

THE HON'BLE SRI JUSTICE M.SATYANARAYANA

MURTHY

WRIT PETITION Nos.28819 of 2014 & 8565 of 2015

COMMON ORDER:

In both the writ petitions the 1st respondent is APSRTC and the issue involved in both the petitions is one and the same, therefore I find it is expedient to decide both the petitions by common judgment.

2) W.P. No.28819 of 2014 is filed under Article 226 of Constitution of India to declare the action of respondents herein in terminating the petitioner from service vide proceedings No.E1/468(1)/14-VDPM, dated 23.08.2014 without providing reasonable opportunity and without providing alternative employment to the petitioner by holding that the petitioner was a contract employee and not entitled to benefits under Section 47 of the Persons with Disabilities (Equal Opportunities Protection of Rights and Full participation) Act, 1995 as illegal, unjust and arbitrary, contrary to principles of natural justice, and consequently direct the respondents to reinstate the petitioner into service by providing alternative employment.

a) The petitioner in W.P. No.28819 of 2014 was appointed as driver on contract basis in regular selection that took place in the year 2011 in Krishna Region. While working in 3rd respondent depot, he was directed to undergo periodical medical check up and was declared medically unfit vide Medical Certificate No.197260, dated 04.03.2014. The 3rd respondent instead of providing alternative employment terminated the petitioner from service vide proceedings No.E1/468(1)/14-VDPM dated 23.08.2014 without providing reasonable opportunity.

Thereupon, the petitioner requested the 3rd respondent to provide alternative employment while submitting explanation to the termination order but without giving an opportunity of filing appeal and instead of providing alternative employment, the 3rd respondent orally rejected the case of the petitioner on the ground that the petitioner being a contract employee is not eligible for alternative employment; as such the action of the 3rd respondent is illegal, arbitrary and violation of principles of natural justice and on account of removal, the petitioner was put to serious loss due to depriving livelihood.

b) It is further contended that as per the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955 (for short 'the Act') when an employee is medically unfit, he is entitled to a suitable alternative employment but the petitioner herein was not offered any suitable alternative employment and therefore the proceedings issued under challenge is in violation of Section 47 of the Act.

c) It is further contended that the petitioner was appointed in the year 2011 and the agreement is initially for a period of one year and there is no further agreement. In fact the petitioner worked for more than 240 days in the year 2012 itself and his batch mates namely Sri Ramanjaneyulu—C-961880 and Sri Murali C-961450 were regularized but the petitioner was undergoing treatment and during treatment, the 3rd respondent issued the impugned proceedings under challenge terminating the petitioner from service on the ground that he was not a regular employee. He suffered colour blindness during the course of employment and after medical examination, he was declared unfit to be a driver due to vision defect. In

such case, the petitioner is entitled to claim the benefit under Section 47 of the Act but no such alternative employment was provided and he was terminated from service on account of which, he has been facing much hardship. The 3rd respondent, instead of utilizing the services of the petitioner as helper, booking clerk or in any suitable post, deprived his livelihood in spite of his completing considerable length of service, which is nothing but defeating the very purpose of the Act.

d) Since the petitioner worked in the Corporation, he is entitled to the benefits of Section 47 of the Act and prayed to set-aside the proceedings issued by the 3rd respondent and reinstate the petitioner into service by providing suitable alternative employment in the 3rd respondent Depot.

e) The respondents filed counter denying material allegations of the petition while contending that the petitioner is a vexatious litigant and that the petitioner was appointed as a contract driver in APSRTC in the year 2011 in Krishna Region and he was referred to Senior Medical Officer, VDPM/VJA for periodical Medical Examination on 04.03.2014. After examination, the SMO/VDPM/VJA declared that he is medically unfit for the post of driver due to 'colour blindness' vide M.C.No.197260 dated 04.03.2014. Basing on the request of the petitioner he has been directed to Tarnaka Hospital, Hyderabad. The Senior Medical Officer-II, Tarnaka Hosptial, Hyderabad also found that the petitioner was unfit for the post of driver in A.1 category. Even the medical board also declared the petitioner unfit for the post of driver and advised to terminate him from service. Accordingly, the 3rd respondent issued proceedings dated 23.08.2014 terminating the petitioner from service.

f) The 3rd respondent also referred various provisions of the Act, more particularly, the definitions of 'Disability', 'Persons with Disability', 'Blindness' and on the basis of definitions, it is contended that colour blindness or lack of perception is not a disability as per the provisions of the Act. Therefore, the petitioner is not entitled for any benefits under the provisions of the Act and placed reliance on the judgment of the Apex Court in ***Union of India vs Devendra Kumar Pant & others***^[1] wherein the Apex Court distinguished the persons with low vision, analysed 'blindness' and 'disability' as appended to Section 2 (b) of the Act. The provisions of the Act cannot be applied mechanically to all persons with any and every kind of disability and it will be necessary to keep in view, the object of the Act, identification of the category of persons for whom a particular beneficial provision has been made and the extent of the benefits provided; prayed to dismiss the petition. Finally, it is contended that the petitioner being a contract driver is not entitled to claim benefits of Section 47 of the Act and prayed for dismissal of the writ petition.

3) W.P. No.8565 of 2015 is filed under Article 226 of Constitution of India to declare the action of the respondents in not continuing the petitioner on out of designation duties other than the conductor till recovery from ill-health of the petitioner, in spite of submitting written representation dated 01.12.2014 as illegal, arbitrary, malafide, contrary to the law and in violation of Articles 14, 16 and 21 of Constitution of India and set-aside the same.

a) The petitioner in W.P. No.8565 of 2015 was appointed as conductor on 01.09.1995 in the respondent Corporation and continued in service discharging duties to

the utmost satisfaction of his superiors. On 22.03.2013, the petitioner while discharging his duties as conductor in the route Nellore to Mutukuru, he lost grip of his hand and the passengers identified that he is suffering from paralysis. Thereafter, he underwent treatment in Nellore Hospital but unable to perform his duties as conductor. The respondent authorities provided him an opportunity to perform his duties with "Out of Designation" other than conductor job for a period of three months by proceedings dated 23.05.2014 and thereafter he made an application on 01.12.2014 requesting the respondent authorities to extend the "out of designation duties" for a period of six months, in view of the inaction of the respondent authorities, the petitioner was on sick leave and lost salary, as such the inaction of the respondents in not extending the Out of Designation duty is arbitrary.

b) The petitioner further contended that he submitted the medical certificate dated 07.03.2015 while requesting for extension of "Out of Designation duties" and he also submitted a representation dated 01.12.2014 to 1st respondent for the same purpose till recovery of ill health but so far respondent authorities has not taken any decision, thereby he was put to irreparable loss and hardship due to long sick leave. The Medical Officer, D.S.R. Government District Head Quarters Hospital, Nellore issued certificate on 07.03.2015 advising the petitioner not to perform regular duties as he has been suffering from 'left side Haemiplegia'. Thus, due to compelling circumstances, the petitioner is unable to discharge his duties as conductor.

c) It is further contended that not only in the interest of his health but also in the interest of public, it is

appropriate to direct the respondents to utilise the services of the petitioner other than conductor in the light of medical certificate dated 07.03.2015 till recovery from his ill-health. In similar circumstances, this Court in W.P. No.35578 of 2014 dated 10.12.2014 issued a similar direction and therefore prayed this Court to issue same direction in respect of the petitioner and prayed for the aforesaid relief.

d) The respondents did not file any counter disputing the facts.

