

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

WRIT PETITION NO.14490 OF 2005

DATED 08th OCTOBER, 2015

Between:

Ch.T.Rao .. Petitioner

and

Andhra Pradesh State Road Transport Corporation,
Musheerabad, Hyderabad, and others .. Respondents

THE HON'BLE SRI JUSTICE SANJAY KUMAR

-

WRIT PETITION NO.14490 OF 2005

ORDER

The grievance of the petitioner was that the Andhra Pradesh State Road Transport Corporation (APSRTC) did not provide him employment in terms of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full

Participation) Act, 1995 (for brevity, 'the Act of 1995'). He sought a consequential direction to the APSRTC to provide him alternate employment with all consequential benefits and other service benefits.

The petitioner worked as a Driver in the service of the APSRTC. He developed defective distant vision in the right eye and was found unfit to continue in the post of a Driver. He was placed under long leave for a period of one year with effect from 10.01.2004, under the proceedings dated 19.01.2004 of the Depot Manager, APSRTC, Srikakulam-II. On 10.01.2005, the APSRTC issued proceedings holding the petitioner unfit for the post of Driver and retired him from service with immediate effect. Aggrieved thereby, he approached this Court by way of the present writ petition.

By order dated 06.07.2005, this Court directed the APSRTC to take the petitioner back into service and provide him alternative employment forthwith.

The APSRTC filed a counter through its Law Officer stating that pursuant to the interim order dated 06.07.2005, the petitioner was appointed as a Shramik at its Palasa Depot. There is however no explanation forthcoming from the counter as to why the APSRTC failed to abide by the statutory mandate of Section 47 of the Act of 1995.

Pertinent to note, Section 2(h) of the Act of 1995 defines disability to mean, amongst others, 'low vision' also. A Division Bench of this Court had occasion to consider the scope and impact of Section 47 in relation to the APSRTC in ***APSRTC REP. BY ITS MANAGING DIRECTOR, MUSHEERABAD, HYDERABAD V/s. K.MOSES***. Therein, the Division Bench observed that the employer is under an obligation to look for suitable alternative employment for providing the same to the person who acquired the disability and so long as the APSRTC, on its own and with reasonable expedition, does not provide alternative employment to a person who has been assessed by it as not being suitable for the post against which he was employed, the burden does not get discharged. The statutory mandate of Section 47 of the Act of 1995, as explained by the Division Bench *supra*, therefore required the APSRTC to provide suitable alternate employment to the petitioner upon his being found unfit to continue as a Driver. Ignoring this statutory obligation visited upon it by Section 47 of the Act of 1995, the APSRTC chose to place the petitioner under long leave for a period of one year and thereafter terminated him from service altogether.

Section 47 of the Act of 1995, in fact, required that if a suitable post was not available for the petitioner, he should be kept on a supernumerary post until a suitable post was found. This being the obligation visited upon the APSRTC by the statute, its actions were clearly contrary to the mandate. The petitioner ought not to have been placed under leave forcibly or thrown out of service.

Though the petitioner has been reinstated in service in an alternate post, the fact remains that he was denied employment for over two years. It is no doubt true that the petitioner did not render any services to the APSRTC during this period but this was not through any fault of his but because of the APSRTC's own illegal actions. He cannot therefore be penalized for the same. Section 47 of the Act of 1995 required the APSRTC to immediately accommodate the petitioner in alternate suitable/supernumerary post upon his being found unfit for the post of driver and as the APSRTC failed to do so, it would necessarily have to bear the consequences thereof.

The writ petition is accordingly allowed directing the APSRTC to treat the petitioner as having continued in service without a break and remit the salary payable to him from 10.01.2004 up to 17.01.2006 within two months from the date of receipt of a copy of this order. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

08th OCTOBER, 2015

PGS