

HON'BLE SRI JUSTICE R. KANTHA RAO

Writ Petition No.16741 of 2015

ORDER:

Heard Sri P. Govindarajulu, learned counsel appearing for the petitioner and Sri A.Ravi Babu, learned standing counsel appearing for the respondents-Corporation.

2. According to the petitioner, while he was working as a driver, the 3rd respondent directed him to appear before the APSRTC Medical Officer for periodical medical examination. The Medical Officer, who examined him, issued a certificate dated 26.09.2013 declaring him unfit for the post of driver due to defective vision. The version of the petitioner is that though the Medical Officer of APSRTC Hospital declared him unit by certificate dated 26.09.2013, the 3rd respondent forcibly obtained a letter from him and directed him to appear before the Appellate Medical Authority i.e., Superintendent, APSRTC Hospital, Tarnaka for re-medical examination. Then the Superintendent of APSRTC Tarnaka Hospital examined and confirmed the same by certificate dated 16.06.2014. Subsequently, the petitioner was provided alternative appointment on 09.02.2015. The petitioner filed the present writ petition seeking payment of salaries and other attendant benefits due to him on account of his becoming medically unfit from the date he became unfit till the date he was provided alternative job as a Record Tracer as per Section 47 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short 'the Act'). Thus the petitioner seeks a direction to the respondents to extend all the service benefits to him for the period during which he was out of employment on account of disability, including annual increment etc.

3. Section 47 of the Act 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;

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.”

4. From the provisions of the Act, it is clear that the Act accords complete protection to the employee, who sustained disability. Sub-section (1) of Section 47 specially states that no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during the service. Therefore, the provisions of Section 47 of the Act are mandatory and they operate notwithstanding any rules or regulations governing the service conditions of the employee. Hence, this court is of the considered view that the seniority of the petitioner shall be maintained in the cadre in which he was working prior to acquiring disability and the same shall be continued and considered for promotion and for all other service benefits. Thus, even if the petitioner in the instant case was provided alternative employment as a Record Tracer, his seniority shall be maintained in the cadre of driver and all the service benefits shall be counted as if he was working in the cadre of driver.

5. It is settled law that the petitioner is entitled for the salary in the interregnum period i.e., when he was declared medically unfit and

till the date on which he was provided alternative employment. Learned standing counsel appearing for the respondents-Corporation would contend that though in the periodical medical examination, the petitioner was found unfit vide certificate dated 26.09.2013 issued by the Medical Officer, but he was finally declared unfit by the Appellate Medical Authority i.e., Superintendent, APSRTC Hospital, Tarnaka by certificate dated 16.06.2014 and therefore, the petitioner is entitled for the salary from the period from 16.06.2014 to 09.02.2015 and not from 26.09.2013. I am not in acceptance with the argument advanced by the learned standing counsel for the Corporation. The petitioner was initially declared as unfit on 26.09.2013, which means on the said date he was found to have incurred disability. The disability continued till the Appellate Medical Authority confirmed by its certificate 16.06.2014. Since the disability found in the initial medical examination was confirmed by the Appellate Medical Authority, for the purpose of providing wages, the interregnum period commences from 26.09.2013 onwards but not from 16.06.2014.

6. Under the above circumstances, the writ petition is disposed of directing the 2nd respondent to maintain the seniority of the petitioner in the post in which he was working prior to incurring disability i.e., in the cadre of driver and provide all service benefits accordingly notwithstanding, the fact that he is now discharging his duties in the post of Record Tracer and also pay him the salaries for the interregnum period i.e., from 26.09.2013 to 09.02.2015, as if he is in the cadre of driver, within a period of eight (8) weeks from the date of receipt of a copy of this order. Miscellaneous applications, if any, in this writ petition, shall stand closed. No order as to costs.

R. KANTHA RAO, J

Date: 13.07.2015
BSS

HON'BLE SRI JUSTICE R. KANTHA RAO

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