4) During the course of hearing, the learned counsel for petitioners in both the writ petitions contended that the petitioners shall be continued by providing suitable alternative employment in terms of Section 47 of the Act and that in case the petitioners are deprived of employment, not only the petitioners but also their family members will be put to financial loss besides losing livelihood.

5) Learned counsel for the petitioner in W.P. No.28819 of 2014 also contended that though the petitioner was a contract employee, he is also entitled to claim benefits of Section 47 of the Act and placed reliance on the judgment of this Court in ***R.B Naik vs Vice Chairman and M.D., APSRTC, Hyderabad and others***^[2] and finally prayed this Court to allow both the Writ Petitions granting the aforesaid reliefs.

6) Whereas the learned counsel for respondents in W.P. No.28819 of 2014 contended that the benefits of the Act cannot be extended to the petitioner in the said writ petition since the said employment is governed by the provisions of the Contract Act and when the petitioner

became incapable of performing his part of contract, the contract is deemed to have been breached which results in termination of the services of the petitioner but in the decision of this court in **R.B Naik** (supra), the learned Judge did not discuss anything about nature of contract employment and extended the benefit of Section 47 of the Act. Therefore, the said decision has no application.

7) Learned counsel for the respondents in W.P. No.8565 of 2015 specifically contended that the petitioner, having suffered disability while discharging his duties on account of paralysis attack, he is not in a position to discharge any duties in the 3rd respondent depot and therefore, removal or termination of the petitioner from service is in accordance with law and prayed to dismiss the writ petition.

8) In both the matters, the dispute is with regard to application of provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Therefore, the inaction in both the writ petitions is application of Section 47 of the Act to both the petitioners. W.P. No.28819 of 2014 though stands on different footing as the petitioner was only a contract employee and applicability of the provisions of the Act to such contract employee is also one of the issues involved. Therefore, this Court is of the view that common finding with regard to applicability of provisions of the Act can be recorded while recording separate finding as to the applicability of Section 47 of the Act to a contract employee.

9) Considering the rival contentions of both parties and perusing the material available on record, the points that arise for consideration are:

1) *Whether the petitioner in W.P. No.28819 of*

2014, a contract driver is entitled to claim benefit of Section 47 of the Act?

- 2) *Whether the 3rd respondent in both the writ petitions is liable to provide suitable alternative employment to the petitioners applying Section 47 of the Act, if so, the order of the 3rd respondent in both the writ petitions, terminating the petitioners from service is liable to be declared as illegal and arbitrary?*

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Point No.1:

10) Undisputedly, the petitioner in W.P. No.28819 of 2014 was engaged in services on contract basis for a period of one year and thereafter his continuance of service in view of termination of contract between petitioner and 3rd respondent but the copy of the contract is not placed on record for perusal of this Court to find out whether the petitioner is continuing as a driver on contract basis or not.

11) Assuming for a moment that the petitioner is continuing in service renewing the contract in terms of original agreement, the petitioner as on the date of acquiring disability was only a contract driver.

12) Undisputedly, the petitioner was suffering from colour blindness which disabled him to work as a driver in view of the medical certificate issued by the concerned authorities to the respondents. Thereupon, the petitioner submitted a representation on 21.08.2014 to the 3rd respondent to provide suitable alternative employment in terms of Section 47 of the Act, but, the 3rd respondent passed the impugned order on 23.08.2014 vide proceedings No.E1/468(1)/14-VDPM, terminating the petitioner from service on the ground that the petitioner is not entitled to claim benefits of Section 47 of the Act, being a contract driver in terms of contract/ agreement. As the appointment

of the petitioner was on contract basis, he is governed by the terms and conditions of the contract/ agreement only and is not covered by the Act.

13) Now the said proceedings is challenged while contending that though the petitioner is a contract driver he is entitled to claim benefits of Section 47 of the Act and placed reliance on the judgment of this Court reported in ***R.B Naik vs Vice Chairman and M.D., APSRTC, Hyderabad and others***^[31] wherein this Court held that when a contract employee was found medically invalidated is entitled to the benefit of providing suitable alternative employment under Section 47 of the Act, since, contract employee is not expressly excluded from application of provisions of the Act.

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14) The judgment referred supra, did not specifically discuss about the application of the provisions of the Act to contract employees since such employees are purely governed by the terms and conditions contained in the contract and such contracts are governed by Indian Contract Act. In the entire Act, the word 'employee' was not defined and there was no specific exclusion from application of the provisions of the Act to a contract employee. Therefore, this Court held that the provisions of the Act are applicable to the contract employees also. However, there is any amount of doubt about the application of the provisions of the Act, 1995 since the petitioner was a contract employee governed by the provisions of the Indian Contract Act.

15) The main contention of the respondents is that the petitioner is a contract employee—driver, who is suffering from colour blindness. The colour blindness is acquired during the course of employment and subsistence of contract, it became difficult to drive the vehicle at the cost of the lives of the passengers, thereby he is unable to

perform the task of driving the bus with passengers and thereby by applying the principle laid down under Section 65 of the Indian Contract Act, the Contract is liable to be terminated due to inability to perform.

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16) At best, the petitioner being a contract employee is entitled to continuance of service till completion of contract. The Apex Court in various judgments discussed about contract employment and held as follows:

A similar question came up before the Apex Court in **STATE OF ORISSA Vs. CHANDRA SEKHAR MISHRA** [\[4\]](#) wherein the respondents had been appointed as a Homeopathic Medical Officer whose services were subsequently terminated by issue of a notice. While rejecting the challenge to the termination order, the Court observed: ***“when the respondent was only a contractual employee, there could be no question of his being granted the relief of being directed to be appointed as a regular employee.”***

17) In **SATISH CHANDRA ANAND Vs. UNION OF INDIA** [\[5\]](#) the Apex Court held as follows:

“where the petitioner, an employee of the Directorate General of Resettlement and Employment, was removed from contractual employment after being served a notice of termination. The contract of service in that case was initially for a period of five years which was later extended. A five-Judge Bench hearing the matter, dismissed the petition, challenging the termination primarily on the ground that the petitioner could not prove a breach of a fundamental right since no right accrued to him as the whole matter rested in contract and termination of the contract did not amount to dismissal, or removal from service nor was it a reduction in rank. The Court found it to be an

ordinary case of a contract being terminated by notice under one of its clauses.

