

* HON'BLE SRI JUSTICE R.KANTHA RAO

+ Writ Petition No.16422 of 2015

% 01-7-2015

J.Balagangadhara Reddy

... Petitioner

Vs.

\$ APSRTC, Rep. by its MD, Bus Bhavan,
Mushsirabad, Hyderabad-500 624;
and 3 others

... Respondents

! Counsel for the Petitioner: Sri A.G. Satyanarayana
Rao

Counsel for Respondents 1 to 4: Sri A.Rama Rao,
Standing Counsel.

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> Head Note:

? Cases referred:

1. (2003) 4 SCC 524

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.16422 of 2015

Date: 01-7-2015

Between

J.Balagangadhara Reddy

... Petitioner

and

APSRTC,
Rep. by its MD,
Bus Bhavan, Mushirabad,
Hyderabad-500 624;
and 3 others

... Respondents

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.16422 of 2015

Order:

Heard Sri A.G. Satyanarayana Rao, learned counsel
appearing for the petitioner and Sri A.Rama Rao, learned
Standing Counsel for the respondents 1 to 4-
Andhra Pradesh State Road Transport Corporation

(the Corporation, for short).

2. The petitioner is a driver appointed on 11-02-1997 on daily wage basis. His services were regularised on 01-01-1998. While performing duty on the bus of the Corporation, the petitioner suffered a fracture to his right leg on 25-6-2011 as the bus met with an accident. The petitioner took treatment for a period of 5 months at the APSRTC Hospital, Tarnaka. He was subsequently examined by the Senior Medical Officer, APSRTC Dispensary, Tirupathi and was declared unfit for the post of driver vide Medical Certificate dated 02-12-2011. The Senior Medical Officer, however, opined that the petitioner has to be directed to appear before the APSRTC Medical Board at Hyderabad for its opinion.

3. The petitioner submitted a representation dated 02-12-2011 to the respondents-Corporation for providing him an alternative post of Record Tracer. Subsequently, the petitioner was examined at the APSRTC Hospital, Tarnaka and was found unfit for the post of driver in the Medical Appeal on 13-12-2011. The petitioner was further examined by the Medical Board, APSRTC Hospital, Tarnaka on 12-01-2012 and was found unfit for the post of driver. The Medical Board, however, opined that the petitioner is fit for alternative employment. Again, the petitioner submitted representations dated 27-12-2011 and 28-01-2012 to provide him the alternative

post of Record Tracer. In consideration thereof, the petitioner was appointed as Record Tracer on 23-4-2013.

4. The grievance of the petitioner is that though alternative employment was given to the him, his Pay Scale was not fixed in the cadre of Driver Grade-II and his service conditions have not been protected in the post of driver as per Section 47(1) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (the Act, for short).

It is further submitted by him that after appointing him in the alternative post of Record Tracer, the annual increments which are required to be paid to him considering him to be in the Pay Scale of Driver Grade-II have not been paid to him. It is also submitted by him that the salary from 02-12-2011 the date on which he became medically unfit till 23-4-2013 the date of providing alternative employment was not paid to him.

5. Under the aforesaid circumstances, the petitioner filed W.P.No.33979 of 2014 in this Court against the respondents and this Court disposed of the writ petition by order dated 12-11-2014 directing the respondents to protect the Pay Scale of the petitioner in the cadre of Driver Grade-II, pay the salary for the interregnum period and maintain the notional seniority for the purpose of promotion etc., as laid down in the order in W.P.No.22472

of 2012 which was upheld by the Division Bench in W.A.No.696 of 2013 and pass appropriate orders.

6. After passing of the order by this Court in W.P.No.33979 of 2014, the 2nd respondent-Regional Manager passed an order stating that in the appointment order whereunder the petitioner was given alternative employment, it is specifically mentioned that his seniority will be reckoned in the post of Record Tracer as and when he reports for duty as Record Tracer. It is further mentioned in the order that once the seniority is fixed in the post of Record Tracer, his past seniority in the pre-categorized post of Driver Grade-II becomes automatically ceased and the question of continuing his seniority in the post of Driver Grade-II does not arise. Further, it is mentioned that the post of Assistant Depot Clerk (ADC) is being filled from among the Drivers Grade-I by transfer and by promotion from the Drivers Grade-II to the extent of the availability of posts and reservations and roaster points for which the drivers who are in active service as drivers and physically discharging the duties of drivers are only eligible whereas the drivers appointed on alternative employment in the other category posts are not entitled for such promotion since their seniority in the post of driver is deleted once they are appointed in the alternative post.

