HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition Nos.16003 of 2013

Order:

This writ petition is filed to declare the proceedings dated 25-9-2010 in allowing the petitioner to retire from service with effect from 16-9-2010 instead of 28-8-2009 on which date, he was declared unfit as illegal, arbitrary, in violation of Articles 14 and 21 of the Constitution of India as well as in violation of Regulation 6(A) of the Andhra Pradesh State Road Transport Corporation Employees' (Service) Regulations, 1964 (the APSRTC Service Regulations, for short) and consequently to direct the respondents to treat his retirement on medical grounds from 28-8-2009 and to pay the leftover months' service emoluments i.e., from 28-8-2009 to
31-8-2011 along with salary of unavailed earned leave of 175 days along with 18% interest from due date.

2. The following are the brief averments made by the petitioner in the Affidavit filed in support of the writ petition:

(a) It is submitted that the petitioner joined the service of the respondents-Corporation as driver on 01-3-1980 on regular basis after undergoing due process of selection. He was not allowed to discharge his duties from 29-5-2009 on the ground that when he was sent on 28-8-2009 for the periodical medical check-up, the Medical Officer of the respondents-Corporation examined and declared him unfit for the post of driver which he was holding right from 01-3-1980 onwards.

(b) It is further submitted that the petitioner submitted letter of resignation dated 31-8-2009 requesting the 2nd respondent-Depot Manager, Picket to allow him to retire from service on medical grounds and extend all the retirement benefits including additional monetary benefits as per Regulation 6A(5a & 5b) of the APSRTC Service Regulations. The 2nd respondent has dodged the matter on one ground or the other with a view to take away the un-availed earned leaves and other half pay leaves, which are available at his credit as on 28-8-2009 and to deny the remuneration to the leftover service towards additional monetary benefits as per Regulation 6A (5B) of the APSRTC Service Regulations.

(c) It is further submitted that the respondents ought to have treated his retirement from 28-8-2009 but not from 16-01-2010. However, the 2nd respondent sent him to the APSRTC Hospital, Tarnaka, Hyderabad through letter dated 16-9-2009 as a medical appeal enclosing the Medical Opinion given by the Medical Officer, APSRTC Dispensary, City Bus Stand, Gowliguda, Hyderabad on 28-8-2009. The Medical Appeal Authority, Tarnaka Hospital, Hyderabad rejected the appeal on 21-12-2009, declaring that he was unfit for the post of driver due to distant defective vision in both the eyes. The same was intimated to the 2nd respondent vide letter dated 21-12-2009. Even then, he was not allowed to retire from service, which is in violation of Regulation 6A(4) of the APSRTC Service Regulations. As such, the attitude of the respondents-Corporation is very unfair and it amounts to unfair labour practice within the meaning of Section 2(ra) read with Schedule V of the Industrial Disputes Act.

(d) It is further submitted that he once again submitted letter dated 04-01-2010 requesting the 2nd respondent to allow him to retire from service on medical grounds and arrange all his service benefits.
But the same was dragged for one reason or the other to deprive the service benefits including encashment of the earned leaves. Due to this oblique motive, the 2nd respondent kept under forced period to use the un-availed earned leaves towards forced period salary and also to pay less additional monetary benefits. However, the 2nd respondent retired him from service with effect from 16-9-2010 through impugned proceedings dated 25-9-2010 and paid the retirement benefits for the period from October, 2010 to February, 2013. The petitioner submitted an application dated 28-01-2013 under the Right to Information Act to the 2nd respondent requesting to furnish all the

records. However, there was no response. Subsequently, he submitted another letter dated

27-02-2013 to the 2nd respondent. Thereafter, the

2nd respondent furnished the correspondence that took place from the date of declaring the petitioner unfit right from 28-8-2009, including his letter of retirement dated 31-8-2009, 04-10-2010 details of gratuity, service record etc., in March, 2013. The 2nd respondent calculated the additional monetary benefits at the rate of basic + DA : Rs.18015+3351 X 8 = 1,70,928 for 8 months towards leftover service i.e., from 16-9-2010 to the actual date of retirement i.e., 21-5-2011 as he was born on
06-5-1953 instead of calculating the same right from the date of declaring the petitioner as unfit on 28-8-2009. Had the petitioner been allowed to retire from service from 28-8-2009 as per Regulation 6A(4) of the APSRTC Service Regulations and as per his letter dated
31-8-2009, his leftover service would have been 1 year,
9 months and 3 days. As per Regulation 6A(5b) of the APSRTC Service Regulations, the additional monetary benefits for the leftover service period has to be calculated as per full salary drawn basing on the total salary drawn on the date of declaring the petitioner as unfit. As such, he is entitled to receive a sum of Rs.5,68,890/- towards leftover service period emoluments, whereas the respondents calculated the same as Rs.1,70,928/-. Further, without any notice to him, an amount of Rs.99,029/- was deducted from Rs.1,70,928/-.