10. There was no compulsion on the petitioner to enter into the contract, he did. He was as free under the law as any other person to accept or reject the offer which was made to him. Having accepted, he still had open to him all the rights and remedies available to other persons similarly situated to enforce any rights under his contract, which has been denied to him, assuming there are any, and to pursue in the ordinary Courts of the land, such remedies for a breach as are open to him to exactly the same extent as other persons similarly situated. He has not been discriminated against and he has not been denied the protection of any laws which others similarly situated could claim....

11. The petitioner has not been denied any opportunity of employment or of appointment. He has been treated just like any other person to whom an offer of temporary employment under these conditions was made. His grievance when analysed, not one of personal differentiation but is against an offer of temporary employment on special terms as opposed to permanent employment. But **of course the State can enter into contracts of temporary employment and impose special terms in each case, provided they are not inconsistent with the Constitution, and those who chose to accept those terms and enter into the contract are bound by them**, even as the State is bound.

(emphasis supplied)

18) Similarly in **PARSHOTAM LAL DHINGRA V. UNION OF INDIA**^[6] following the principle laid down in **SATISH CHANDRA ANAND** case held that,

“A conspectus of the pronouncements of this Court and the development of law over the past few decades thus show that there has been a notable shift from the stated legal position settled in earlier decisions, that termination of a contractual employment in accordance with the terms of the contract was permissible and the employee could claim no protection against such termination even when one of the contracting

parties happened to be the State. Remedy for a breach of a contractual condition was also by way of civil action for damages/ compensation. With the development of law relating to judicial review of administrative actions, a writ Court can now examine the validity of a termination order passed by the public authority. It is no longer open to the authority passing the order to argue that its action being in the realm of contract is not open to judicial review. A writ court is entitled to review the action judicially and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract. Having said that we must add that judicial review cannot extend to the court acting as an appellate authority sitting in judgment over the decision. The Court cannot sit in the arm chair of the Administrator to decide whether a more reasonable decision or course of action could have been taken in the circumstances. So long as the action taken by the authority is not shown to be vitiated by the infirmities referred to above and so long as the action is not demonstrably in outrageous defiance of logic, the writ Court would do well to respect the decision under challenge.”

19) In **GRIDCO Limited and Another v. Sri Sadananda Dolio and others**^[71] placing reliance on the judgment in **Shrilekha Vidyarthi and Others v. State of U.P. and Others**^[81], decided as follows:

“17....the question of reviewability of administrative action in the realm of contract was in that backdrop examined by this Court. The Court also examined whether the personality of the State Government undergoes a change after the initial appointment of government counsels so as to render its action immune from judicial scrutiny. The answer was in the negative. The Court held that even after the initial appointment had been made and even when the matter is in the realm of contract, the State could not cast off its personality and exercise a power unfettered by the requirements of Article 14 or claim to be governed only by private law principles applicable to private

individuals. The court observed:..... we are also clearly of the view that this power is available even without that element on the premise that after the initial appointment, the matter is purely contractual. Applicability of Article 14 to all executive actions of the State being settled and for the same reason its applicability at the threshold to the making of a contract in exercise of the executive power being beyond dispute, can it be said that the State can thereafter cast off its personality and exercise unbridled power unfettered by the requirements of Article 14 in the sphere of contractual matters and claim to be governed therein only by private law principles applicable to private individuals whose rights flow only from the terms of the contract without anything more? We have no hesitation in saying that the personality of the State, requiring Regulation of its conduct in all spheres by requirements of Article 14, does not undergo such a radical change after the making of a contract merely because some contractual rights accrue to the other party in addition. It is not as if the requirements of Article 14 and contractual obligations are alien concepts, which cannot co-exist.”

20) In view of various principles laid down by the Apex Court in various judgments referred supra when the employment of the petitioner is on contract basis at best, he be permitted to continue in service till completion of contract period, they are not entitled to claim benefits of the Act. However, this Court in **R.B Naik** (supra) did not discuss the concept of contract employment with reference to law but concluded that unless the contract employees are specifically excluded from application of provisions of the Act, they are applicable to the contract employees also.

23) One of the contentions urged before this Court is that the petitioner in W.P. No.28819 of 2014 is a contract employee not entitled to claim the benefits of the Act. The word employee or workman are not defined in the Act of 1995. But, in the decision of this Court referred supra, the

provisions of the Act applies even to the contract employee, however, the contract of employment is governed by the Contract between the employer and the employee either oral or in writing. A contract of employment is also a subject matter in the writ petition and unless the employment is governed by a statute or statutory rules, the provisions of the Indian Contract Act, 1872 would be only applicable to the formulation of the contract and also the determination thereof. Subject to certain just exceptions, even specific performance of a contract by way of a direction for reinstatement of a dismissed employee is also permissible in law. Once it is held that the provisions of the Indian Contract Act, 1872 would be applicable, the scheme admittedly being contractual in nature, the provisions of the Act shall apply. The scheme having regard to its provisions as noticed would merely constitute invitation and not an offer. Not only the power of the department to accept or reject such application is absolutely discretionary, it, as noticed, could also amend or rescind the scheme. The scheme, therefore, cannot be said to be an offer which, on the acceptance by the employee, would fructify in a concluded contract. The proposal of the employee when accepted by the department would constitute a promise within the meaning of Section 2 (b) of the Act. Only then the promise becomes an enforceable contract. Therefore, the contract of employment is governed by the provisions of the Indian Contract Act as discussed in **Bank of India and Others vs O.P. Swaranakar etc.**^[9]

24) A similar issue regarding applicability of provisions of contract Act came up for consideration before the Apex Court, which I discussed in the earlier Paras and in

State of Karnataka Vs Uma Devi^[10], the Supreme Court again considered the scope of regularization of contract employment and expressed its view that such employment is governed by the terms of contract between the employer and the employee.

