

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

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For the State of Telangana and the State of Andhra Pradesh

WP Nos.25577 of 2014, 33637 of 2014, 20101, 20479 and 22507 of 2015

Between:

B.R. Reddy

.. Petitioner(s)

And

APSRTC and others

.. Respondent(s)

DATE OF JUDGMENT PRONOUNCED: 23.7.2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE R. KANTHA RAO

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| 1. Whether Reporters of Local news papers
may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals | Yes/No |
| 3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? | Yes/No |

THE HON'BLE SRI JUSTICE R. KANTHA RAO

WP Nos.25577 of 2014, 33637 of 2014, 20101, 20479 and 22507 of 2015

Common Order:

In all the writ petitions, the petitioners are working as employees in the respondent-Corporation. When they were examined by the doctors of the respondent-Corporation, during the periodical medical examination, they were found to have been suffering from visual disability/colour blindness. Ultimately, the respondent-Corporation by the impugned orders declared the petitioners herein as unfit to continue in service and retired them as such.

In all the writ petitions, the main contention urged on behalf of the petitioners is that they got colour blindness which is a disability and they are

entitled for alternative employment and therefore the respondent-Corporation ought not to have retired them from service.

On the other hand, learned Standing Counsel appearing for the respondent-Corporation contended that colour blindness is not a disability as defined under section 2 of the Persons with Disabilities (Equal Opportunities) Protection of Rights and Full Participation Act, 1995 (for short “the Act 1995”) and therefore they are not entitled for any employment and were rightly retired from service by the respondent-Corporation on their becoming unfit to discharge the duties.

The sole question which is to be addressed in these writ petitions is if a person acquires “colour blindness” which is not specifically covered under

the definition of disability under the provisions of the Act 1995, can he be provided with alternative employment in terms of section 47 of the Act 1995.

Section 47 of the Act of 1995, to the extent relevant, reads as under:

“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.

.....”

Learned Standing Counsel appearing for the respondents placed reliance on the judgment of the Supreme Court reported in **UNION OF INDIA v. DEVENDRA KUMAR PANT AND OTHERS** ^[1], wherein the Supreme Court held as follows:

“ 13. 'Blindness' is a disability defined in clause (b) of

section 2 and refers to (i) total absence of sight or (ii) visual acuity not exceeding 6/60 or 20/200 (swollen) in the better eye with correcting lenses; or (iii) limitation of the field of vision subtending an angle of 20 degree or worse. 40% disability referred to in Section 2 (t) to identify persons with disabilities, will apply to categories (ii) and (iii) of section 2(b) but will be irrelevant in regard to persons with total absence of sight falling under category (i) of section 2(b). Section 2(u) defines a "person with low vision" as "a person with impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device". Lack of colour perception is neither blindness nor low vision and is therefore apparently not a disability under the Act. It is therefore, doubtful whether a person lacking colour perception can claim to be a person entitled to any benefit under the Act. Be that as it may. We will examine the issue assuming that respondent is a person with disability."

The Supreme Court **DEVENDRA KUMAR**

PANT's case (1 supra) categorically held that "Lack of colour perception is neither blindness nor low vision and is therefore apparently not a disability under the Act". The Supreme Court also held that it

is doubtful whether a person lacking colour perception can claim to be a person entitled to any benefit under the Act. That apart in that case the Supreme Court was dealing with the issue as to promotion of an employee who acquired colour blindness and not fit to discharge the duties on promotion. Therefore, the ratio laid down in that case cannot be directly made applicable to the facts of the present case.

In the instant case, the issue requires to be examined is as to whether if a person acquires disability of whatever nature while in service and becomes unfit to discharge the post he had been performing is entitled for alternative employment under Section 47 of the Act 1995. In this context, it would be relevant to refer to the judgment of the

Supreme Court in **KUNAL SINGH v. UNION OF**

INDIA AND ANOTHER^[2]. In the said case, 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.”

In view of the language employed in Section 47 of the Act, 1995 that a person who 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. However, the learned Standing Counsel has brought to the notice of this Court a circular issued by the respondent corporation on 28.11.1981. As per the said circular in case a driver who is declared unfit due to colour blindness, as far as possible day duties be allotted to such driver subject to availability of such duties at the depots, without disturbing the existing schedules. If there is no possibility of providing day duties, he shall be offered alternative job of direct recruitment post (lower post or equivalent post and not higher post) subject to availability of vacancy, suitability to hold the post and also subject to medical fitness. Therefore there need not be any doubt in regard to the fact that if a driver working in the Corporation acquires colour blindness, he is

entitled for alternative employment in terms of section 47 of the Act 1995, which is also made clear by the Supreme Court in **KUNAL SINGH**'s case (2 supra).

For the foregoing reasons, it is not possible for this Court to accept the contention urged by the learned Standing Counsel for the respondents that colour blindness is not disability as defined under section 2 of the Act, 1995 and the petitioners are not entitled for any alternative employment. The writ petitions are therefore must succeed. The impugned orders passed by the respondent-corporation retiring the petitioners from service are set aside and the respondents are directed to provide alternative employment to the petitioners. Accordingly, the writ petitions are allowed.

Miscellaneous Petitions, pending if any, shall
stand closed. No costs.

JUSTICE R. KANTHA RAO

Dated: 23-7-2015
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THE HON'BLE SRI JUSTICE R. KANTHA RAO
WP Nos.25577 of 2014, 33637 of 2014, 20101, 20479 and 22507 of 2015

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[\[1\]](#) AIR 2010 SUPREME COURT 1253
[\[2\]](#) (2003) 4 Supreme Court Cases 524