7. It is stated as regards the payment of wages

during the interregnum period that since the driver was under medically unfit and not attended work till finalization of the case by the Medical Board, wages cannot be drawn and paid under the policy '*no work no pay*'. According to the 2nd respondent, while working in one particular cadre of post, even though the pay is protected in the earlier post, wages can only be drawn in his present time scale, otherwise it tantamounts to violation of APSRTC Employees' Pay and Allowances Regulations, 1964. It is said that since the petitioner's pay is protected as per the Service Regulations in force and absorbed in the time scale of Record Tracer only, his seniority in the post of Record Tracer will be continued from the date of his reporting as Record Tracer as per the Office Order dated 16-02-2012.

8. The learned Standing Counsel for the respondents-Corporation submits that the order passed by the 2nd respondent-Regional Manager is in accordance with the service conditions governing employees of the Corporation and therefore, the same cannot be found fault with.

9. I have gone through the proceedings issued by the 2nd respondent-Regional Manager, dated 13-4-2015. The said proceedings are not in conformity with the order passed by this Court.

10. In this connection, it is necessary to extract Section 47 of the Act, which 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 employees 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.”

11. The provisions of Section 47 of the Act are mandatory. The Section lays down specifically that no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service. It also further lays down that no promotion shall be denied to a person merely on the ground of his disability.

12. The Hon’ble Supreme Court in **KUNAL SINGH v. UNION OF INDIA**^[1] has laid down as under:

“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.”

13. Thus, complete protection is given under the Act to an employee who acquires the disability during his service. Any rules governing the services of employees of the respondents-Corporation cannot override the statutory provisions. Thus, Section 47 of the Act operates notwithstanding any rules governing the employees of the respondents-Corporation and it has overriding effect. The provisions of the Act as well as the judgment of the Supreme Court in **KUNAL SINGH**

(1 *supra*) clearly indicate that the service of an employee who has acquired disability shall be protected completely. Therefore, in the considered opinion of this Court, even if the petitioner after acquiring disability is provided

alternative post, in a lower cadre, his pay scale in the original post which he was holding has to be maintained. As Section 47 of the Act provides for protection in respect of the pay scale, service benefits and also promotion even if the petitioner is discharging duties in a lower cadre, the Corporation has to consider the case of the petitioner for promotion as if he is working in the original post.

14. In the instant case, the promotional post for the petitioner, who is a driver, is Assistant Depot Clerk. If he acquires the seniority and eligibility to be promoted to the post of ADC by virtue of the provisions of Section 47 of the Act, it is obligatory on the part of the Corporation to consider the case of the petitioner for promotion as ADC if he is able to discharge the duties of ADC and he has the requisite qualifications for the post. Even though after being declared unfit for the post of the driver, he is working in the alternative post of record tracer which is lower in rank. I am not in acceptance with the contention urged by the learned Standing Counsel for the respondents-Corporation that Section 47 of the Act only protects the petitioner in respect of payment of salary but not in any other respects. Further, after receiving the injury which resulted in disability, the period during which the petitioner was “out of duty” shall be treated as the “period on duty” for payment of salary and no leaves earned by the employee

can be adjusted to the said period.

15. Another important aspect is that from which date the petitioner is entitled for the wages between the period of incurring disability and acquiring alternative employment. It has been argued that when the Medical Board of the Corporation ultimately declares the petitioner as unfit for the post he was doing, it has to be taken as a crucial date for payment of wages in the interregnum period. I am not in acceptance with the said contention. The period shall be computed from the date on which the petitioner was initially found medically unfit by the authorities of the hospital run and managed by the Corporation and ultimately, if it is confirmed by the Medical Board in the subsequent examinations. Therefore, though the petitioner was provided alternative employment of Record Tracer, the Corporation is under obligation to maintain his seniority in the post of Driver Grade-II and consider his case for promotion at the time when he becomes eligible for promotion by counting his seniority in the cadre of driver as such. In the instant case, the petitioner is entitled for the salary from 02-12-2011 i.e. the date on which the Senior Medical Officer, Corporation Dispensary, Tirupathi found him unfit for the post of driver till the date of 23-4-2013 when he was provided with alternative employment. The said period shall be treated as the "period on duty" and no

leaves earned by the petitioner shall be adjusted towards the period of absence during which he became unfit on account of disability.

16. For the foregoing reasons, the writ petition is allowed. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

R.KANTHA RAO, J.

01st July, 2015.

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Note:-

L.R. Copy to be marked.

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HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.16422 of 2015

01st July, 2015.
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[\[1\]](#) (2003) 4 SCC 524