25) In the present case, the petitioner was appointed under Regulation 17 of Recruitment Regulations, 2004. The petitioner was appointed in terms of constitutional scheme for appointment of employees of the Corporation by regular process of selection. In **Sudarshan Rajpoot Vs. Uttar Pradesh State Road Transport Corporation**^[11], the Apex Court had an occasion to decide the similar circumstance where the Corporation set up plea that the petitioner therein was a contract employee not entitled to claim the benefits of the Act of 1995. The Apex Court while deciding the issue held that the burden of proof that the employee was a contract employee is on the transport corporation and that to the driver who completed 240 days in corporation continuously in a calendar year cannot be terminated by adopting the definition of workman under Section 2 (s) of the Industrial Disputes Act, which reads as under:

“(s) “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person--

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

26) The source of employment or entry in the service, mode of payment of wages or length of period of employment did not have any significance to determine the issue whether any position falls within the definition of workman. But, it has to be examined on the facts of each case when such question was raised by any one. In the present case, the undisputed fact is that the petitioner in W.P. No.28819 of 2014 was a contract employee. Therefore, the question of placing the burden on the Corporation to prove that the petitioner is a contract employee does not arise in view of the admission that the petitioner was a contract employee. If the definition of workman under Section 2(s) is applied to the facts of the present case, Section 47(1) of the Act would certainly apply to the case of the contract employees even otherwise, the Act is purely a welfare legislation and it has to be interpreted in favour of the petitioner to achieve the object of the Act. In the same judgment, the Apex Court in Para No.23 expressed its view that Umadevi's case cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 30 of the MRTU and PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established.

27) In **Maharashtra SRTC vs. Casteribe Rajya**

Parivahan Karmchari Sanghatana^[12] in Para 36 distinguished Umadevi's case and the view expressed by the Apex Court is a plausible view and on the basis of Maharashtra SRTC, the Apex Court concluded that dismissal or removal of an employee who acquire disability during employment is unsustainable since it is in contravention of Section 47 (1) of the Act and directed to extend all benefits, providing suitable employment to the employees who were removed from service.

28) Though, I am not totally agreeing with the view expressed by the single judge of this Court, however to maintain the judicial discipline by applying the principle laid down in R.B Naik case supra, I held that the petitioner being a contract employee is entitled to claim the benefits of the Act.

29) Accordingly, point No.1 is answered.

Point No.2

30) In both the cases, the driver and conductor became disabled while discharging their services as driver and conductor respectively and when an employee who became disabled and unable to perform his duties, were discharging duties as on the date of acquiring disability is entitled to shift to some other post with the same pay scale or service benefits.

“Section 47 of the Act deals with Non-discrimination in Government employment and it shows that no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service;

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits.

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of

superannuation, whichever is earlier.”

31) Therefore, in view of Section 47 of the Act, when an employee suffers from any disability acquired during employment he shall be shifted to some other post with same pay scale and benefits. In case, no post is available, he shall be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation and cannot be terminated from service.

32) The contention of respondents in W.P. No.28819 of 2014 is that the petitioner is suffering from disability as defined under Section 2(1) and not a person of that disability as defined under Section 2 (t), person with disability means a person suffering from not less than forty percent of any disability as certified by a medical authority. The petitioner in W.P. No.28819 of 2014 is suffering from colour blindness only and unable to perform the task entrusted to him i.e., driver of the bus with passengers. Therefore, the petitioner is only a person with disability acquired during subsistence of contract.

33) Under Section (2), ‘Disability’ and ‘Persons with Disability’ are separately defined and they are distinct. It is well settled that in the same enactment if two distinct definitions are given in defining a word or expression, it must be understood in terms of such definition as held by the Apex Court in ***Kunal Singh vs Union of India***^[13].

34) Section 2 (b) defined ‘Blindness’ and this definition is based on elaborate scientific study and physical data collected, before the Act is enacted. It is not as if any deficiency, vis-à-vis the perfect vision, hearing etc. should be treated as disability by itself. By their very nature, such faculties are bound to vary from person to person. It is only

when the disability or the deficiency is to such an extent that it would differentiate the person from others with ordinary faculties, which can be treated as physically disabled. Therefore, this Court did not accept the plea of the petitioner with regard to the applicability of Section 2 (b) of the Act in **Rasala Gopal vs Andhra Bank**^[14].

35) In the present case, the petitioner became disabled to drive the bus with passengers due to colour blindness. The word 'blindness' is defined under Section 2 (b) and it refers to a condition where a person suffers from (i) total absence of sight; or (ii) visual acuity not exceeding 6/60 or 20/200 (snellen) in the better eye with correcting lenses; or (iii) limitation of the field of vision subtending an angle of 20 degrees or worse; Therefore the definition of blindness covered colour blindness also. Under Section 2(i) the word 'disability' means, (i) blindness; (ii) low vision; (iii) leprosy-cured; (iv) hearing impairment; (v) locomotor disability; (vi) mental retardation; (vii) mental illness;

Therefore, the word 'disability' is defined under Section 2 (i) and 'blindness' is defined under Section 2 (b) and thus the color blindness is disability.

Section 2 (u) defined 'person with low vision' means a person with impairment of visual functioning even after treatment or standard refractive correction but who use or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device.

36) Thus, the petitioner is a person with low vision i.e., having colour blindness and he is unable to drive the vehicle. Due to such low vision with number of passengers in the bus, if he is allowed to drive the vehicle, it will be at the peril of the passengers who are traveling in the bus and may result in loss of lives of passengers which would cause

substantial loss to Corporation.

37) In W.P. No.8565 of 2015, the petitioner was a permanent employee, who suffered from paralysis while discharging his duties as conductor on the bus plying between Nellore and Mutukuru. Thereafter he applied for extension of Out of Designation duties. Accordingly, he was entrusted to "Out of Designation Duties" for a period of three months by proceedings dated 23.05.2014 and thereafter on the advice of the doctor, he applied for extension of "Out of Designation duty" for a period of six months but no action was taken.

38) A similar question came up before this Court in a common judgment of this Court in W.P.No.36337 of 2015 and Batch, wherein the single Judge of this Court discussed the law in detail and analyzed each and every aspect pertaining to provisions of the Act and finally directed that all the drivers or any other employees, who are not assigned work after they were declared as medically unfit are entitled to pay and allowances attached to the post of Driver or any employee 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 was general and applicable to all employees including Drivers. It was further directed that the Corporations shall undertake review of all such claims and shall ensure that no driver is denied pay and allowances on this issue. The said order was directed to be complied within eight (8) weeks from the date of receipt of a copy of the order.

39) It is further directed that petitioners and all drivers, who are declared as unfit to drive on account of 'acquiring disability' while in service are entitled to

alternative job as a matter of course. The Corporation was directed to make an endeavour to provide alternative job of the same status. It is further directed that if for any reason, providing 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. 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. These directions are applicable to similarly situated drivers,

40) In view of the principles laid down in the above judgment all the drivers and other employees working in APSRTC are entitled to the above benefits of Section 47 of the Act and entitled to claim suitable alternative employment with same pay and other benefits attached to the post, which he was holding at the time of acquiring disability.

