

Q & A



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Is there any prescribed age limit for retiring an employee in a Private company?

The Law does not prescribe the age at which a person in the private sector will retire. However, it is up to the company to make an employee policy or specify the age of retirement in the contract of employment. In the absence of such a policy or provision in the contract of employment, it may not be possible to retire an employee. The Bombay High Court (Goa Bench) in the case of *Sirsat Lodge vs. Mashnu Gawade* [2015 (5) ARB 152] held that if the contract of employment does not have an age of retirement, and, there is no employee policy with regard to the age of retirement, the employee is entitled to work till the time he is physically and mentally fit.

However, for those who are governed by the Standing Orders, it may be noted that the age of retirement is provided in the Industrial Employment (Standing Orders) Act, 1946 as 60 years. Further, it may also be noted that the Employees Provident Fund and Miscellaneous Provisions Act also provides for employer's contribution only up to the age of 60 years. However, the same does not prevent a person from carrying on employment after the age of 60.

Are the terminating terms for a workman and an employee holding the managerial and supervisory role

similar?

Dismissal from service of a workman or retrenchment comes within the purview of the Industrial Disputes Act, and the workman concerned may approach the labour court against dismissal from service. A workman does not include any person engaged in managerial or supervisory role and drawing more than Rs. 10,000 per month as salary. Further, a person should have completed at least 240 days of work in a year in order to qualify as a workman.

Are there any restrictions placed on the employment of women under the Factories Act?

Restrictions are placed on the closing hours for women as well as on giving them dangerous work. Therefore, subject to exemptions, no woman can be required to or allowed to work, whether as an employee or otherwise, in any establishment before 6 am and after 7 p.m. State governments may, for any factory or a group or class or description of factories, increase the working hours up to 10 pm. In other words, women cannot be required or allowed to attend work late in the evening. Similarly, no woman working in any establishment, whether as an employee or otherwise, can be required or allowed to perform work involving danger to her life, health or morals.

Adding Teeth To People With Disabilities

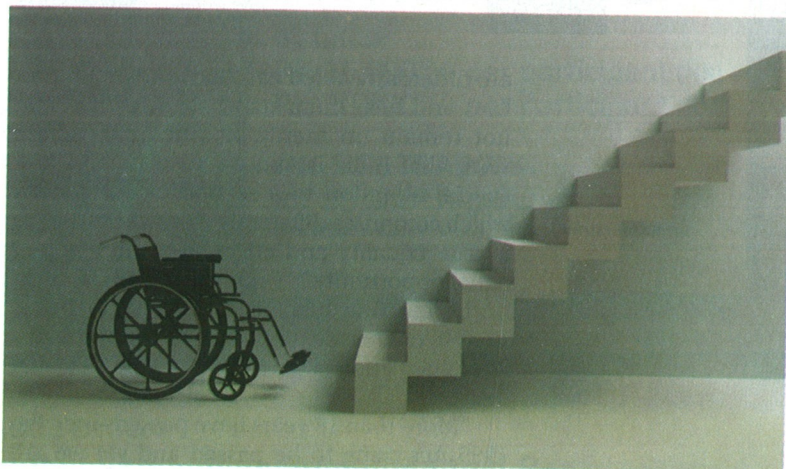
- BY KRISHNA VIJAY SINGH

The Parliament had passed the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 in the same year, whereby for the first time a specific law was enacted to ensure reservation of jobs in Government for persons living with disabilities. However, despite the passage of the law, the implementation of the same by the Central Government, State Governments and Union Territories was lax, and in fact, very little efforts were made to estimate the number of vacancies available, or, to identify the posts for disabled persons.

