

HON'BLE SRI JUSTICE R. KANTHA RAO

Writ Petition No.23380 of 2015

ORDER:

Heard Sri P. Sridhar Rao, learned counsel appearing for the petitioner and Sri S.V. Ramana, learned standing counsel for respondent-Corporation.

2. In pursuance of the Notification dated 25.10.2011 issued by the Corporation, the petitioner applied for the driver post under ST back-log vacancy and he was selected by the duly constituted selection committee and was appointed on 16.05.2012 as a driver on contract basis. Since then, he was working in the Corporation, till he was terminated by order dated 13.11.2014. During the periodical medical examination, the petitioner was declared medically unfit on account of partial colour blindness vide medical certificate dated 14.04.2014. In the appeal, the Medical Board also confirmed that the petitioner became unfit to discharge the duties of the driver. Thereafter, the Corporation issued impugned proceedings terminating the petitioner from service and also stating he being a contract employee is not eligible for alternative employment or additional monetary benefits. Challenging the said order, the present writ petition is filed to set aside the impugned order dated 13.11.2014 and consequently to direct the respondents to provide suitable alternative employment to the petitioner with all consequential benefits, including payment of salary from the date on which he was medically unfit till the date of providing alternative employment.

3. The respondent-Corporation filed counter-affidavit *inter-alia* contending that since the petitioner is not a regular employee of the Corporation, he is not entitled for alternative employment or additional monetary benefits as per the Standing Instructions of the Corporation.

According to them, colour blindness is not a disability within the meaning of Section 2(i) of the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short 'the Act, 1995') and therefore, he is not entitled for any alternative employment. It is contended that as per Regulation 5B of the APSRTC Service Regulations, the petitioner is not entitled for any benefits under the provisions of the Act 1995, but he is entitled only for additional monetary benefits and sought for dismissal of the writ petition.

4. The question, whether the person, who acquires colour blindness, is entitled for alternative employment, was considered by this court in WP No.25577 of 2014 & batch. By a common order dated 23.07.2015, this court after going through the several judgments relied on by the learned counsel on either side, including the decision of the Supreme Court in '**Kunal Singh vs. Union of India & another**' [(2003)4 SCC 524], arrived at the decision that in view of the language employed in Section 47 of the Act 1995, the person who in service acquires any sort of disability, the employer is under legal obligation to provide him alternative employment when he was declared unfit to do the job in which he was employed and he is capable of performing some other job. This court took a view that since Section 47 of the Act 1995 is mandatory, any Circular or Regulation, which runs contrary to the provisions, cannot be taken into consideration while dealing with the cases in the light of the provisions of the Section 47 of the Act 1995.

5. The other question raised by the learned standing counsel appearing for the Corporation is that since the petitioner is a contract employee, he is not entitled for the benefits of Section 47 of the Act 1995. According to the learned standing counsel, only the regular employees of the Corporation are entitled for the benefits under the above Section.

6. Section 47 of the Act, 1995 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.”

7. The Legislature enacted Section 47 of the Act 1995 is to accord complete protection to the employees, who acquire disability while in service. In the considered opinion of this court, the words ‘service’ used in Section 47 of the Act 1995 has to be given a wider meaning, including the service of each and every employee. Thus, even if an employee working on temporary basis or contract basis, the provisions of the Act 1995 would apply to such employees also and therefore, there is no force in the contention of the learned standing counsel that the provisions of Section 47 of the Act are applicable only to the regular employees of the Corporation. For the purpose of extending benefits to the employees on account of disability sustained by them while in service, the service need not be that of only regular employees and the provisions of the Act 1995 equally apply to the temporary employees or the employees working under contract basis.

8. For the foregoing reasons, the impugned termination orders dated 13.11.2014 issued by the 3rd respondent are set aside and the respondent-Corporation is directed to provide alternative employment to the petitioner, which he is able to perform, protecting the pay and allowances in the pay scale of driver and also considering his seniority in the post of driver for all other consequential benefits, though he is provided alternative employment in the lower cadre. Further, it is clarified that the Corporation shall pay the salary to the petitioner for the interregnum period i.e., the date on which he was initially declared

as medically unfit by the Medical Officer, till the date of providing alternative employment. The Corporation is directed to complete the entire exercise including providing of alternative employment to the petitioner, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

9. The writ petition is accordingly allowed. No order as to costs. Pending miscellaneous petitions, if any, in this writ petition shall stand closed.

R. KANTHA RAO, J

Date: 01.09.2015
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