

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION NOs.36337, 39206, 39353, 39354 of 2012, 4233, 7633, 18451, 24113, 26188, 26551, 33765, 33987, 34189 of 2013, 2614, 2734, 5531, 7281, 7316, 7354, 12254, 15516, 19726, 22292, 34206 of 2014, 10698, 10832, 32784, 35578, 35588, 36135, 36157, 36348, 36690, 36692, 36700, 36728, 36747, 37539, 37550, 37838, 38060, 39767, 40775, 40824, 40935 of 2015

W.P.No.36337 of 2012:

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Between:

M.Venkateswarlu S/o Papaiah, Aged 39 years,
E.726249, Driver, Macharla Depot,
R/o H.No.8-21, Gurjala Post and Mandal,
Guntur District.

.....Petitioner

And

Andhra Pradesh State Road Transport Corporation,
rep.by its Managing Director, Musheerabad, Hyderabad
and others.

.....Respondents

DATE OF JUDGMENT PRONOUNCED : 29.01.2016

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SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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1. Whether Reporters of Local Newspapers may : Yes
be allowed to see the Judgment ? :

2. Whether the copies of judgment may be marked : Yes

to Law Reporters/Journals :

3. Whether Their Lordship wish to see the fair : No
copy of the Judgment ? :

***THE HON'BLE SRI JUSTICE P. NAVEEN RAO**

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... Respondents

! Counsel for Petitioners : S/Shri. A.G.Satyanarayana Rao,
M.Venkat Ram Reddy, A.Jagan,
S.M.Subhan, P.Govinda Rajulu,
S.D.Gowd, Mohd.Ghouseuddin,
K.Srinivasa Rao, G.Rajesh,
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^Counsel for Respondents : Sri G.Vidya Sagar representing Sri
B.Mayur Reddy, standing counsel for
Telangana State Road Transport
Corporation ;
Sri P.Durga Prasad, Sri Aravale
Rama Rao and Sri S.V.Ramana
learned standing counsels for
Andhra Pradesh State Road
Transport Corporation.

<GIST :

>HEAD NOTE :

? Cases referred :

AW (SC)-2013-7-39; (2007) ILLJ 9 Mad
(2009) 14 SCC 546 ; 2008 (1) SCC 579
2010 (2) SCR 6 ; (2013) 1 SCC 353
2012 (2) ALD 772 (DB); (2003) 4 SCC 524
(2013) 10 SCC 772 ; (2012) 3 LLJ 564
1995 Supp (2) SCC 348 ; (2009) 3 SCC 709
(2013) 7 SCC 182; 1957 SC 23 [(S) AIR V 44 C 5 Jan.]
AIR 1960 SC 936 (V 46 C 166) ; (1997) 2 SCC 53
(1998) 8 SCC 1; 2012 (2) ALD 772 (DB)
(1991) 1 SCC 731

HONOURABLE SRI JUSTICE P.NAVEEN RAO

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COMMON ORDER:

It is apropos to begin this judgment by noting ***Mr. Henry Viscards Jr., American activist who fought for the rights of disabled formula propounded for belief for the disabled: "I seek opportunity, not security. I will not trade my dignity for a handout. It is my heritage to think and act for myself."***

1. It is apposite to note the observations of Hon'ble Justice S.B. Sinha in Justice J.K. Mathur Memorial Lecturer (Published in (2005) 3 SCC J-1):

The mindset of people towards PWDs which needs to be changed . In the words of Henry Viscards Jr., " there are no disabled people. There is nothing which can substitute for human rights, no honours, no fame, no pension, no subsidy, can replace a wish to work with dignity in free and open competition with all." (emphasis supplied).

2. In his conclusive remarks, Justice Sinha observed,

“Legal predications, judicial pronouncements and constitutional preferences only elucidate the imperative, for

laws alone cannot guarantee integration. There are no firm policy decisions nor is there any action plan as to how and in what manner the provisions of the enactments would be implemented. Significantly, there has also been no financial impact assessment conducted to anticipate the cost of policies.

Besides, there is also a need to recognize that problems do not reside in a person with a disability, but are a result of structural practices and attitudes that prevent an individual from exercising his or her capabilities.

The time is now ripe for “social innovation”, that is, the normalization, integration, equalization and inclusion of the PWDs. Restorative, rehabilitative, and participative support with dignity is needed to bring the PWDs back into the mainstream.”

