

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION NO. 3826 OF 2011

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ORDER:

The petitioner herein who is employed as a driver with the A.P.S.R.T.C sought for a *Writ of Mandamus* for declaring the action of the respondents herein in retiring the petitioner from service without providing alternative employment and also insisting the petitioner to refund certain benefits, in case he solicits alternative employment, as illegal.

The case of the petitioner is that, the petitioner was employed as a driver with the A.P.S.R.T.C in the year 1989 onwards. As is required, all the drivers of the Corporation will be subjected to periodical medical examination. Since the petitioner is afflicted with Epilepsy (fits), a neurological disorder, the Medical Officer declared the writ petitioner as unfit for the driver's job. Based upon the opinion tendered by the Medical Officer, the Depot Manager retired the petitioner from service on 06.04.2009 without providing any alternative employment. Since, there are several posts such as helper, cooking clerk or similar posts available in the Corporation, the petitioner expressed his desire that he is willing to join the alternative employment. Such a request has not been conceded to. Hence, this writ petition.

The Law Officer attached to the Corporation filed a detailed counter affidavit. It is admitted in paragraph 3 thereof that the petitioner was appointed as a driver in the services of the Corporation on 16.02.1989. But however, the Medical Officer at the Tarnaka Hospital of the Corporation who examined him declared him unfit for A-1 Category post of driver. Accordingly, Medical Certificate No.141289 dated 31.10.2008 is issued declaring the petitioner unfit to function as a driver in view of the neurological disorder he is suffering from. As per the policy of the Corporation, the petitioner was then subjected to re-medical examination on 29.12.2008. The Superintendent and Chief Medical Officer, Tarnaka by his letter dated 26.03.2009 informed the Chairman, Medical Committee that the petitioner is unfit for the post of driver in A-1 category as per the medical standards prescribed by the Corporation. Accordingly, the Depot Manager retired the writ petitioner from service on

06.04.2009 on medical grounds. It appears, the petitioner has submitted a representation on 18.04.2009 seeking voluntary retirement on medical grounds and for settlement of his terminal benefits. It is stated therein that the petitioner is not interested in any alternative post. In view of the representation submitted by the petitioner that he is not interested in alternative employment, he was settled all the terminal benefits which worked out to a sum of Rs.6,26,078/-. After affecting legitimate deductions of Rs.84,691/- therefrom, the balance amount of Rs.5,41,387/- was settled and paid to the petitioner. This included the A.M.B.F benefit of Rs.3,10,230/-.

The bone of contention between the parties was, as to whether the petitioner is entitled to retain the retrial benefits and also seek an alternative employment. The learned counsel for the petitioner has placed a strong reliance upon the judgment rendered by a Division Bench of this Court in W.A.No.1153 of 2010, which was decided on 14.11.20 by this Court. Incidentally, A.P.S.R.T.C is the first appellant therein. The Division Bench after examining the backdrop in which the Indian Parliament enacted The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, has noticed the contours of the provision contained under Section 47 of the said Act. The Bench has also noticed the principle enunciated by the Supreme Court in **Kunal Singh vs. Union of India** and held that the provision contained in Section 47 of the Act is a comprehensive one, but not a contingent one. It was also set out that an obligation is cast on the part of the employer to protect an employee who acquired disability during his service. Incidentally, I am one of the members of the Division Bench and even otherwise, I am bound by the Judgment of the Division Bench in this regard.

Learned counsel for the petitioner has drawn attention of this Court to the fact that the petitioner has since been provided an alternative employment and he has also been functioning as such. Therefore, all that I need to declare in this writ petition is that the petitioner is fully entitled to the benefit of declaration set out and contained in the judgment in W.A.No.1153 of 2010.

Accordingly, the writ petition stands disposed of, after hearing the learned Standing Counsel Sri A. Rama Rao.

Consequently, miscellaneous applications pending if any shall also stand closed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

30.04.2015

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