

HON'BLE SRI JUSTICE R. KANTHA RAO

Writ Petition No.30182 of 2015

ORDER:

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

2. The petitioner was a driver in the respondent-Corporation. During the periodical medical examination held on 01.08.2012, the petitioner was declared as unfit for the post of driver due to defective vision. According to the petitioner, even though he made several representations for providing alternative employment, the respondents did not consider his case and they also did not pay the salaries to him. Thereafter, the petitioner approached NIMS Hospital for medical advise. The Superintendent of NIMS Hospital examined the petitioner and by letters dated 02.03.2013 and 10.05.2014 advised him to follow light duties and avoid prolonged sitting. It is submitted by the petitioner that in spite of the opinion given by the Superintendent, NIMS Hospital, the petitioner was directed to appear before the APSRTC Medical Board on 30.05.2013 and on examination, he was declared unfit for the post of driver and further declared him fit for the post of Conductor-A2 category. According to the petitioner, he was appointed in the alternative post of Conductor on 03.09.2013.

ii) The version of the petitioner is that in spite of his representation that he is not able to discharge duties as a Conductor, he was given the post of Conductor basing on the opinion of the APSRTC Medical Board. Then he filed WP No.24574 of 2013 before this court and this court by order dated 01.10.2013 directed the respondents to provide suitable stationary job to the petitioner. Thereafter, the respondents with utter disregard to the order of this

court as well as the opinion given by the Superintendent, NIMS Hospital, appointed the petitioner in the alternative post of Shramik. Feeling aggrieved, the petitioner again filed WP No.28605 of 2014 before this court. This court by order dated 03.09.2014 directed the respondents to provide the petitioner alternative job involving light physical activity, such as Record Tracer, Mike announcer or attender etc. In pursuance thereof, the 2nd respondent by order dated 14.10.2014 appointed the petitioner as Record Tracer and he has been discharging the duties as Record Tracer.

iii) The petitioner filed the present writ petition seeking a direction to the respondents to pay him the salaries for the interregnum period i.e., from 01.08.2012 on which date he was initially declared unfit to perform the duties of driver, till 14.10.2014, the date on which he was appointed as Record Tracer by fixing the pay in the pay scale of driver.

3. Learned standing counsel for the Corporation contends that since the petitioner did not join in the alternative post of Conductor as well as Shramik, he is not entitled to claim the salary for the interregnum period. On the other hand, it is the contention of the learned counsel appearing for the petitioner that since the petitioner was unfit to discharge the duties of Conductor and Shramik, the respondents ought not to have posted him in those jobs and therefore, he is entitled to claim the salary for the period mentioned in the writ petition.

4. Having gone through the submissions made on either side, I am of the opinion that since the petitioner has been expressing his difficulty to discharge the duties of Conductor as well as Shramik and making representations to provide light duties and he filed writ petitions before this court seeking directions, he cannot be denied the salary on the ground that he did not join the alternative post of

Conductor as well as Shramik. It has to be necessarily understood that the petitioner was really unable to discharge the duties of Conductor or Shramik due to his health condition. Further, the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995, obligate the employer to provide the employee who acquires disability with alternative post which he is able to discharge. Therefore, the prayer in the present writ petition can be granted.

5. Consequently, the writ petition is allowed, directing the respondents to fix the pay of the petitioner in the pay scale of the driver and pay him the salaries for the interregnum period i.e., from 01.08.2012 to 14.10.2014, within a period of eight (8) weeks from the date of receipt of a copy of this order.

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

R. KANTHA RAO, J

Date: 16.09.2015
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