

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.16447 of 2015

Date: 01-7-2015

Between

M.Bhaktavachala Reddy

... Petitioner

and

APSRTC,
Rep. by its MD,
Bus Bhavan, Mushirabad,
Hyderabad-500 624;
and 2 others

... Respondents

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.16447 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 3- Andhra Pradesh State Road Transport Corporation (the Corporation, for short).

2. It is agreed by both the learned counsel that the issue involved in the present case is squarely covered by the order dated 01-7-2015 in W.P.No.16422 of 2015 passed

by this Court, wherein it was held as follows:

“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."

3. In view of the above, this writ petition is allowed in terms of the said order with the direction that the observations made therein shall be read as part of this order. 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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