41) In ***APSRTC rep. by its Managing Director, Hyderabad vs Abdul Asad***^[15] the Division Bench of this Court held that the driver was put off duty after he was declared as unfit, the respondent was entitled to count the period when he was put off for the purpose of payment of salary. The learned Single Judge directed the appellants to treat the period i.e., from the date of declaring him unfit for the post of Driver till the date of his appointment as a Shramik and the leave period which was adjusted by the appellant authorities should be credited to his leave account. Whereas the Division Bench of this Court held that the petitioner is entitled to count his seniority in the service of the APSRTC from the initial date of his regular

appointment as a driver in its service, notwithstanding the fact that he was thereafter shifted to the post of a Record Tracer.

42) In **G.Muthu vs Tamilnadu State Transport Corporation** ^[16], G.Muthu, the petitioner/ appellant was declared as unfit to perform his duties as Driver as he was diagnosed as suffering from “colour blindness”. He was discharged from service and was not provided alternative employment. Single Judge dismissed the writ petition on the ground of delay. Division Bench allowed the Writ Appeal. The SLP filed against said decision is dismissed. On elaborate consideration of the precedents on the term ‘unless the context otherwise requires’ occurring in other Statutes and significance of different terminology used in Section 47 and other provisions in chapters IV to VII, succinctly put as under:

“14.... On a close reading of such provisions contained in Chapters IV to VII, we would discern that the benefit which are conferred under those provisions are to be made available to persons who already suffered a disability. In other words, the two categories, namely a person ‘with a disability’ is always distinguishable from a person who later on ‘acquires a disability’. Viewed in that respect, it will have to be held that the expression ‘disability’ used in Section 47 of the Act can, by no stretch of imagination, be equated with a case of a person ‘with disability’. A close reading of section 47 of the Act would show that the benefit granted under the said provision was to be conferred on a serving employee in an establishment who acquires a ‘disability’ during such service. When such ‘disability’ was acquired by him during his service, the Parliament thought it fit to ensure that his service is not in any way affected because of acquisition of such a ‘disability’ and with that view directed that he should be shifted to some other post with the same pay scale and service benefits and in the event of such alternate post not being available, to create a supernumerary post until a

suitable post is available or till he attains the age of superannuation.

15.....In other words, the term 'disability' used in Section 47 can draw support not only in respect of the defined 'disabilities' as contained in Section 2 (i) of the Act but will also encompass such other 'disability' which would disable a person from performing the work which he held immediately prior to acquisition of such 'disability' and thereby entitle him to avail the benefits conferred under the said provision for having acquired such a 'disability'.

....

17.....In the same line of reasoning, it will have to be held that the specific expression contained in Section 47 to the effect that 'a person who acquires a disability' should be applied with particular reference to the context in which the said expression was used. We also do not find any scope of comparison of those provisions with that of Section 47 when we consider the submission of the learned counsel for the appellant, according to whose submissions the definition of 'disability' under Section 2 (i) was not exhaustive and that the expression 'disability' used in Section 47 will have to be independently applied to the facts of the each case."

43) In **APSRTC, Musheerabad, Hyderabad and others vs K.Moses**^{[\[17\]](#)}, Driver met with an accident while returning home from duty, rendering him unfit to continue in service as Driver. He was retired on 13.11.2016. Petitioner expressed his willingness for retirement on medical grounds and opted for payment of additional monetary benefits in lieu of alternative job. In view of the same, his claim for alternative job was rejected. In addition to the plea of exercising option **for payment of additional monetary benefits**, it was also contended that petitioner did not acquire disability during service. Division bench of this Court held:

"6.Therefore, for purposes of Section 47, assessment of disability suffered by the employee from the stand point of view of his

further suitability/ continuity in service, has got to be examined by the employer himself. If the employer is satisfied that the employee who suffered the disability is not suitable for further continuation in service against the post held by him, it would be sufficient for him to provide for an alternative employment to such an employee. If the decision of the employer is intended or required to be challenged by the employee then, perhaps, the necessity to secure assessment and certification by the competent Medical Authority constituted by the appropriate Government would arise. If on the other hand, if the employee does not wish to dispute the correctness of the assessment made by the employer about his non-suitability to continue to hold the post and he is willing to take up alternative employment, the decision of the employer about his disability acquires finality. It is not necessary to be called in question."

44) In **S.Renuka Swamy vs Managing Director, APSRTC, Hyderabad and 3 others** ^[18], petitioner was declared medically unfit to drive and was provided alternative post of Conductor Grade II. While working as conductor, he developed further medical problem and was declared as unfit to continue as conductor. He was retired on medical grounds. This action of RTC was held as illegal. Learned single Judge referred to provisions of the Act, the service regulations and the circulars and held,

"surprisingly, though this Regulation was amended in the year 2003, no attempt was made by the APSRTC to bring it into consonance with Section 47 of the Act of 1995. In the light of the legal environment obtaining under this statutory welfare provision, it is no longer open to the APSRTC to fall back on a regulation framed by it in the year 1964 to justify its callous disregard of disabled employees.

The APSRTC is therefore statutorily required to place the petitioner in a suitable post keeping in mind his medical condition. It would therefore not suffice for the APSRTC to provide him unsuitable alternate employment; then take advantage of the

same and remove him from service.”

45) In **AP State Road Transport Corporation and others vs M.V.Ramana Rao** (W.A.No.1366 of 2003), M.V.Ramana Rao was found to be suffering from ear problem. He was examined by the senior medical officer and certified that he was unfit for A-1 category driver's job due to defective hearing and '**Tinnitus**'. Basing on the said medical report, he was placed under forced leave. His claim for provision of alternative employment was rejected. Aggrieved thereby, he filed writ petition. The claim of Ramana Rao was that he is entitled to alternative employment was resisted by the respondent corporation holding that Section 47 of the Act is not attracted as disease of 'Tinnitus' does not come under the meaning of 'disability' enumerated in Section 2 of the Act. It was further contended that there was no nexus between the nature of duties performed and the disease with which the respondent was suffering. The said contentions were rejected by the learned single Judge, held that in the absence of finding that the disease suffered by the respondent is not during the course of the employment, it has to be presumed that the disease suffered by the employee is deemed to have 'acquired disability' during the course of his employment and, therefore, provision of Section 47 is attracted. The said decision of the learned single Judge is upheld by the Division Bench in **A.P.State Road Transport Corporation and others vs. M.V.Ramana Rao**^[19].

