denied to a person merely on the ground of disability.
- (vi) Section 20 (4) provides that no government employee shall dispense with or reduce in rank an employee who acquires disability during his or her service and states further that if it is not possible to adjust the employee against any post, he or she may be kept on a supernumerary post with the same pay scale and benefits.
- (vii) Section 21: Section 21 (1) requires every establishment to notify an equal opportunity policy detailing measures proposed to be taken by

it in pursuance of the provisions of Chapter IV relating to employment.

25. It is submitted that a holistic reading of all the above provisions of the RPD Act would indicate that no employee can be discriminated in employment due to disability and such obligations of non-discrimination apply to government and private establishments as well. A combined reading would indicate that the Petitioner establishment also cannot terminate the Respondent No.1 from employment due to her disability which she acquired during the course of employment and must continue her either on the same post or on any supernumerary post on the same pay scale and benefits. Not doing so would amount to discriminating against the Respondent no.1 by terminating her employment solely due to her acquiring disability during her employment and punishing her for it.

26. In the Petitioner's letter to the Respondent No. 2 dated 10.06.2019, the Petitioner listed certain "practical issues" which allegedly hinder the Petitioner institution from offering employment as teaching or non-teaching staff to the Respondent No. 1. The Petitioner in the said letter stated that the "school will only be able to provide basic facilities for a person with 90% disability", and that "the school is willing to offer an Employment to her as "Administrative Support Staff" with the consolidated pay of Rs. 15,000 per month, provided she is willing to accept the offer keeping in mind the limited facilities available at the school for a person with disabilities and discharge her duties effectively". This response of the Petitioner is clear proof of its unaccommodating and discriminatory attitude towards the Respondent No. 1 and is in direct contravention of the Petitioner's obligations under the Rights of Persons with Disabilities Act, 2016. The Petitioner's offer of employment, which is conditional on the Respondent No. 1 accepting the "limited facilities at the school for a person with disabilities", is in effect discriminatory against the Respondent No. 1. The Petitioner has refused to

extend any form of additional support required by the Respondent No. 1 on account of her disability. This is in violation of subclause (3) of Section 3 of the Rights of Persons with Disabilities Act, 2016.

27. Section 16 of the Act places an obligation on *all* educational institutions recognized by the Government to provide inclusive education to children with disabilities. In pursuance of this, all such institutions are, *inter alia*, required to; make building, campus and various facilities accessible; provide reasonable accommodation according to the individual's requirements; and, provide transportation facilities to the children with disabilities and also the attendant of the children with disabilities having high support needs. Therefore, the Petitioner is barred from claiming that requests for accessible transport and on-call doctor/ambulance services are "not feasible for any private entity to provide". The Petitioner institution is obligated to make its infrastructure accessible and provide reasonable accommodation to persons with disabilities, irrespective of this instant case concerning the employment of Respondent No. 1. In light of this, the accommodations sought by the Respondent No. 1, to be able to resume her job at the Petitioner institution, cannot be said to be an unreasonable or onerous burden on the Petitioner. The facilities requested by the Respondent No. 1 squarely fall within the ambit of "reasonable accommodation" defined under Section 2(y) of the Act, which is an integral part of non-discrimination of persons with disabilities. Section 2(h) of the Act clearly states that the denial of reasonable accommodation to persons with disabilities amounts to discrimination.

28. The Petitioner rejected the Respondent No. 1's request for accessibility to basic amenities such as transport, emergency healthcare, etc., and on this basis terminated her employment. Therefore, the termination of employment of the Respondent No. 1 is unfair and discriminatory, and in direct violation of Section 3 of the Act.

29. The Hon'ble Apex Court has time and again enunciated the principle of substantive equality and the rights of persons with disabilities which have to be recognized by private persons as well as by the government. In **Jeeja Ghosh v. Union of India, (2016) 7 SCC 761**, the Hon'ble Supreme Court reiterated that:

"We have already taken note of some of the international covenants and instruments guaranteeing rights to persons with disabilities. Insofar as obligation to fulfil these rights are concerned the same is not limited to the government or government agencies/State but even the private entities (which shall include private carriers as well) are fastened with such an obligation which they are supposed to carry out." [para 18]

30. It is submitted that the Petitioner cannot invoke its status of being an unaided private educational establishment to escape liability under the Act. Private establishments are also bound by certain obligations under the Act, especially under Sections 3 (3), 16, and 21. Section 2(i) of the Act clearly states that the definition of "establishment" "includes a Government establishment and private establishment". Therefore, the Petitioner's contention that its actions are beyond the jurisdiction or scope of this Act deserves to be rejected. The Petitioner cannot be permitted to deflect and shirk its responsibilities by referring to the alleged deficiency of the Respondent No. 2, or the State Government, in fulfilling their mandate under Sections 35 or 39 of the Act. It is pertinent to note that the obligation on the Petitioner to ensure equal treatment of persons with disabilities not only arises from Section 21, but also Section 3 (3) of the Act. Thus, the Petitioner cannot seek refuge under Paragraph 50 of the National Policy for Persons with Disabilities dated 10.02.2006, as it has attempted to do.