3. Having extracted work from Petitioners and utilized their productive years, the respondent corporations unceremoniously dumped them when they were found no more useful since they have acquired disability and no more fit to drive their vehicles and put them to slavery; give them lower post of Shramik or its equivalent and not granting pay protection; they were deprived salary and allowances when they were put off duty after they were declared unfit to drive; they have joined the list of scores of disabled persons in this country who are ill treated, neglected and their fundamental and human rights are systematically violated by the States and its instrumentalities. In spite of suffering several decisions, the respondent corporations continue to ill-treat them, drive them to litigation, contest each case tooth and nail and would comply only when intra-court appeal and SLP are dismissed.

4. Petitioners are recruited as Drivers. They were declared as unfit to drive as they have acquired disability. The petitioners are seeking pay and allowances for the period they were put off duty, to provide alternative job and to grant same pay and allowances as was paid to them as Drivers, respectively. Issues agitated in all the writ petitions

being same, they are disposed of by this common order.

5. Heard learned counsels for the petitioners, learned senior counsel Sri G.Vidya Sagar representing Sri B.Mayur Reddy, standing counsel for Telangana State Road Transport Corporation and Sri P.Durga Prasad, Sri Aravale Rama Rao and Sri S.V.Ramana learned standing counsels for Andhra Pradesh State Road Transport Corporation.

6. For convenience, the facts in W.P.No.36135 of 2015 are noted. Petitioner was appointed as Driver in the year 1996. The Medical Officer found that the petitioner was suffering with Cataract in both eyes and, therefore, unfit to perform duties as driver. Petitioner was referred to the Medical Board. On examining the petitioner on 30.01.2013, the Medical Board found that petitioner was suffering with defective distant vision and declared him as unfit to perform the duties as driver, however, certified that petitioner is fit to perform alternative employment. On consideration of the report of the Medical Board, petitioner was retired as driver and he was provided employment as Shramik by proceedings dated 10.04.2013. Petitioner joined service on the same day. This writ petition is filed praying to grant direction to pay salary and allowances payable to the post of the driver from 22.11.2012 to 09.04.2013, the period during which he was not allowed to perform the duties as driver after he was declared as unfit by the Medical Officer and to fix the pay of petitioner in the cadre of Shramik by protecting the pay drawn by him as driver.

7. Learned counsel for petitioners made following submissions:

(1) Persons with Disabilities (Equal, Opportunities, Protection of Rights and Full Participation) Act, 1995 (Act 1 of 1996) is made as a result of commitment of the Government of India in honoring the proclamation on the Full Participation and Equality of the people with the disabilities in the Asian and Pacific Regions. India is also signatory

to the convention on the rights of the persons with the disabilities and its optional protocol enacted by the United States, which came into force on 3.05.2008. Provisions of the Act 1 of 1996 have to be interpreted keeping in view of the above proclamation and international conventions.

(2) Lot of significance need to be attached to the introductory provision in Section 2; which reads, "In this Act unless the context otherwise requires". The provision in Section 47 has to be interpreted independent of the definition contained in Section 2(i) and Section 2(t) of the Act. Benefits of Chapter-V, VI and VII are different from the non-discriminative protection guaranteed to employees under Section 47, which is in Chapter-VIII.

(3) On closure reading of definition in Section 2(t) of the Act, 'the person with disability' applies only to direct recruitment and other purposes. Reliance is placed on the words used in Sections 33 and 38 of the Act. Section 33 refers to reservation of posts and Section 38 refers to formulation of scheme for ensuring employment to the disabled persons. By referring to other provisions, it is contended that definitions provided therein have no application to in service candidates. The Parliament was careful in using different words in respective provisions of the Act and therefore they have to be understood accordingly. The intendment of Parliament is discernible and requires to be given effect. Thus, disability mentioned in Section 47 is not restrictive and applies to all disabilities.

(4) Employer is under obligation to give effect to the provisions of the Act and cannot contend that the employee can seek the benefits of the Act only if they suffer the diseases provided in Section 2 of the Act.

(5) Once a driver is declared as unfit to drive, irrespective of the nature of disability, alternative job has to be provided. It is mandatory for the respondent corporation to grant protection of pay drawn by

petitioners as driver in the alternative post provided to them. Not granting pay protection is *ex facie* illegal.

(6) The period when petitioners were restrained from attending to the duties after they were declared as unfit to perform duties as Drivers, must be treated as compulsory wait and be paid full pay and allowance.