(e) It is further submitted that the petitioner got issued a legal notice dated 06-4-2013 to the respondents informing them to treat the retirement from 28-8-2009, calculate all the service benefits for the service put up from the date of appointment i.e., 01-3-1980 to
28-8-2009 including availed leaves available at his credit on 28-8-2009 including half pay leaves and return Rs.99,029/- which was deducted without any notice and authority and arrange the additional monetary benefits for the leftover service at the rate of full salary but not based on basic + DA. Though the respondents received the said notice on

09-4-2013 no response was given.

(f) It is further submitted that had the petitioner been allowed to retire from service as on 28-8-2009 on which date, he was declared unfit or at least from 31-8-2009 on which date, he submitted letter of retirement he would have encashed those days' salary along with each month emoluments for the leftover month of service i.e., 1 year, 9 months and 3 days. Thus, he is put to loss on two counts – one is loss of salary on the unavailed earned leaves of 175 days and another loss of leftover month service salary. Therefore, the action of the respondents is illegal and unsustainable in law. Hence, the writ petition.

3. The respondents-Corporation filed counter affidavit contending, *inter alia*, as under:

(a) It is submitted that as per the instructions of the Corporation, the drivers who completed 45 years of age shall be directed for periodical medical examination on 28-6-2009 to assess their suitability under 'A1' Category for the post of driver. The Medical Officer, APSRTC CBS Dispensary declared the petitioner as unfit for the post of driver vide Medical Certificate dated 28-8-2009.

(b) Nextly, it is submitted that the Corporate Office issued certain guidelines in regard to retirement of drivers, who were found unfit in the periodical medical examination through Circular dated 25-8-2005 wherein it was clearly mentioned that if a driver is found unfit in the periodical medical examination, he should not be retired on medical grounds straightaway. He shall be directed to the Chief Medical Officer, APSRTC Hospital, Tarnaka for assessing his suitability for the post of driver. If the driver is found unfit, he shall be then retired on medical grounds and the additional monetary benefits in lieu of employment as envisaged in Regulation 6A(b) of the APSRTC Service Regulations will be paid. If the driver willingly opts for retirement on medical grounds in view of his health conditions, he shall be directed to APSRTC Hospital, Tarnaka to appear before the Chairman of the Committee constituted for the said purpose to examine his case. On the report of the

Committee, he shall be retired on medical grounds and the additional monetary benefits in lieu of employment shall be extended on the medical retirement. The report of the Medical Committee was received on 16-9-2010. Hence, the petitioner was retired on medical grounds with effect from 16-9-2010.

(c) It is submitted that the Medical Appeal Authority, APSRTC, Tarnaka Hospital also made the petitioner unfit under 'A1' Category for the post of driver and sought the opinion of the Medical Committee for retiring the petitioner as per the latest Circular instructions issued in that regard.

(d) It is submitted that though the petitioner submitted an application to the 2nd respondent to retire him on medical grounds on 04-01-2010, it was not considered since the opinion of Medical Committee was not received. The report of the Medical Committee was received on 16-9-2010 and the petitioner was retired immediately with effect from 16-9-2010 on medical grounds and the additional monetary benefits were arranged as per his eligibility.

(e) It is submitted that all the payments were calculated as per the procedure and were paid to the petitioner to the eligible extent. While paying the additional monetary benefits, it was noticed that the petitioner availed 74 ELs and 52 HPL (MC) excess for which a sum of Rs.99,029/- arrived, which was recovered from the additional monetary benefits. Further, a sum of Rs.200/- due towards Festival Advance was recovered from the additional monetary benefits. After deducting the amount, the remaining amount was paid to the petitioner.

(f) It is submitted that the respondents received the legal notice dated 09-4-2013 and verified calculation sheets of leftover service and leave and found to be correct as per the existing rules in force. As per the calculation as on 16-9-2010, the petitioner availed 74 ELs and 52 HPL(MC) excess as per audit. They denied that the petitioner is entitled for 33½ months' *ex gratia* which cannot be accepted. The date of birth of the petitioner is 08-5-1953, the date of appointment is 01-3-1980, the date of medical retirement is 18-9-2010, the date of superannuation is 31-5-

2011 and thus, the leftover service is 8 months and 15 days. The petitioner was paid all the retirement benefits including the additional monetary benefits as per the eligibility, after calculation and audit.

Contending as above, the respondents-Corporation sought to dismiss the writ petition.

4. I have heard Sri V.Narsimha Goud, learned counsel appearing for the petitioner and Sri C.Sunil Kumar Reddy, learned Standing Counsel for APSRTC-respondents 1 and 2.

