THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION NOS. 24323, 30536, 32338, 32359, 32552, 40252, 6516, 24841, 29829 AND 30938 OF 2012, 12687. 17218, 30414, 35196, 13815, 2046, 8278 AND 18100 OF 2013, 7922, 7936, 10493, 11699, 16595, 23668, 31184, 32071, 37972, 5874 20640 AND 38752 OF 2014, 2179, 6116, 8708, 18713, 32292, 38101, 42751, 43143, 15337, 18926, 25577 AND 41926 OF 2015, 15494, 15726, 18698, 18806, 18869, 18922, 19171, 19349, 19434, 20028, 20886, 20941, 20996, 21002, 21006, 21047, 21654, 22088, 22401, 22576, 22716, 23180, 23628, 23666, 23996, 24769, 24834, 25252, 25738, 25761, 26026, 26158, 26442, 27219, 28243, 28249, 28257, 28269, 28300, 29338, 29740, 30228, 30231, 30247, 30251, 30326, 30328, 30479, 30504, 30530, 30577, 31056, 31144, 31148, 31209, 31604, 31613, 31842, 10960, 13955, 18047, 18077 AND 18560 OF 2016.

COMMON ORDER:

Since these writ petitions relate to implementation of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short 'the Act'), they are being taken up together and disposed of by way of this common order.

2. There is no dispute that the petitioners in these writ petitions are employees of the respondent corporation and they were declared as medically unfit by the Medical Officer of the corporation. When they were sought to be retired after declaring them as medically unfit, they approached this Court challenging the proceedings of the respondents' retiring them on medical ground contrary to Section 47 of the Act and this Court, vide common order, dated 29-01-2016 in W.P.No.36337 of 2012 and batch, allowed the writ petitions with the following directions.

> "1.All the drivers who are not assigned work after they were declared as medically unfit are entitled to pay and allowances attached to the post of Driver till they were retired from service /alternative job is provided to them. They shall be paid arrears of pay and allowances with 8% interest from the due date till the date of payment. This direction is general and applicable to all Drivers. The Corporations shall undertake review of all such claims and shall ensure that no driver is denied pay and allowances on this issue. The order shall be complied within eight (8) weeks from the date of receipt of the copy of the Order.

2) Petitioners and all Drivers who are declared as unfit to drive on account of 'acquiring disability' while in service are entitled to provision of alternative job as a matter of course. The Corporations shall endeavor to provide alternative job of the same status. For any reason, alternative job of the same status is not possible and the drivers are adjusted in any other post, they shall be paid the same pay and allowances as were paid to them as Drivers including the annual increments.

3) If alternative job cannot be provided, the Drivers shall be kept in a supernumerary post until a suitable post is available or till he attains the age of superannuation whichever is earlier and shall be paid pay and allowances of the post of Drivers until they attained the age of superannuation.

4). These directions are applicable to all similarly situated drivers."

3. Challenging the said common order, dated 29-01-2016, the corporation preferred W.A.No.1120 of 2015 and batch and a Division Bench of this Court, vide common judgment, dated 08-09-2016, dismissed the appeals confirming the order of the learned single Judge with the following observations:

"Conclusion:

42. "Section 47 of the Act is a stand alone provision which deals with the persons who acquired disability while in employment, as distinct from persons already with disability. Having regard to the context in which the phrase 'a disability' is required to be interpreted and the purpose for which Section 47 is enacted, if a disability results in the inability of the employee to discharge his duties attached to the post he was holding, he is entitled to the protection of Section 47 even if such disability is not enumerated under Section 2(i) of the Act.

Result:

43. For the afore-mentioned reasons, the writ appeals must fail. However, before concluding, we need to address two more aspects - (a) as to the benefits, if any, received by any of the disabled drivers who are parties to this litigation; and (b) the contingency of raising future claims by disabled drivers who have already been discontinued, received the monetary compensation as per the Corporations' Regulations and Circulars and did not move the Courts so far. As regards (a) supra, as Section 47 of the Act affords full protection to disabled drivers, to confer the benefits on them under the Regulations/Circulars as well as under Section 47, amounts to unjust enrichment. Therefore, the Corporations are entitled to recover the benefits already received by the disabled drivers in terms of the Regulations/Circulars by deducting from the salaries payable to them consequent upon their reinstatement by virtue of this judgment, in easy instalments not exceeding Rs.5,000/- (Rupees five thousand only) per month. If the Corporations will not be able to recover the entire amounts through this process before any of the disabled drivers reaching their superannuation, they can recover the balance amounts from their retirement benefits. Qua the category of disabled drivers in (b) supra, we direct that those disabled drivers who have already received the benefits under the Regulations/Circulars and have not approached

> this Court so far claiming protection under Section 47 of the Act, are not entitled to seek relief based on this judgment, on the principle of laches and in order to prevent entertainment of stale claims and the settled claims from being unsettled.

4. The individual facts in each case are not being dealt with separately in view of subject matter in all these writ petitions falling in one or other situations detailed below. The cases can be broadly classified into three categories, which are as follows:

> "(1) The cases of the employees who were declared as unfit by the Medical Officer of the corporation and were denied alternative employment, but were asked to retire from service by taking monetary benefits or otherwise. In such cases, the respondent corporation has to provide employment in accordance with the directions of the learned single Judge and as confirmed by a Division Bench by taking into consideration the observations made in respect of the persons who received benefits as mentioned in para 43 (a) thereof.
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> (2) In respect of employees who were provided with alternative employment, but pay was fixed to them applicable to the post given to them as alternative employment. In such cases, the petitioners are entitled to pay and allowances attached to the post at the time of declaring them as unfit and they are entitled to arrears and pay allowances with interest at 8% per annum from the said date till the date of payment and that protection shall be continued along with annual increments till the date of their superannuation.
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> (3) In respect of employees, to whom even after providing alternative employment pursuant to the provisions of the Act after declaring them as unfit, no wages were paid to them from the date of declaring them as unfit to the date of joining in the alternative employment and in respect of those employees, they are entitled to pay and allowances admissible to the post held by them at the time of declaring them as unfit and those pay and allowances for the interregnum period should be paid to them subject to second category as indicated above.

5. In view of the above, the respondents are directed to examine each individual case and take necessary steps for implementing the provisions of the Act in the light of the order passed by the learned single Judge and as confirmed by a Division Bench, within a period of three months from the date of receipt of a copy of this order. The petitioners are entitled to move this Court under Contempt of Courts Act if the individual cases are not

considered and the above order is not implemented. In case of non application of this order in respect of any case, the respondents are at liberty to pass a speaking order.

6. Accordingly, all the writ petitions are disposed of. No order as to costs. Miscellaneous petitions, if any pending in these writ petitions shall stand closed.

A.RAMALINGESWARA RAO, J

DATED: 21-09-2016
Hsd