(7) It is illegal to drive individual employees to Court even though several decisions rendered by this Court, it is held that whenever an employee is declared as unfit to perform the duties of the post he was holding on account of medical invalidation an alternative post be provided; the person is entitled to pay protection of the post earlier held by him and also payment of pay and allowances of the post from the date of declaring him unfit till alternative employment is provided.

(8) As held by the Supreme Court in **Anil Kumar Mahajan Vs. Union of India**^[1], the employee who is provided with alternative job is entitled for the protection of the pay scale, payment of full salary for the interregnum period and service benefits. The settlement entered by the respondent corporation with the recognized Trade Unions under Section 12(3) of the Industrial Disputes Act, 1947 mandates the respondent corporation for provision of alternative job as well as protection of service benefits and denial of the same is illegal.

(9) In **G.Muthu vs. Tamilnadu State Transport Corporation**^[2] Madras High Court has exhaustively considered the provisions of the Act and the precedents on the subject and categorically held that even if an employee suffers from the disability not provided in Section 2(t) of the Act, the protection of Section 47 is still attracted. The Delhi High Court in the case of **Airport Authority of India vs. Kumar Bharat Prasad Narain Singh** (LPA 1601 of 2005 of Delhi High Court) has not considered the provisions in detail. **Union of India vs. Devendra**

Kumar Pant and others^[3] is not applicable to the facts of these cases. It was the case concerning promotion and, therefore, it is not relevant for claims arising under Section 47(1) of the Act.

(10) The alternative remedy available under the Act 1 of 1996 is not an effective and efficacious remedy. The Chief Commissioner/Commissioner under the Act has no power to issue any mandatory or prohibitory injunction or other interim directions. The Chief Commissioner/Commissioner have no enforcement mechanism to ensure compliance of his orders.

(11) Learned counsel for petitioners placed reliance on the following decisions:

i) Tamilnadu State Transport Corporation vs. B.Gnanshekharan (W.A.No.860 of 2007) (Madras High Court).

ii) Municipal Corporation of Gr.Mumbai vs. Srirang Anand Rao Jhadav (Bombay High Court)

iii) Bhagavandas Vs. Punjab State Electricity Board^[4]

iv) Ritesh vs. Dakshin Haryana Bijili Vitaran (Special Leave to Appeal (Civil) No.9194/2008)

v) State Bank of Patiala Vs. Vinesh Kumar Bhasin^[5]

vi) Order of High Court at Hyderabad in W.A.No.739 of 2013

vii) Order of High Court at Hyderabad in W.A.No.829 of 2013

viii) Order of High Court at Hyderabad in W.A.S.R.No.96347 of 2014

ix) Tukaram Kana Joshi and others vs. Maharashtra Industrial Development Corporation and others^[6],

- x) W.P.No.22269 of 2012, dated 25.09.2012;
- xi) W.P.No.26604 of 2015 and batch, dated 08.09.2015;
- xii) WP No.30421 of 2013 dated 03.09.2015,
 - xii) APSRTC, Muesheerabad, Hyderabad and others vs. K.Moses^[7]
- xiv) W.A.No.696 of 2013 dated 28.06.2013
- xv) Kunal Singh vs. Union of India and another^[8]
- xvi) Union of India and another vs. National Federation of the Blind and others^[9]

8. Learned senior counsel Sri Vidya Sagar appearing for Telengana State Road Transport Corporation made his submissions by referring to the facts in W.P.No.36135 of 2015.

(1) According to learned senior counsel on 11.2.2013 petitioner submitted a requisition for providing alternative job. He was medically examined for alternative employment on 06.04.2013 and having found fit to perform the duties of Shramik, the post was offered to him on 10.04.2013. Petitioner joined service as Shramik on 10.04.2013. He contended that petitioner was initially declared as unfit to perform the duties of the driver on the ground that he was suffering with Cataract. Cataract is a curable one and without taking treatment to cure cataract petitioner cannot claim himself to be disabled and cannot seek other benefits. He further submitted that even according to the report of Medical Board, it only pointed out that petitioner was suffering with defective distant vision. The defective distant vision was not the one covered by the provisions of the Act 1 of 1996 and, therefore, he is not entitled to protection under Section 47 of the Act.

(2) Learned senior counsel extensively referred to the definitions provided in Section 2 of the Act. An employee is entitled to claim the protection under Section 47 only if he is suffering with any of the seven

disabilities mentioned in Section 2 of the Act. A cumulative reading of various definitions in Section 2 of the Act would clearly show that petitioners in this batch of writ petitions do not have the same disability as provided therein.