5. The grievance of the petitioner is that he was not retired on medical grounds from the date on which he was declared unfit to perform duties of the driver i.e. from 28.08.2009 and the emoluments which are payable to him consequent upon his retirement on medical grounds have been straightaway reduced.

6. On the other hand, it is the contention of the Corporation that the corporate office issued certain guidelines in respect of the drivers who are found unfit for the periodical examination through Circular dated 25.08.2005 wherein it was clearly mentioned that if a driver is found unfit in the periodical examination, he should not be retired on medical grounds straightaway, but he should be directed to the Chief Medical Officer, APSRTC Hospital, Tarnaka for assessing his suitability for the post of driver. If the driver is found unfit, he shall be then retired on medical grounds and the additional monetary benefits in lieu of employment as envisaged in Regulation 6A(b) of the APSRTC Service Regulations shall be paid to him. If the driver willingly opts for retirement on medical grounds in view of his health conditions, he shall be directed to APSRTC Hospital, Tarnaka to appear before the Chairman of the Committee constituted for the said purpose to examine his case. On the report of the committee, he shall be retired on medical grounds and the additional monetary benefits in lieu of employment shall be extended on the medical retirement.

7. According to the Corporation, in the instant case, the report of the

medical committee was received on 16.09.2010 and therefore, the petitioner was retired on medical grounds with effect from 16.09.2010. It is the version of the respondents that though the petitioner submitted applications to retire him on medical grounds on 31.08.2009 and 04.01.2010 respectively, it was not considered since the opinion of medical committee was not received. The report of the medical committee was received on 16.09.2010 and the petitioner was retired immediately with effect from 16.09.2010 on medical grounds and the additional monetary benefits were arranged as per his eligibility.

8. After the petitioner submitted his application seeking retirement on medical grounds, the respondent can subject him for further medical examination by the committee. It is not obligatory on the part of the committee to submit its opinion within a particular period. Some times, it takes considerable time for the committee to give its report. Therefore, on account of the delay caused due to the procedure adopted by the respondents, the petitioner who sustained medical disability which was noticed in the initial medical examination cannot be made to suffer. In the considered opinion of this Court when once the disability which was noticed in the initial medical examination by the Doctor of the Corporation Hospital is confirmed by the committee, the retirement of the petitioner relates back to the date on which the petitioner was initially declared unfit for holding the post he was doing.

9. In the instant case, the petitioner was declared unfit to perform the duty of the driver by the medical officer of the respondents corporation on 28.08.2009 he submitted a letter of retirement dated 31.08.2009. Therefore, the retirement of the petitioner on medical grounds shall take effect from 31.08.2009 i.e. the date on which he submitted a letter seeking retirement on medical grounds.

10. In the instant case, the petitioner was retired on medical grounds from 16.09.2010 i.e. the date on which the report of the medical committee was received. The approach adopted by the respondents corporation is totally wrong and it is not in accordance with Regulation 6A(b) of the APSRTC

Service Regulations.

11. Learned counsel appearing for the petitioner relied on a judgment in **RANI LAXMIBAI KSHETRIYA GRAMIN BANK AND OHTERS v. MANOJ KUMAR CHAK**[1] wherein the Supreme Court held as follows:

> *"It is now settled beyond cavil that statutory rules can be supplemented but cannot be supplanted. This is the ratio of law laid down in the case of Sant Ram Sharma supra. It has been reiterated by this Court in a catena of subsequent judgments. It is, however, not necessary to burden the present judgment by making a copious reference to the other decisions which merely reiterated the same ratio. The Circular dated 01.12.1987 was, therefore, clearly contrary to the 1988 statutory rules, and, therefore, ceased to have any legal effect from the date of the enforcement of the rules."*

12. In the instant case, the circular of the Corporation which provided that the date of retirement on medical grounds shall be from the date of the receipt of the opinion of the medical committee is contrary to the statutory rules and therefore, it cannot be given effect to.

13. In view of what all stated hereinabove, the respondents shall consider that the petitioner retired on medical grounds on 31.08.2009 when he submitted a letter seeking his retirement on medical grounds and not from 16.09.2010 the date on which the corporation received the report of the medical committee. The Corporation is directed to pay the petitioner the sum of Rs.99,029/- which was recovered from the additional monetary benefits and is further directed to pay all the benefits treating that the petitioner was retired on 31.08.2009. The benefits due to the petitioner have to be calculated on the aforesaid basis and shall be paid to the petitioner within a period of two months from the date of receipt of a copy of this order.

14. In the above terms, the writ petition is disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

R.KANTHA RAO,J

Date:19.01.2016
Ccm/Ak

HON'BLE MR JUSTICE R. KANTHA RAO

Writ Petition NO.16003 OF 2013

DATE:19.01.2016

Ccm/ak

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[1] 2013(5) SCALE – 486