IV. POWERS OF RESPONDENT NO.2 TO PASS THE IMPUGNED ORDERS AND NO BAR OF LIMITATION:

31. The averments that the Respondent No. 2's order dated 12.06.2020 was passed without jurisdiction and exceeded his power under Section 80 are baseless and deserve to be set aside. Under Section 80 of the RPD Act,

the Respondent No.2 Commissioner has the powers to suo moto or otherwise to take steps and inquire into the deprivation of rights of persons with disabilities and take up the matter with the authorities for corrective action and also recommend measures and effective implementation of the law and has the powers under section 82 of the Act, of a civil court. The complaint was filed by the Respondent No.1 on 7.2.2019, and hence is covered under the provisions of the RPD Act.

32. Further there is no time bar or limitation period imposed under the RPD Act for filing complaints under Section 80 of the Act.

33. In **Geetaben Ratilal Patel v. District Primary Function Officer, (2013) 7 SCC 182**, the Hon'ble Apex Court has upheld the powers of the State Commissioner for Disabilities as provided under Section 62 of the previous Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1996 which was identical to Section 80 of the RPD Act and held:

“The power of the Commissioner “to look into the complaints with respect to the matters relating to deprivation of rights” as provided under Section 62 of the Act is not an empty formality and the Commissioner is required to apply his mind on the question raised by the complainant to find out the truth behind the complaint. If so necessary, the Commissioner may suo motu inquire into the matter and/or after giving notice, hearing the parties concerned and going through the records may decide the complaint. If it comes to the notice of the Commissioner that a person with disability has been deprived of his rights or that the authorities have flouted any law, rule, guideline, instruction, etc. issued by the appropriate Government or local authorities, the Commissioner is required to take up the matter with the appropriate authority to ensure restoration of rights of such disabled person and/or to implement the law, rule, guideline, instruction if not followed.”

34. It is submitted that the Respondent No. 1's complaint to the Respondent No. 2 was not barred by limitation. The Petitioner has wrongly stated that the cause of action only arose on two dates, i.e., 22.08.2013 (the date of the incident) and 31.05.2015 (the date of termination). There is a continuing cause of action in this instant case from 22.08.2013 onwards, in the

discriminatory treatment meted out to Respondent No. 1 by the Petitioner. After her employment was illegally terminated in May 2015, the Respondent No. 1 continued to make multiple requests seeking some sort of accommodation, so that she could be reinstated as a teacher at the Petitioner institution. It was only when all attempts to resolve this issue with the Petitioner failed, that the Respondent No. 1 found herself constrained to file a complaint with the Respondent No. 2.

35. It is further submitted that the discrimination of the Respondent No. 1 by the Petitioner is a continuing cause as the Petitioner, for more than five years, has been refusing to allow reasonable accommodations to the Respondent No. 1 and, on this basis, has not reinstated her to her teaching post. Therefore, the Petitioner's contention that the Act has been applied retrospectively is misconstrued. The Petitioner has a positive obligation to comply with the requirements of non-discrimination and inclusive education under the RPD Act and Section 3 places an obligation on the Petitioner to make reasonable accommodations for persons with disabilities. Therefore, the Petitioner cannot be permitted to continue its discrimination against the Respondent No. 1 by simply claiming that the cause of discrimination, i.e., the acquirement of disability, arose before the Act came into force. This approach would defeat the very purpose of the Act and would leave numerous persons with disabilities, similarly situated to the Respondent No. 1, without any redress.

36. The Petitioner has also contended that the only remedy available to the Respondent No. 1 to challenge her termination of employment is under the Karnataka Education Act, 1983, (henceforth, 'the 1983 Act) which is now barred by limitation. However, it is submitted that there is nothing in the 1983 Act which indicates exclusive jurisdiction of the Tribunal thereunder or which bars the applicability of other legislations in matters concerning discriminatory termination of employment. Hence, the limitation period of

three months under the 1983 Act does not prohibit the Respondent No. 1 from exercising her rights under special legislations such as the Rights of Persons with Disabilities Act, 2016.

37. On all the above grounds, it is submitted that the present petition deserves to be dismissed. The Petitioner has filed this petition only to evade its obligations under the Rights of Persons with Disabilities Act, 2016 and to escape its financial responsibilities towards the Respondent No. 1. If this present petition is allowed, it would effectively condone the reprehensible discrimination committed against the Respondent No. 1, as a person with disability, and would amount to a serious violation of the Respondent No. 1's legal rights under the RPD Act and also her fundamental rights under the Constitution of India under Article 14 and 21. Therefore, this petition is completely frivolous and without any legal basis and deserves to be dismissed.

WHEREFORE, the Hon'ble Court may be pleased to dismiss this present petition, with exemplary costs and direct the Petitioner to comply with the order dated 12.6.2020 passed by the Respondent No.2 Commissioner for Disabilities, in the interest of justice and equity.

Place: Bangalore

Date:

Counsel for Respondent No. 1