(3) By referring to the provisions of chapter-VI and chapter-VII, learned senior counsel contended that a clear distinction is brought in these two chapters. Chapter-VI deals with provision of employment to disabled persons. Here the words 'persons with the disabilities' is specifically used for extending certain concessions in providing employment, whereas chapter-VIII deals with non-discrimination in employment including promotion.

He contended that the Parliament clearly intended to bring about distinction between the un-employee seeking employment and a person who is already in service. Protection of Section 47 is attracted only if the employee acquires any of the disabilities provided in the Act during the course of employment.

Thus, Section 47 has limited application and cannot be extended to all cases of disability as sought to be contended by the counsel for the petitioners.

(4) According to the learned senior counsel the service conditions of the petitioners are governed by the APSRTC Employees' (Service) Regulations 1964. Regulation 6A deals with retirement due to failure to conform to the requisite standard of physical fitness. Sub-clause 5(b) provides for financial assistance in case the driver is declared as unfit to perform his duties. According to sub-clause 5(a), employee may be extended all termination benefits as mentioned therein. He, therefore, submitted that regulations governing service conditions of the petitioners do not envisage the provision of alternative employment and these regulations are not under challenge.

(5) As a major of social security and in order to obviate the problem of declaring an employee as medically unfit to perform his duties, instructions were issued in Circular bearing No.PD-16/2008 on 25.02.2008 to enable the driver who is declared as unfit to perform the duties by the medical board to apply for alternative employment. On such application, depending on his qualification and availability of the vacancies, he can be provided the post of Conductor Gr.II or Shramik. Neither the regulation 6A of 1964 Regulations nor the circular give pay protection of the post held by employee.

(6) The alternative employment is provided to the petitioners as a consequence to the policy formulated by the respondent corporation, more as a welfare measure and providing alternative job is in accordance with said policy. The policy does not envisage pay protection of the previous post. There is no compulsion on employee to accept alternate job and instead he can receive financial package as provided in Regulation 6A of the Service Regulations. He, therefore, submitted that petitioners are not entitled to claim protection of pay.

(7). Once a driver is declared as unfit, he cannot be allowed to perform duties as Driver in public interest. Such Driver has to go on leave before a final decision is taken. Thus, there was no illegality in treating the period as leave admissible and cannot be paid full pay and allowances as he has not discharged his duties during the period.

(8) Learned senior counsel further contended that even assuming that the provisions of the Act 1 of 1996 are applicable and employee has a grievance, he has to avail redress mechanism created by the Act 1 of 1996 and cannot directly invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India without availing the statutory remedy. Section 60 of the Act provides appointment of the Commissioner for persons with disabilities. The Commissioner is vested with ample powers to attend to grievance of

the aggrieved person. In terms of the provision contained in Section 63, he is also vested with the powers of Civil Court. Petitioners ought to have filed complaint under Section 62 of the Act. This mechanism created by the Act is an effective and efficacious remedy available to the petitioners and when there is an effective and efficacious remedy available to the petitioners, the writ petition is not maintainable.

(9) He further submitted that petitioners have not availed the remedy within the organization. They ought to have represented to the competent authority in the Corporation ventilating their grievances soon after a grievance arose to them. Petitioners kept quiet for long time before instituting these writ petitions directly. According to learned senior counsel, writ petitions are not maintainable on this ground.

(10) Whether the medical status of the petitioners is falling within the parameters of one of the disabilities defined in Section 2 of the Act or not is a question of fact and Writ Court in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India cannot go into the same. The issue is technical in nature and the writ Court does not have expertise to decide the issue. He also submitted that petitioners have not raised the issue immediately when grievance arose; there are no bona fides in prosecuting the grievance.

(11) Learned senior counsel fairly submitted that the contentions now urged were not placed before this Court or before the Supreme Court in the earlier rounds of litigation though the decisions rendered by this Court are complied with and pay protection as well as the pay for the break in period was granted. However, learned senior counsel submitted that these contentions require consideration.