46) **APSRTC, Depot Manager, Jeedimetla Depot, Hyderabad and others vs G.Darshan,**^[20] wherein the Division Bench of this Court placing reliance on Kunal Singh and Moses Supra held that as per the

provisions of Section 47 of the Act though an employee retired from service on medical grounds and accepted additional monetary benefit offered in lieu of employment, the obligation of the employer under Section 47 of the Act cannot be washed away by offering additional monetary benefits as well as Regulation 6 A (4) of service regulations, employees entitled for option of reversion and therefore upheld the direction issued by the Single Judge to provide employment to the employee and adjust the amount already paid as additional compensation.

47) **J.Mallesam vs APSRTC, Managing Director, Hyderabad and others** [\[21\]](#) similar question came up before this Court and this Court held that it is not possible to accept the contention if the driver is found unfit by the Board and if he opts to retire from service on medical grounds, he shall be permitted to do so by extending additional monetary benefits. On the other hand, if the Driver opts for alternative employment, he should be offered the post of Conductor Grade-II, if he possesses the requisite qualifications, or he should be offered the post of Shramik, subject to his medical fitness for X2 category. It is not in dispute that the Corporation has been following this procedure ever since 2008 and appointing the medically unfit Drivers to alternative posts including Shramik posts. Insofar as the Shramik post is concerned, fitness for X2 category post is concerned sufficient. The Corporation, having thus evolved its own mechanism and machinery for evaluation which it has been following since 2008, is not justified in insisting for certification by an authority constituted under the Act.

48) **APSRTC, Musheerabad, Hyderabad and others vs B.Sailoo** [\[22\]](#) the Division Bench of this Court

placing reliance on Kunal Singh (supra) reiterated the same principle and held that in view of the principles laid down in Kunal Singh, the person who was declared unfit to discharge the duties of the post he was holding as on the date of acquiring disability must be afforded to work providing suitable alternative employment with same pay and benefits under Section 47 of the Act. The same question came up before the Apex Court in catena of decisions and while dealing with the provisions of the Act, the law laid down **Madhya Pradesh State Cooperative Dairy Federation Limited and another vs Rajnesh Kumar Jamindar and others**^[23], the Apex Court held at para No.56 as follows:

“The learned counsel submits that his client suffered disability in 1991. The 1995 Act, thus, did not come into force at that point of time. His services were continued not as a disabled person within the provisions of the 1995 Act. He was treated equally and, thus, we see no reason as to why the entire back wages should be granted in his favour whereas all other employees would be given 50% of their back wages.

The petitioner is entitled to claim backwages though the said Act has not come into force as on the date of his suffering disability in 1991.”

49) **In State Bank of Patiala and others vs Vinesh Kuman Bhasin**^[24] in para Nos.29 and 30, the Apex Court held as follows:

“29. The grievances and complaints of persons with disabilities have to be considered by courts and authorities with compassion, understanding and expedition. They seek a life with dignity. The Disabilities Act seeks to provide them a level playing field, by certain affirmative actions so that they can have adequate opportunities in matters of education and employment. The Act also seeks to ensure non-discrimination of persons with disabilities, by

reason of their disabilities. But the provisions of the Disabilities Act cannot be pressed into service to seek any relief or advantage where the complaint or grievance relates to an alleged discrimination, which has nothing to do with the disability of the person. Nor do all grievances of persons with disabilities relate to discrimination based on disability.

30. Persons with disabilities are no less afflicted by human frailties like ego, pride, jealousy, hate or misunderstanding, when compared with persons without disabilities. Many of their grievances and disputes may have nothing to do with disability. The fact that the respondent claimed to be a person with disability appears to have swayed the Chief Commissioner and the High Court, to ignore the absence of any legal right and grant an interim remedy which in the normal course would not have been considered. Issuing interim orders when not warranted, merely because the petitioner is a person with disability, is as insidious as failing to issue interim orders when warranted.”

50) In ***Anil Kumar Mahajan vs Union of India***^[25]

the Apex Court discussed the objects of the Act and distinguished at para Nos.20 to 22 as follows:

“20. The appellant was appointed in the service of the respondents as an IAS officer and joined in the year 1977. He served for 30 years till the order of his compulsory retirement was issued on 15.10.2007. It is not the case of the respondents that the appellant was insane and in spite of that he was appointed as an IAS Officer in 1977. Therefore, even if it is presumed that the appellant became insane, as held by the enquiry officer, mental illness being one of the disabilities under Section 2 (i) of the 1995 Act, under Section 47 it was not open to the respondents to dispense with, or reduce in rank of the appellant, who acquired a disability during his service. If the appellant, after acquiring disability was not suitable for the post he was holding, should have been shifted to some other post with the same pay scale and service benefits. Further, if it was not possible to adjust the appellant against any post, the respondents ought to have kept the appellant on a

supernumerary post until a suitable post is available or, until the appellant attained the age of superannuation whichever was earlier.

21. In view of the aforesaid finding, we are of the view that it was not open to the authorities to dispense with the service of the appellant or to compulsorily retire him from service. The High Court also failed to notice the relevant facts and without going into the merits allowed the counsel to withdraw the writ petition merely on the basis of the finding of the enquiry officer. In fact the High Court ought to have referred the matter to a Medical Board to find out whether the appellant was insane and if so found, in that case instead of dismissing the case as withdrawn, the matter should have been decided on merits by appointing an advocate as amicus curiae.

22. It is informed at the Bar that in normal course the appellant would have superannuated from service on 31.07.2012. In that view of the matter, now there is no question of reinstatement of the appellant though he may be entitled for consequential benefits including arrears of pay. Having regard to the facts and finding given above, we have no other option but to set aside the order of compulsory retirement of the appellant dated 15.10.2007 passed by the respondents; the order dated 22.12.2008 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No.2784 of 2008 and the impugned order dated 20.04.2010 passed by the High Court of Delhi in **Anil Kumar Mahajan vs Union of India** ^[26]

and the case is remitted to the respondents with a direction to treat the appellant as continued in the service till the date of his superannuation. The appellant shall be paid full salary minus the subsistence allowance already received for the period from the date of initiation of departmental proceeding on the ground that he was suffering from mental illness till the date of compulsory retirement. The appellant shall also be provided with full salary from the date of compulsory retirement till the date of compulsory retirement. The appellant shall also be provided with full salary from the date of compulsory retirement till the date of superannuation in view of the first and second provisions to Section 47 of the 1995 Act. If the appellant has already been superannuated, he will also be entitled to full retrieval benefits

counting the total period in service. The benefits shall be paid to the appellant within three months, else the respondents will be liable to pay interest at the rate of 6% per annum from the date the amount was due, till the actual payment.”

