

THE HON'BLE SRI JUSTICE A.V. SETHA SAI

WRIT PETITION No.13108 OF 2016

ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India for the following relief:

“to issue an appropriate writ or order or direction more particularly one in the nature of writ of Mandamus declaring the action of the Respondents in not fixing the pay of the petitioner in the pay scale of the post of Driver in the alternative post of Record Tracer and not extending the service benefits, is contrary to Section 47 (1) of the Persons with Disabilities Act, 1995, unjust, arbitrary, discriminatory and in violation of Article 14 and Article 21 of the Constitution of India and set aside the Proceedings No.E1/255(2)/2011-RM(T) dated 03.12.2011 to that extent and consequently, direct the Respondents to fix the pay of the petitioner in the pay scale of the post of Driver in the alternative post of Record Tracer, extend the service benefits by reckoning the interregnum period from the date of medical unfit i.e. 26.05.2011 till the date of providing alternative employment i.e. 07.12.2011 as on duty for the purpose of salary, increments and leave and reckon the seniority of the petitioner in the post of Driver also for the purpose of promotion to the post of Assistant Depot Clerk, in the interest of justice and fair play and pass such other order or orders, just and necessary in the circumstances of the case.”

2. When the matter is called, it is represented by the learned counsel for the petitioner that the issue in the present Writ Petition is squarely covered by the orders of this Court in W.P.No.36337 of 2012 and batch, dated 29.01.2016. The operative portion of the said order at Paragraph No.63 of the said order reads as under:

“63. The points are answered in favour 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."*

3. Following the above said common order and for the reasons recorded therein, this Writ Petition is also allowed, in terms of the above said common order.

4. Miscellaneous petitions pending consideration, if any, in the Writ Petition shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

20.04.2016

SS

*Note: Copy of the order in W.P.No.36337 of 2012 and batch,
dated 29.01.2016, shall be annexed.*

B/o. SS