

THE HON'BLE SRI JUSTICE R.KANTHA RAO

WRIT PETITION No.28762 of 2014

AND

CONTEMPT CASE No.488 of 2015

-

COMMON ORDER:

This Writ Petition No.28762 of 2014 is filed under Article 226 of the Constitution of India seeking a writ of mandamus declaring the action of the first respondent in issuing the impugned proceedings No.P3/876(06)/2013-RM:KR, dated 28.08.2014 refusing to allot alternative post of Desk Job to the petitioner as per the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

2. This Contempt Case No.488 of 2015 is filed under Sections 10-12 of Contempt of Courts Act to punish the respondents as per the provisions of Contempt of Courts Act for violating the orders of this Court passed in W.P.No.28762 of 2014, dated 24.09.2014.

3. Heard the learned counsel appearing for the petitioner and the learned Counsel appearing for the respondents in both the cases.

4. The petitioner was initially appointed as conductor in the respondents' corporation in the year 1991 and since then he has been working at 3rd respondent depot without any remark. While the things stood thus, the petitioner developed growth on his tongue and after diagnosis, the doctors confirmed that it is a tongue cancer, then he underwent operation and left side part of the tongue was removed, as a result, he

was unable to speak properly and move his jaws. After operation in the month of November, 2012, he was continued under treatment till 13.11.2013 and the doctors gave fitness certificate to attend the duty. Pursuant to his representation, dated 05.09.2013, he was given the post of out of designation duty on medical grounds for a period of two months by proceedings dated 05.09.2013. It is submitted by the petitioner that the very purpose of allotting the OD is to give physical and mental rest to him, but the Respondents Corporation extracted all types of works, due to which he was totally subjected to physical and mental torture in view of his ill-health. The said order discloses that it was given for a period of two months and on completion of the said period, the respondents directed him to restore to his original duties i.e. conductor. It is further submitted by the petitioner that even now he is under regular treatment, due to radiation treatment he was totally prohibited to speak and travel by bus continuously as per the advice of the doctors. He is unable to pronounce properly and he is giving in writing if he requires anything to his friends and family members. The post of conductor in which he was working requires physical movement and continuous use of voice to discharge his duties promptly. He is totally handicapped to discharge his duties as conductor. The action of the respondents in not allotting the desk job to the petitioner in view of his disability is in gross violation of the provisions of the "Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. It is further submitted by the petitioner that he is entitled for an alternative post other than the conductor for which he is totally unfit. For the last two years he has been subjected to mental trauma coupled with physical torture and humiliation with terrible disease of cancer and his family members suffered tremendous agony all these days. At this juncture, the petitioner filed W.P.No. 38983 of 2013 for consideration of his case and this Court issued interim direction on 31.12.2013 directing the respondents to consider his representation and when the said order has not been implemented, he filed C.C.No.661 of 2014 and after issuance of notices, the present impugned order has been passed stating that he is not disabled as per Section 2(1) of the Act. It is further submitted by the petitioner that in the final medical report dated 05.08.2014 the petitioner was declared unfit for the post of conductor and if that is so, the respondents shall not deny the benefit of Disability Act, 1995. The disability suffered by the petitioner is covered under Clause 5 of Section 2(i) of the Act.

5. The respondents' Corporation filed counter contending *inter alia* as follows:

The petitioner was appointed as conductor in the respondents Corporation in the year 1991 and on his representation, the Corporation allotted out of designation duties by proceedings dated 05.09.2013, thereafter the petitioner submitted another representation dated 26.12.2013 stating that he suffered tongue cancer, underwent surgery and was unable to perform the duties of conductor. In compliance of the interim direction of this Court in W.P.No.38983 of 2013, dated 31.12.2013, the respondents corporation considered the representation of the petitioner, issued proceedings dated 28.08.2014 allotting out of designation duties for four months with an advice to prefer an appeal to the Medical Board so as to assess his physical fitness. The respondents Corporation contended that the petitioner is affected by tongue cancer and the said disease does not fall under the definition of disability and therefore, he cannot be treated as disabled employee and is not entitled to claim any benefits under the Act. It is further contended that the petitioner has acknowledged the proceedings, dated 28.08.2014 on 15.09.2014, but did not report to the depot even to perform light duties. Though the case of the petitioner was already considered by the respondents in compliance with the order of this Court in W.P.No.38983 of 2013, dated 31.12.2013 by proceedings dated 28.08.2014, the petitioner filed the present writ petition with the same prayer as in the previous writ petition, as such the present writ petition is not maintainable and the same is liable to be dismissed. Contending as above, the respondents sought to dismiss the writ petition.

6. In spite of interim direction to pay the arrears of salary and continue to pay the same to the petitioner, pending consideration of his claim for alternative employment, the respondents corporation did not implement the orders nor paid the salary to the petitioner and therefore, the petitioner filed contempt case alleging willful disobedience on the part of the respondents and to punish them as per the provisions of the Contempt of Courts Act. Thereafter, the respondent-Corporation filed vacate stay petition along with the counter.

7. Considering the submissions made by the learned Standing Counsel for the respondents and also the learned counsel appearing for the petitioner, the writ petition is allowed directing the respondents Corporation to provide the petitioner any alternative job involving discharge of light duties after subjecting him to medical examination, within a period of eight weeks from the date of receipt of a copy of this

order. The petitioner is directed to make a representation with regard to payment of salary and upon receiving the said representation, the respondents are directed to consider the representation and pass appropriate orders as per his entitlement.

8. Accordingly, the writ petition is allowed and the contempt case is closed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in these cases shall stand closed.

R.KANTHA RAO,J

Date:13.10.2015

ccm

THE HON'BLE SRI JUSTICE R.KANTHA RAO

-
-
-
-
-
-
-
-
-

-
-
-
-

WRIT PETITION No.28762 of 2014

AND

CONTEMPT CASE No.488 of 2015

Date:13-10-2015

ccm