51) **Union of India and others vs B.Banerjee** [\[27\]](#)

in para No.14 the Apex Court held that:

“14. In case of medically decategorised driver, like the respondent, the said component being a part of the pay drawn by him as a running staff has to be protected. The same apparently has been done as it is evident from the rejoinder—affidavit of the Union of India. The above act of the appellants also ensures compliance with the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which entitles the respondent to receive the pay and service benefits earlier drawn by him. The running allowance to which the respondent was entitled while he was a member of the running staff has been protected as a part of his pay in the post of Crew Controller. In such circumstances, any further grant of ALK will not be justified.”

In the facts of above judgment, the respondent was a driver in Indian Railways entitled to claim running allowance as per Rules @30% of the basic pay even after he became medically unfit while he is posted as a crew controller his pay was directed including running allowance of which he was entitled as a part of running staff.

52) **Union of India and others vs Dileep Kumar Singh** [\[28\]](#) wherein the Apex Court held at para No.22 as follows:

“another interesting facet is brought out by the marginal note of Section 47 and Chapter VIII in which Section 47 falls. Chapter VIII has as its heading “non-discrimination”. Equally, the marginal note of Section 47 is “non-discrimination in government employments”. It is

clear that the idea of Section 47 is not to discriminate against employees who acquire disability during service. It is settled law that discrimination cannot be viewed in the abstract—the doctrine of classification is an important adjunct to the doctrine of discrimination. It is clear, therefore, that if there is an intelligible differentiation having a rational relation to the object sought to be achieved, a provision will not be held to be discriminatory. Further, the Apex Court placed reliance on *Kunal Singh (supra)* wherein held that the benefit of Section 47 would be available to a person as an additional benefit even though he may get certain other benefits under the service rules applicable to him. Thus, the law declared by the Apex Court in various judgments and Division bench of this Court, it is made clear that the employee who acquires disability during his service is entitled to the benefits of Section 47 of the Act.

53) In W.P.No.8565 of 2015, the petitioner, while discharging his duties as conductor on the bus plying between Nellore to Mutukuru, suffered paralysis stroke and disabled to discharge his duties as conductor. Thereupon, 3rd respondent placed him on put off duty i.e., Out of Designation duty that is made other than conductor job for a period of three months. But he did not recover from his illness. As he did not recover from illness, he submitted representation, requesting for extension of Out of Designation duties for another six months by representation dated 01.12.2014 but the 3rd respondent did not consider his claim and removed him from service without affording any opportunity by issuing impugned proceedings. When Section 47 of the Act obligates respondents to provide suitable alternative employment when the petitioner became disabled while discharging his duties and found medically unfit to discharge his duties of the post he was

holding while acquiring disability and in case no suitable alternative employment is available he shall be kept in supernumerary post until suitable post is available or till his retirement from service on superannuation and entitled to the same pay scale and other benefits of the post he was holding at the time of acquiring disability.

54) The Delhi High Court in ***Sadhuram vs Delhi Transport Corporation***^[29] considered the scope of Section 47 of the Act. In that case, a conductor of Delhi Transport Corporation suffered from disability i.e., loss of one ear and not in a position to execute the task assigned to him even with proper assistive device. That being so, the case of the respondent in an accident case who suffered the said disability during service was held totally covered by Section 47 of the Act. Therefore, the service could not be terminated prematurely. Similarly in ***Uppala Venkat vs Divisional Manager, South Central Railway***^[30] this Court held that in case of total disability which renders employee unfit for any employment in the establishment, he has the protection of the Provisions of Persons with Disabilities (Equal Opportunities, Principles, Protection of Rights and Full Participation) Act, 1995. Under the said provision, if he is completely disabled, he should be provided with alternative employment and if alternative employment is not possible, he should be kept in supernumerary post till he attained the age of retirement.

55) But the respondents in W.P. No.8565 of 2015, instead of providing suitable employment by following the settled principles of law referred in earlier paras, terminated the petitioner from service as conductor and such proceedings are arbitrary and totally in violation of

Section 47 of the Act and liable to be set aside.

56) In W.P. No.28819 of 2014, the petitioner, who was a contract driver and suffered colour blindness during his employment, was removed from service without providing alternative employment in terms of Section 47 of the Act. But as per the Judgment in R.B Naik (supra) though the petitioner a contract employee is entitled to the benefits of Act and denial of such benefit under Section 47 of the Act amounts to exercise of power, arbitrarily, illegally and in violation of Section 47 of the Act, if such attitude is encouraged, the very intention of the legislator in enacting the Act, 1995 will be frustrated and it is nothing but infringement of fundamental right guaranteed under Article 14 (2) and 21 of Constitution.

57) The petitioners, who are employees in the APSRTC, were removed from service on the ground of acquiring disability during employment. Their contention is that when the petitioners acquired disability during employment, they are entitled to claim alternative employment under Section 47 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short 'the Act') with all benefits of the post, which they were holding including promotion and pay protection. But denial of alternative employment with all benefits under Section 47(1) of the Act amounts to violation of human rights and fundamental rights guaranteed under Constitution of India besides violation of rights under Section 47(1) of the Act. The petitioners being citizens of India are entitled to claim protection from infringement of the fundamental rights guaranteed under the Constitution of India. Article 14 (2) contemplates equal protection of laws and privileges offered by the state to the citizens of India. Since the guarantee of equal protection

under Article 14 embraces the entire realm of State action, it would extend not only when individual is discriminated against in the matter of exercising of his rights or in the matter of imposing liabilities upon him, but also in the matter of granting privileges including protection of employment and providing employment. Equal protection requires affirmative action by the State towards unequals by providing facilities and opportunities. The petitioners in both the writ petitions on account of acquiring disability became entitled to protection under Section 47(1) of the Act, but they were discriminated from providing such employment in most unfair and irrational manner by the Corporation. In such case, the petitioners are entitled to protection under Article 14 (2) of the Constitution of India.

58) Article 21 of the Constitution of India guarantees protection of life and personal liberty, which is one of the luminary provisions in the Constitution and is a part of scheme of fundamental rights, which occupied a place of pride in the Constitution, it mandates that no person shall be deprived of his life and personal liberty except according to the procedure established by law. Life includes right to life enshrined in Article 21 something more than survival or animal existence, it would include right to life with human dignity. It would include all those aspects of life, which make a man's life meaningful, complete and worthy living. In the present case, though the Government enacted the Act referred above to permit the employees who acquire disability to enjoy the equal benefits of the post, which they were holding by way of providing alternative employment so as to lead life with dignity. On account of removal of the petitioners in both the writ petitions, they were deprived of their right to life engaging themselves in gainful employment and apart from that there is no possibility of

securing employment in near future and chances of their survival as a human being with minimum dignity became bleak and such act of the respondents/ Corporation amounts to infringement of fundamental rights guaranteed under Articles 14(2) and 21 of the Constitution of India.

