

HON'BLE SRI JUSTICE R. KANTHA RAO

Writ Petition No.19367 of 2015

ORDER:

Heard Sri S.M.Subhan, learned counsel appearing for the petitioner and Sri A. Ramarao learned standing counsel for the respondents-Corporation.

2. The petitioner was appointed as driver on 01.08.1995 in the 3rd respondent-Depot and was discharging duties. While on duty, he met with a major accident on 13.03.2012, resulting in injuries to his both legs. After treatment, one leg was amputated. The accident spot was near Bengaluru, operation was conducted in the hospital at Bengaluru. The respondents-Corporation kept the petitioner idle for about two years and three months without paying any salary, after he was declared unfit. The petitioner submitted a representation to the 3rd respondent on 30.05.2013 requesting him to provide alternative employment and to pay him salaries due to him. The petitioner was not provided with any alternative employment. The petitioner was initially declared by the Medical Officer of the Corporation on 30.04.2013. However, the Medical Board of the Corporation on 21.05.2014 ultimately confirmed the opinion initially given by the Medical Officer and declared him unfit for any post i.e., even for alternative employment. Under these circumstances, the petitioner filed the present writ petition seeking direction to the respondents to pay salary for the interregnum period i.e., from 29.04.2013 till 21.05.2014, the date on which he was made to retire from service on the ground that he was unfit to perform any duty.

3. Learned counsel appearing for the petitioner submits that the petitioner sustained injury to his leg while he was on duty and one of his legs was amputated by performing a surgery on him and he was

finally declared as unfit as driver on 29.04.2013. Though the matter was referred to the Medical Board and the Medical Board gave its opinion declaring him as unfit to any post on 30.04.2014 and he shall be treated as became unfit to the post of driver from 29.04.2013 and therefore, he is entitled for salary from that date onwards. On the other hand, Sri A. Rama Rao, learned standing counsel for the Corporation submits that the relevant date for considering the crucial date for determining of the fact that the petitioner was not fit for duty is 30.04.2014 when ultimately the Medical Board declared him unfit. I am not in acceptance with the contention urged by the learned standing counsel. This is the case where the petitioner's leg was amputated and he was rightly declared unfit on 29.04.2013. Subsequent opinion given by the Medical Board confirming the opinion expressed by the doctor initially does not become crucial date for determining the date on which the petitioner was medically unfit. Since Section 47 of the Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, affords full protection to the employee, who incur disability while in service, any interpretation that the petitioner would be declared unfit only on the date on which the ultimate opinion given by the Medical Board, in my view, it is contrary to the true spirit of Section 47 of the Act, 1995.

4. The further contention of the learned standing counsel for the Corporation is that the petitioner was not on duty during the period claimed by him and hence, he is not entitled for salary also, cannot be accepted. Therefore, the petitioner is entitled for salary from 29.04.2013 to 21.05.2014.

5. Consequently, the writ petition is allowed, directing the respondents to pay salary to the petitioner, with all consequential benefits, from 29.04.2013 to 21.05.2014, within a period of eight (8) weeks from the date of receipt of a copy of this order. Miscellaneous petitions, if any, in this writ petition, shall stand closed. No order as to

costs.

R. KANTHA RAO, J

Date: 14.07.2015
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HON'BLE SRI JUSTICE R. KANTHA RAO

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