(12) In support of his submissions, learned senior counsel placed reliance on the decision of the Supreme Court in **Devendra Kumar Pant**. He submitted that though the said decision deals with the provision contained in sub-section (2) of Section 47 i.e., matters

concerning promotion, the principle would equally govern contingency provided by sub-section (1) of Section 47 of the Act. He has also relied on the following decisions:

i) Airport Authority of India vs. Kumar Bharat Prasad Narian Singh (LPA No.1601 of 2005 of Delhi High Court)

ii) Hawa Singh vs. Delhi Transport Corporation^[10].

iii) P.Kasilingam and others vs. P.S.G. College of Technology and others^[11]

iv) Paul Enterprises and others vs. Rajib Chatterjee and Company^[12]

v) Judgment of this Court in W.A.No.623 of 2007 (The APSRTC rep. by its Regional Manager, Adilabad Town, Adilabad district and another vs. Sd.Esa Ali)

vi) Geetaben Ratilal Patel vs. District Primary Education officer^[13]

9. Learned standing counsel representing the APSRTC adopted the submissions made by learned senior counsel.

10. The points that arise for consideration in these writ petitions are:

1. Whether a Driver is entitled to pay and allowances for the period he was put off duty after he was declared as unfit ? and

2. When a driver was declared as unfit to drive and is provided alternative employment, whether he is entitled to pay protection as drawn by him in the post of Driver?

11. Before appreciating the rival contentions, it is necessary to dwell

into the history of fight for equal rights to disabled persons on par with able bodied persons and the measures taken to protect the rights of disabled persons by the international organizations and in India.

12. There are people who are disabled by birth or acquired during the life time. Due to such disability, their dependence is more on others. A disabled person is neglected/ill treated and same care and affection is not extended as is given to ordinary persons. In many instances, their basic needs are not attended. It is an un-equal treatment to persons who are also entitled to all rights and safeguards bestowed in them by the Constitution of India. What is not appreciated is disabled persons are also equally entitled to mandate of Articles 14, 16 and 21. They have right to a decent and honorable living. State and its instrumentalities must endeavor to protect and preserve their rights.

13. This ill treatment/neglect is a universal phenomenon. World over, several movements launched to achieve some sort of protection and helping hand, yielded results in the form of Beijing Proclamation of 1992. India was a signatory to this proclamation. As per the commitment made by India, "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was enacted.

14. This Act aims to achieve following objectives:

- "i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;
- ii) to create barrier free environment for persons with disabilities;
- iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-à-vis non-disabled persons;
- iv) to counteract any situation of the abuse and the exploitation of

persons with disabilities;

v) to lay down a strategy for comprehensive development of programmes and services and equalization of opportunities for persons with disabilities; and

vi) to make special provision of the integration of persons with disabilities into the social mainstream.”

15. The Act intends to provide a mechanism to ensure equal participation, safeguards and all the other objectives of the enactment. Act deals with safeguards in the matter of education, employment and in social life.

16. While so the United Nations General Assembly passed resolution on 13.12.2006 on the ‘Convention on the Rights of Persons with disabilities’. India ratified the convention on 01.10.2007. The convention came into effect on 03.05.2008.

17. The convention recognizes 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. Some of the important provisions of the Convention are listed here under:

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.

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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.

18. As a consequence to ratification of United Nations Convention, Government of India set in motion the process of revamping the Act and to bring in tune with the international commitments. A comprehensive bill is drafted for consideration of Indian Parliament. The bill is pending approval of the Parliament. Bill seeks to bring about significant changes in the provisions on various aspects including the definition of disability. It is wider and incorporates provision for addition. The endeavour is to ensure full participation by disabled persons in all activities of life an able bodied person can perform without any hindrance and not to discriminate disabled persons in all aspects of life. The points in issue require consideration, having due regard to the above legal framework.

19. Before dealing with points, it is necessary to clear two preliminary objections. Learned senior counsel contended that if petitioners rely on provisions of the Act, they must first avail the remedies provided under the Act before invoking the jurisdiction of this Court. In view of the decision of Supreme Court in ***State Bank of Patiala*** (*supra*), it cannot be said that the remedies under the Act are

efficacious and effective to through the writ petitions on that ground.

Mere availability of alternative remedy cannot be a ground to reject a writ petition. It is settled principle, needs no reiteration, that alternative remedy is not a bar to entertain the writ petition. Having regard to the issues raised in the writ petition and the approach of the respondent corporations, I am not inclined to through the writ petitions on that ground.