59) The petitioners though employees in Corporation, they are basically human beings and entitled to claim protection from infringement of human rights. There are several conventions and declarations by United Nations. They are classified as covenants on civil and political rights which include substantive rights. Article 6 of the International Covenants on Human Rights protects right to life, which is equivalent to Article 21 of Constitution of India. According to it, every human being has inherited the right to life and this right shall be protected by law and no one shall be arbitrarily deprived of his life. Article 7 protects freedom from inhuman or degrading treatment. Similarly in covenant on economic, social and cultural rights, Article 6 protects right to work and Article 7 protects to just and favourable conditions of work. In view of these rights of the covenants to which the State is a party, the petitioners, employees of the Corporation, being human beings are entitled to protection of their right to life and right to work including in a just and favourable conditions of work. The petitioners being the employees are entitled to claim protection of such rights, but on account of removal of the petitioners from service, they lost their sustenance to lead a life with dignity and even if they are posted in a lower post, it amounts to violation of human rights i.e., covenant on civil and political rights under Articles 6 and 7. To avoid infringement of human rights of employees who acquire disability during employment, the Government passed a proclamation on the full participation and equality of people with disabilities in

Asian and Pacific region. The convention recognizes that the disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others. Clause (e), (h), (i), (j) and (k) of Article 1, Articles 2, 4 and 27 are the relevant articles.

They are extracted hereunder:

“Preamble:

The States Parties to the present Convention

(a) to (d)

(e) Recognizing that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.

.....

.....

(h) Recognizing also that discrimination against any person on the basis of disability is a violation of the inherent dignity and

Worth of the human person,

(i) Recognizing further the diversity of persons with disabilities,

(j) Recognizing the need to promote and protect the human rights of all persons with disabilities, including those who require more intensive support,

(k) Concerned that, despite these various instruments and undertakings, persons with disabilities continue to face barriers in their participation as equal members of society and violations of their human rights in all parts of the world.

Article - 2

“Discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment of exercise, on equal basis with others, of all

human rights and fundamental freedoms in the political, economic, social cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;

“Reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment of exercise on an equal basis with others of all human rights and fundamental freedoms;

Article-4:

1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

(a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;

(b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities.

Article 27: Work and Employment:

1.State parties recognize the right of persons with disabilities to

Work, on an equal basis with others; this includes the right to opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by making appropriate steps, including through legislation, to, inter alia:

(a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance

of employment, career advancement and safe and healthy working conditions;

(b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances.”

60) In view of the proclamation, the Government of India being a party to the proclamation, passed the Act to fulfil its commitment and to avoid discrimination of the employees who acquire disability during employment. In the present case, such discrimination is continued and the petitioners were removed from service on account of acquiring disability and consequently, the action of the respondents can be described as infringement of fundamental rights guaranteed under Articles 14 (2) and 21 and also the human rights guaranteed under Articles 6 and 7 and proclamation on full participation and equality of people with disabilities in Asian and Pacific region and it is irrational and contrary to the provisions of the Act. On this ground alone, the action of the respondents is liable to be set aside.

61) In **Jeeja Ghosh and others Vs. Union of India and Others**^[31], the Apex Court discussed at length about infringement of fundamental rights and human rights of persons disabled.

62) Therefore, in view of my foregoing discussion, the petitioners in both the writ petitions are entitled to claim suitable alternative employment with same pay and benefits which they were drawing as on the date of acquiring disability during employment while holding that the action of respondents in issuing proceedings in W.P.

No.28819 of 2014 and W.P. No.8565 of 2015 as arbitrary, illegal and contrary to Section 47 of the Act. Accordingly, point No.2 is answered in favour of petitioners and against the respondents.

63) In the result, the Writ Petitions are allowed directing the respondents to provide suitable alternative employment to the petitioner in both the writ petitions with the same pay and benefits which they were drawing in the post they were holding as on the date of acquiring disability, during employment. In case, suitable post is not available, they shall be placed in supernumerary post till availability of suitable post or till attaining the age of superannuation and during contract period of petitioner in W.P. No.28819 of 2015 with consequential benefits during put off duty or Out of Designation duty of the petitioner in W.P. No.8565 of 2015.

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64) Pending miscellaneous petitions in these writ petitions, if any, shall stand closed. No order as to costs.

M.SATYANARAYANA MURTHY, J

Date: .06.2016.

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THE HON'BLE SRI JUSTICE M.SATYANARAYANA
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W.P Nos.28819 of 2014 & 8565 of 2015

Date:17.06.2015

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- [\[1\]](#) AIR 2010 (SC) 1253
[\[2\]](#) 2014 (4) ALT 696
[\[3\]](#) 2014 (4) ALT 696
[\[4\]](#) (2002) 10 SCC 583
[\[5\]](#) AIR 1953 SC 250
[\[6\]](#) AIR 1958 SC 36
[\[7\]](#) AIR 2012 SC 729
[\[8\]](#) (1991) 1 SCC 212
[\[9\]](#) AIR 2003 SC 858
[\[10\]](#) 2006 (4) SCC 1
[\[11\]](#) (2015) 2 SCC 317
[\[12\]](#) (2009) 8 SCC 556
[\[13\]](#) 2003 (3) ILD 920 (SC)
[\[14\]](#) 2003 (7) ILD 869 (AP)

- [\[15\]](#) W.A. No.739 of 2013
- [\[16\]](#) (2009) 14 SCC 546
- [\[17\]](#) 2012 (2) ALD 772 (DB)
- [\[18\]](#) W.P. No.18418 of 2012
- [\[19\]](#) 2003 (6) ALD 322
- [\[20\]](#) 2013 (6) ALD 317 (DB)
- [\[21\]](#) 2014 (3) ALD 597
- [\[22\]](#) 2014 (6) ALD 112 (DB)
- [\[23\]](#) (2009) 15 SCC 221
- [\[24\]](#) 2010 (4) SCC 368
- [\[25\]](#) 2013 (7) SCC 243
- [\[26\]](#) W.P © No.2622 of 2010 decided on 20.04.2010 (Delhi)
- [\[27\]](#) (2013) 10 SCC 265
- [\[28\]](#) (2015) 4 SCC 421
- [\[29\]](#) AIR 1994 SC 1467
- [\[30\]](#) 2003 (5) ALD 263
- [\[31\]](#) AIR 2016 SC 2393