

* HON'BLE SRI JUSTICE R.KANTHA RAO

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+ W.P.Nos.35279 & 35256 of 2013, 7865,
27350, 25191 of 2014,

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%Dated 09.09.2015

Ch.Raja Reddy and others.

..... **Petitioners**

\$ The A.P.State Road Transport Corporation
rep., by its Managing Director, Musheerabad
and others.

.....

RESPONDENTS

! Counsel for Appellant : Sri A.Jagan
^ Counsel for Respondent : Sri K.Satyanarayana

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> HEAD NOTE:

? Cases referred

1. AIR 2010 SC 1253
2. 2012 (134) FLR 1022
3. (2007) ILLJ 9 Mad
4. (2003) 4 SCC 524

HON'BLE SRI JUSTICE R. KANTHA RAO
Writ Petition Nos. 35279 & 35256 of 2013, 7865, 27350
& 25191 of 2014

COMMON ORDER:

Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents.

2. In all these cases, the question arises for consideration is for coming under the purview of Section 47 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short 'the Act') whether the disability incurred by an employee has to be necessarily the one defined under Section 2 of the Act or any sort of disability.

3. The ancillary question which falls for consideration would be from what date the employee is entitled for the salary for the interregnum period.

4. It has been contended by the learned Standing Counsel appearing for the respondents-Corporation that unless the disability falls in any of the categories mentioned in Section 2 of the Act, the employee is not

entitled for the promotion as well as benefits conferred on him under Section 47 of the Act.

5. On the other hand, the learned counsel appearing for the petitioners submits that the disability which is mentioned in Section 47 of the Act is of wider amplitude and it covers any sort of disability which disables the employee in performing his duties.

6. Several authorities have been relied on by the learned counsel on either side.

7. Learned counsel appearing for the respondents Corporation relied on UNION OF INDIA v. DEVENDRA KUMAR PANT AND OTHERS^[1] wherein the Hon'ble Supreme Court dealing with the definition of disability, expressed the view that the disability for the purpose of promotion of an employee has to be the one which has been defined under Section 2 of the Act. The question which was considered by the Supreme Court was that an employee must be fit to discharge the duties in the promotional posts, otherwise he is not entitled for promotion to the said post even if he is disabled. Therefore, the said decision is not applicable to the present cases. The learned Standing Counsel for the respondents Corporation further placed reliance on the judgment of the Division Bench

of Delhi High Court in **HAWA SINGH v. DELHI TRANSPORT CORPORATION**^[2] wherein the Delhi High Court took the view that disability contemplated under Section 47 of the Act must be the disability which is defined under Section 2 of the Act but not each and every kind of disability. However, the Delhi High Court was dealing with the cases under Motor Vehicles Act in respect of payment of compensation to the persons who sustained disability and not with any alternative employment or other benefits conferred on the employee under Section 47 of the Disabilities Act. Further, the Division Bench decision of Madras High Court in **G. MUTHU v. THE MANAGEMENT OF TAMIL NADU STATE**^[3] was not brought to the notice of the Division Bench of Delhi High Court wherein the Division Bench of Madras High Court took a view that for the purpose of Section 47 of the Act, the disability need not be of categories mentioned in Section 47 of the Act but any type of disability which disables the employee from performing his duties.

8. The Division Bench of Delhi High Court did not follow the judgment of the Division Bench of the Madras High Court on the ground that there was earlier judgment of Division Bench of Delhi High Court to the effect that disability means which is mentioned

in Section 2 of the Act but not any disability.

9. In KUNAL SINGH v. UNION OF INDIA AND ANOTHER^[4], the Supreme Court has drawn a distinction between a person with disability and a person who had acquired disability while in service. The Supreme Court held at para 9 of its judgment as follows :

“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 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 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 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. In view of the language employed in Section 47

of the Act, 1995 if a person while in service acquires any sort of disability, the employer is under legal obligation to provide him alternative employment when he was declared unfit to do the job in which he was employed and he is capable of performing some other job.

11. Having gone through all the aforementioned judgments relied on by the learned counsel appearing on either side, I am of the considered view that the disability for the purpose of Section 47 of the Act is any kind of disability which disables the employee from performing his duties but the same cannot be confined to the disabilities mentioned in Section 2 of the Act. If it is confined to the disability mentioned to the disability mentioned to Section 2 of the Act, it would defeat the legislative intent in enacting Section 47 of the Act.

12. As regards the other question, this Court has already taken a view in some cases that for the purpose computing the interregnum period, during which the employee is entitled for the salary, the date on which the employee was initially declared unfit has to be taken into consideration. Therefore, in all these cases if the petitioners are not provided with any alternative employment, the respondents are directed to provide them alternative employment within a

period of two months from the date of receipt of a copy of this order and maintain the pay scale in the time scale of the post in which they were originally working and also pay them the salaries for the interregnum period from the date on which they were initially declared unfit till they were provided with alternative employment.

13. Accordingly, all the writ petitions are disposed of. There shall be no order as to costs. Miscellaneous Petitions, pending if any, shall stand closed.

JUSTICE R.KANTHA RAO

9th September, 2015
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Note: LR Copy to be marked.

[\[1\]](#) AIR 2010 SC 1253

[\[2\]](#) 2012 (134) FLR 1022

[\[3\]](#) (2007) ILLJ 9 Mad

[\[4\]](#) (2003) 4 SCC 524