20. Learned senior counsel also vehemently contended that petitioners kept quiet after receiving the orders, never protested regarding not granting pay protection, not paying the pay and allowances for the period when the petitioners were put off duty. They have not even represented to the competent authority before invoking jurisdiction of this court and, therefore, the writ petitions are liable to be dismissed on that ground alone wherever writ petitions are not filed soon after the cause of action arose. The very same issue was considered by the Bombay High Court in **Municipal Corporation of Greater Mumbai**. I am in respectful agreement with the reasons assigned therein. In the cases on hand, petitioners are seeking for enforcement of mandate of Act 1 of 1996 which is binding on the respondent corporations. In addition to mandate of Act 1 of 1996, the respondent corporations are equally bound by the **United Nations Convention on the rights of persons with disabilities**, and there own decisions and therefore, while seeking enforcement of those rights the Court cannot take narrow pedantic approach and dismiss the writ petitions on the ground of delay and laches. Further more in the cases on hand, it cannot be said that petitioners were not diligent and slept for long time and invoked jurisdiction of this court after inordinate delay. Petitioners are low educated and they are mostly guided by clerks in the administrative offices and the union leaders and are not well versed with rules, regulations and statutory mandate. In spite of several decisions rendered by this Court, the respondent corporations

consider individual cases separately, deprive the legitimate benefits to its employees, reject the claims for grant of alternative job, pay protection and deny the pay and allowances for the period when the petitioners were put off duty. Such conduct of the respondent corporations cannot be appreciated. It is their conduct which is driving them to litigate, thrust on them. More so, when the complaint is against abrogation of their fundamental rights the court cannot refuse to grant relief on that ground. Therefore, for the aforesaid reasons and in the peculiar facts of these cases, I am not inclined to through the writ petitions on this ground also.

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POINT NO. 1:

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21. In the cases on hand drivers were declared as medically unfit to drive the vehicles on account of acquiring disability. Based on the recommendation of the medical authority, they were put off duty. It is illegal to put a driver off duty on declaring him as medically unfit to drive, ask him to apply for leave or treat such period as compulsory leave/medical leave/extra-ordinary leave. The Driver was not asking to permit him to go on leave. He was willing to work. No employee can be compelled to go on leave or mandate him to apply for leave. If employer does not assign him work, at the most it has to be treated as compulsory wait. He is entitled to full pay and allowances for the period when employer chooses not to assign work, as if he is on duty, from the date when he was declared medically unfit and till he was retired/provided alternate job. Such action amounts to treating a driver worse than an employee against whom disciplinary proceedings are initiated due to misconduct. Even an employee whose services are placed under suspension gets subsistence allowance.

22. In several decisions this court directed for payment of pay and allowances for the period when driver was put off duty after he was declared unfit. In **Abdul Asad** (W.A.No.739 of 2013) the issue for

consideration was whether respondent was entitled to count the period when he was put off duty for the purpose of seniority, payment of salary and other attendant benefits. Learned single Judge directed to treat the period as on duty. The decision of learned single Judge was upheld. Division Bench also held that petitioner is entitled to count his seniority from the initial date of regular appointment as Driver notwithstanding the fact that he was thereafter shifted to the post of Record Tracer.

23. The decisions rendered in individual cases are contested by the Corporations by way of intra court appeal and in some cases to Supreme Court. Thereafter, the orders are complied. This shows the flawed administrative and litigation policies of the Corporations. Though it is fundamental principle that employee is entitled to full pay and allowances for the period when employer does not assign work on his own, the individual employees are denied pay and allowances and are driven to take legal course. The claims are contested on the ground of delay and laches. Such conduct of respondent Corporations is *ex facie* illegal. Hope and expected that the Corporations correct themselves and avoid further litigation on this issue. Any further litigation on this issue has to be viewed seriously.

POINT NO.2:

24. Debate centered on the scope of application of definition of 'disability', 'Persons with disability' and 'acquired disability' as enumerated in Section 2 and its application to Section 47 of the Act. In substance, counsel for petitioners contended that Section 47 is an exception to other provisions and the definition of 'disability' as enumerated in Section 2(i) has no application to employees who suffer disability while in service. Section 47 uses the term 'acquiring disability' as against 'with disability' in other provisions. Definitions in Section 2 are not exhaustive. Section 2 starts with 'unless the context otherwise requires' and context of Section 47 is different from other

provisions. Therefore, if employee acquires disability while in service, irrespective of nature of disability, if such disability results in declaring him as unfit to do the job to which he was recruited, such employee is entitled to the protection of Section 47. The stout opposition by senior counsel and other counsels for respondent corporations is unless employee suffers any of the disabilities as enumerated in Section 2 such employee is not entitled to the protection of Section 47 and petitioners do not suffer the same disability as provided in Section 2(i) and, therefore, are not entitled to the protection of Section 47.