Concerned with the poor implementation of the 1995 Act, Justice Sunanda Bhandare Foundation filed a writ petition for the implementation of the provisions of the 1995 Act before the Supreme Court. The Foundation sought a declaration that the denial of appointment to the visually disabled persons in the faculties and colleges of various universities in the identified posts is violative of their fundamental rights guaranteed under Article 14 and 15 read with Article 41 of the Indian Constitution. While dealing with the writ petition *Justice Sunanda Bhandare Foundation vs. Union of India and Another* (2014) 14 SCC 383, the Court referred to its earlier decision in *Union of India and Another Vs National Federation of the Blind and Others* (2013) 10 SCC 772, wherein the court had issued directions to the appropriate governments to compute the number of vacancies available in all the establishments, and, to identify the posts for disabled persons within a period of three (3) months of the order, and, to implement the

same without default. In the said matter, the court had also observed that:

"Employment is a key factor in the empowerment and inclusion of people with disabilities. It is an alarming reality that the disabled people are out of job not because their disability comes in the way of their functioning, rather it is the social and practical barriers that prevent them from joining the work force. As a result, many disabled people live in poverty and in deplorable conditions. They are denied the rights to make a useful contribution to their own lives, and, to the



lives of their families and community."

In the said matter, the Court further stated that "Union of India, the State Governments and the Union Territories have a categorical obligation under the Constitution of India and under various International treaties relating to human rights in general and treaties for

disabled persons in particular, to protect the rights of disabled persons. Even though the Act was enacted way back in 1995, disabled people have failed to get required benefit until today."

The three judge bench in the Sunanda Bhandare Foundation matter thereafter observed as under:

"Be that as it may, the beneficial provisions of the 1995 Act cannot be allowed to remain only on paper for years thereby defeating the very purpose of such law and legislative policy. The Union, States, Union territories and of those upon whom obligation has been cast under the 1995 Act have to effectively implement it. As a matter of fact, the role of governments in the matter such as this has to be proactive. In the matter of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief oriented and not obstructive or lethargic. A little concern for this class who

was still seeking compliance, the Parliament repealed the 1995 Act and brought in The Rights of Persons with Disabilities Act, 2016 on account of India's commitment to the Convention of the United Nations General Assembly. The 2016 Act has been brought into existence to give effect to the Union Nations Convention on the Rights of Persons with Disabilities, and, for matters connected therewith or incidental thereto which was adopted by the United Nations General Assembly on December 13, 2006. The aforesaid Convention lays down principles for empowerment of persons with disabilities, such as (i) non-discrimination; (ii) respect of inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons; (iii) full and effective participation and inclusion in society; (iv) acceptance of persons with disabilities as part of human diversity and humanity; (v) equality of opportunity; (vi) accessibility (vii) equality between men and women etc.

In consonance with the Convention, the 2016 Act is a substantial improvement over the 1995 Act. It adopts the principles of the Convention and define barrier, discrimination, private establishment, etc. thereby expanding the horizon and the scope of the rights of differently abled persons. The 2016 Act also obligates the appropriate government to ensure that the persons with disabilities are provided access to justice without discrimination. It also envisages duty of educational institutions and lays down specific measures to promote and facilitate inclusive education, as also, vocational training and self employment. The Act also envisages provisions of social security, health, rehabilitation and recreation as well as reservation in higher educational institutions receiving aid from government. Besides identification of posts and reservation of post in government departments, the 2016 Act also obligates the government and local authorities (within the limit of their economic capacity and development), to provide incentives to employers in the private sector to ensure that atleast 5% of their work force is composed of persons with benchmark disability.

The implementation of the 2016 Act is also being monitored, and, it is hoped that the Union, State, Union Territories and local bodies etc who are obligated to ensure the implementation of the 2016 Act will implement the same in letter and spirit and the government would incentivise the private sector to ensure at least 5% of their workforce comprises of persons who are differently abled.



are differently abled can do wonders in their lives and help them stand on their own and not remain on mercy of others. A welfare state, that India is, must accord its best and special attention to a section of our society which comprises differently abled citizens. This is true equality and effective conferment of equal opportunity."

Proceeding further, the three (3) Judge Bench expressed its anguish on the non-implementation of the 1995 Act in the following manner:

"More than 18 years have passed since the 1995 Act came to be passed and yet we are confronted with the problem of implementation of the 1995 Act in its letter and spirit by the Union, States, Union territories and other establishments to which it is made available". Thereafter, the Court passed directions for implementation of 1995 Act without any delay and sought affidavits of compliance from the governments."

While the Court through its various orders