

HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.4188 of 2014

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DATED : 09.02.2016

Between:

M.N.Reddy S/o.Sitaram Reddy,

Aged about 57 yrs, Occu : Driver,

E.No.271185, R/o.6-2-953/2/3,

Meerbagh colony, Hyderabad Road,

Nalgonda, Nalgonda District.

.. Petitioner

AND

APSRTC rep., by its Managing Director,

Bus Bhavan, Musheerabad, Hyderabad & 2 others.

.. Respondents

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The Court made the following:

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ORDER:

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Heard learned counsel for the petitioner and learned Standing Counsel appearing on behalf of the respondents.

2. Petitioner joined in service as driver in May, 1991 and his services were regularized in October, 1992. The drivers in the respondent-Corporation are subjected to periodical medical check up to assess their suitability and fitness to continue the responsibilities as driver. In the said manner on 05.07.2012 petitioner was subjected to medical examination and on examining the petitioner, he was found unfit for performing his duty in A.1 category. The petitioner was referred to Medical Board for further examination and the Board after examination, on 17.04.2013 declared the petitioner as unfit. The endorsement made on the original medical report by the appellate Medical authority refers to the reason as "Defective Distant Vision". In the proceedings communicated to the Depot Manager, on behalf of the appellate medical authority, it was informed that petitioner was suffering with "RECURRENT TIA". After the petitioner was declared as unfit to perform the duties as driver, he was forced to go on leave from 06.07.2012. Petitioner was further examined on 18.07.2013 and having found that petitioner improved medically he was declared as fit to perform the duties. As a consequence to the further advise of the medical authority, petitioner was admitted to duty as driver and is working as driver as on today. The limited grievance of the petitioner in this writ petition is after petitioner was declared as medically unfit, he was forced to go on compulsory leave from 06.07.2012 and till he was restored to duty as driver, i.e., 17.08.2013, he was continued to be on leave and no pay and allowances were paid for the said period. The representation submitted by the petitioner and the legal notice issued for payment of pay and allowances for the said period were not answered. Hence, in the compelling circumstances, this writ petition is filed.

3. The drivers of the respondent-Corporation has to maintain high degree of health standards, alertness and physical fitness to perform the duties as driver. Thus, the respondent-Corporation subjects the drivers to regular medical check ups. When a driver is declared as medically unfit, he will not be allowed to perform the

duties as driver. In many cases, the driver will not be restored to duty as driver, but alternative employment would be provided. In the instant case, strangely, the petitioner was further examined and having found fit to perform the duties as driver, he was restored to the post of driver. It is for the period from 06.07.2012 till 17.08.2013, petitioner was not allowed to perform the duties as driver nor was he granted alternative employment. After the report of the appellate medical authority, a request was made for provision of alternative employment.

4. It is not a case where, petitioner was not willing to perform his duties nor he himself volunteered to go on leave on account of illness. The medical authority on a routine medical check up has declared him as unfit and because he was declared as unfit, he was put out of duty. When an employee is put out of duty at the instance of employer, the employee cannot be forced to go on leave nor the period of out of employment on account of denial of work to the employee by the employer cannot be treated as leave. It has to be treated as compulsory wait and to be treated as "on duty" and such employee is entitled to all consequential benefits as if the entire period is spent on duty.

5. The issue of benefits that a driver is entitled as a consequence to declaring him as unfit to perform the duties as driver, fit to perform other duties and the period when he was kept out of duty on his declaring as unfit to perform duties, pay protection was considered by this Court in W.P.No.36135 of 2015 and batch and rendered judgment on 29.01.2016. In Para 63 of the Judgment following directions were issued. They read as under:

63. The points are answered in favor of the petitioners. The Writ Petitions are allowed. The following directions are issued:

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.

6. Following the said decision, it has to be held that after the petitioner was declared as unfit to perform the duties as driver, he was put out of duty and thus, when an employee is not assigned work, employer cannot compel the employee to go on leave. Thus, the denial of the period as on duty and treating it as compulsory leave is *ex-facie* illegal and violates the mandate of Act 1 of 1996. Petitioner is entitled to treatment of the period above mentioned as "On Duty".

7. This Writ petition is allowed and respondents are directed to arrange payment of salary and allowances for the period from 06.07.2012 to 17.08.2013 and

all consequential benefits including continuity of service during the said period as “On duty” and conferment of seniority. There shall be no order as to costs.

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

P.NAVEEN RAO, J

Date :9th February, 2016

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