

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.1723 of 2012

Between:

Sk.Sharfuddin

.. Petitioner

And

The Regional Manager, A.P.S.R.T.C., Secunderabad Region, JBS, Picket, Secunderabad, Andhra Pradesh and another.

.. Respondents

This Court made the following:-

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ORDER:

Petitioner, while working as Driver in the respondent Corporation, was medically examined by the Medical Officer of the respondent Corporation hospital at Tarnaka, Hyderabad and was declared as unfit for A1 category vide his Medical Certificate dated 29.06.2007. On declaring him as unfit to perform the duties, he was not assigned duties. Aggrieved by the report of the Medical Officer declaring him as unfit, the petitioner preferred appeal. The appellate Medical Board has examined the

petitioner and it also declared him as unfit. The report of the appellate Medical Board is dated 30.08.2007. Left with no option, the petitioner wanted to leave the service and accordingly, gave a declaration that he would not be seeking any employment in future. Accepting his request, orders were passed on 06.09.2007 retiring the petitioner from the service of the Corporation with effect from 30.08.2007.

2. The benefits payable on account of such retirement without providing alternative employment were actually settled and paid by way of cheque dated 11.09.2009. Petitioner instituted this writ petition contending that he is entitled to salary for two months period i.e., July and August, 2007 when he was kept out of work before retiring him from service and to pay interest on the additional monetary benefits he was entitled to but actually paid two years after the retirement.

3. Learned counsel for the petitioner submits that there was no justification for the inordinate delay in making the payments of amounts due more particularly, when the petitioner opted out from taking alternative employment on his retirement on account of medical invalidation. The amounts due were paid after more than two years depriving him the opportunity to utilise the amounts for his urgent requirements immediately after his retirement. On account of inordinate delay in payment, the petitioner was subjected to lot of suffering and hardship.

4. Learned counsel for the petitioner further contends that for no fault of the petitioner, after he was declared as unfit by the Medical Officer on 28.06.2007, he was kept out of employment till he was actually retired from service; the entire period has to be treated as on duty and petitioner is entitled for payment of salary and allowances for the period from 28.6.2007 to 30.8.2007.

5. Learned Standing Counsel representing the respondent Corporation states that once a person is declared as unfit to perform duties, he would be put off duty till a decision is taken regarding his retirement from service and the said period would be treated as Earned Leave to the extent eligible and rest of the period would be adjusted with regard to other leave accounts and accordingly, the absence of the petitioner from 29.6.2007 till he was retired was treated as on leave and the same is in accordance with the procedure envisaged by the respondent Corporation in all

such cases and he, therefore, submits that no exception can be given in case of the petitioner.

6. Learned Standing Counsel further submits that delay in payment of the amount was not deliberate and wilful and the delay has been occasioned in processing the file within the organisation and therefore, the petitioner is not entitled to any claim for interest.

7. Learned Standing Counsel endeavoured to persuade the Court by contending that Section 47 of the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, "the Act") do not come to the rescue of the petitioner inasmuch as petitioner did not opt for alternative employment.

8. The issue of treatment of period when an employee was put off duty fallen for consideration before this Court in W.P.Nos.22269 of 2012 and W.P.No.12819 of 2014. In identical circumstances, this Court held in W.P.No.22269 of 2012 that denying the salary of the petitioner therein and attendant benefits for the period that he was kept out of service and adjusting as leave cannot be countenanced. Directions were accordingly issued. W.A.No.739 of 2013 preferred against the decision of the learned Single Judge in the above writ petition was dismissed. Following the said decision, W.P.No.12819 of 2014 was allowed. In view of the above decisions, the claim of the petitioner merits consideration.

9. Section 47 of the Act vests right in the disabled person to secure alternative job with the same employer once he is declared unfit to perform his duties of post he was holding. It also mandates the protection of last pay drawn in any other alternative job provided to him. This section does not deal with payment of compensation in lieu of employment whereas the scheme envisaged by the R.T.C. provides payment of compensation in lieu of alternative employment. The petitioner did not absent from duty. He was not allotted work after the report of Appellate Medical Board and thereafter decision to retire him was taken. Till such decision

was taken, petitioner was not allotted work. Thus, the employer having not entrusted the work to petitioner, employer cannot deny the petitioner salary and allowances payable to the said period. Therefore, the contention of the learned Standing Counsel merits no consideration and in view of the decisions of this Court referred to above, petitioner is entitled for treatment of period from 28.06.2007 to 30.08.2007 as on duty and for payment of pay and allowances payable for the period in the category of driver.

10. Though the petitioner retired from service by proceedings dated 06.09.2007 and has opted out from taking alternative job, there is a delay of more than two years in payment of compensation in lieu of alternative job. Explanation given for this delay in para No.4 of the counter-affidavit is that on scrutiny of the papers for payment of amount, the competent authority returned the file with the objection that the petitioner was not examined by the Medical Committee. However, after prolonged correspondence within the administrative hierarchy of the Corporation, payment was sanctioned and released.

11. The above averment would clearly show that petitioner was not responsible for the delay. Furthermore, the petitioner was initially examined by the Medical Officer of the hospital run by the respondent Corporation. The Corporation has not doubted the medical certificate issued by the Medical Officer declaring the petitioner as unfit whereas on a challenge made by the petitioner, he was examined by the Medical Board and Medical Board affirmed the decision of the Medical Officer. The report of the Medical Board has been accepted and the petitioner has been retired from service on the ground of medical invalidation by proceedings dated 06.09.2007. Thus, for no justifiable reason, the amounts payable to the petitioner in lieu of alternative job were delayed for more than two years. For no fault of the petitioner, he was subjected to harassment and humiliation for more than two years to receive the amounts he is legally entitled to receive and therefore, there is merit in the claim of the petitioner to grant interest for the delayed payment of amounts due to him.

12. Accordingly, the Writ Petition is allowed. The respondent Corporation is directed (i) to treat the period from 28.6.2007 to 30.8.2007 as on duty and shall pay the pay and allowances payable to the driver, for the said period; and (ii) to pay interest for

the delayed payment of amounts. The interest payable shall be applicable interest on fixed deposits in a nationalised bank. Such interest shall be paid for the period from 01.09.2007 to 11.09.2009. The amounts due as above shall be paid within a period of two (2) months from the date of receipt of a copy of this order. There shall be no order as to costs.

13. Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 02.11.2015

AMD

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DATE: 02.11.2015