25. The principles of interpretation of various provisions of an enactment are well settled. It is necessary to have regard to the purpose behind the particular provision made and its setting in the scheme of the statute (***Shamrao Vishnu Parulekar and another vs.***

The District Magistrate, Thana and others^[14]). If in any legislation, the general object of which is to benefit a particular class of persons and provision is ambiguous so that it is capable of two meanings, one which would preserve the benefit and another which would take it away, the meaning which preserves it should be adopted (***Mahadeolal Kanodia vs. The Administrator General of West Bengal***^[15]).

Statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive in as much as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different section of the Act depending upon the subject or context [***The Vanguard Fire and General Insurance Co. Ltd. Madras Vs. M/s.Fraser & Ross and another – AIR 1960 SC 971 (1)***].

Where the definition or expression is preceded by the words, ‘unless the context otherwise requires’, the said definition set out in the section is to be applied and given effect to but this rule, which is normal rule may be departed if there is something in the context to show that the

definition could not be applied (**K.V.Muthu vs. Angamuthu Ammal**^[16]).

26. In **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others**^[17], Supreme Court held,

“28. Now, the principle is that all statutory definitions have to be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject and context

27. In the above backdrop it is necessary to consider the several precedent decisions by this Court, Supreme Court, Madras High Court and Bombay High Court on the scope of Sections 2 and 47 of the Act as discussed hereunder.

28. In **Devendra Kumar Pant**, heavily relied on by learned senior counsel for TSRTC, the Supreme Court was considering claim of an employee for promotion as Chief Research Assistant when he was not meeting the bench mark of fitness fixed by employer. Minimum medical standards were fixed taking into account the requirements in the Medical Manual having regard to public safety, interest of the employee himself and fellow employees and the interest of the administration. Supreme Court upheld the disqualification of employee for promotion and held that prescription of higher medical standard having regard to safety, security and larger public interest is permissible and does not offend the mandate of Act 1 of 1996. This case concerns scope of Section 47(2) as against the cases on hand which are covered by Section 47 (1). Furthermore, Supreme Court carved out exception having regard to facts of that case. It is also appropriate to note what Supreme Court has said:

“23. What is significant is all persons with disability are not treated equally or similarly, under the Act. The benefits extended under the Act depend upon the nature of disability and the extent

of disability.

24. Different principles relating to non-discrimination apply depending upon the context in which the benefit is extended.

25. Therefore, the provisions of the Act cannot be applied mechanically to all persons with any and every kind of disability.

33. When invoking or applying the provisions of the Act, it is necessary to keep in view that the intention of the Act is to give a helping hand to persons with disability so that they can lead a self-reliant life with dignity and freedom.”

29. In **Kunal Singh**, applicant suffered injury to his left leg while on duty resulting in amputating the leg. He was declared permanently incapacitated for further service. Challenging the same and claiming alternative job he filed writ petition. The said writ petition was dismissed. In Supreme Court reliance was placed on Section 48(1) in support of appellant. Respondents opposed said claim on the ground that in accordance with definitions contained in Section 2, appellant is not a person with disability. Supreme Court held as under:

“9. Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of “disability” and “person with disability”. It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that a person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature.

.....

In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses

the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service.

10. The argument of the learned counsel for the respondent on the basis of the definition given in Section 2(t) of the Act that benefit of Section 47 is not available to the appellant as he has suffered permanent invalidity cannot be accepted. Because, the appellant was an employee, who has acquired “disability” within the meaning of Section 2(i) of the Act and not a person with disability.

.....

12. Once it is held that the appellant has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay scale and service benefits; if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation, whichever is earlier. “

30. In **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 job. 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, the Madras High Court, succinctly put as under:

14. On a close reading of such provisions contained in Chapters IV to VII, we could discern that the benefits which are conferred under those provisions are to be made available to persons who already suffer 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 the 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.

31. Highlighting the imperative to give liberal interpretation to welfare statute to ensure achieving of the objectives of the Act, the Division Bench of the Madras High Court held as under:

"21. The object which Section 47 of the Act purports to achieve is that appropriate provision should be made for the employees employed in the establishments who acquire a disability during their service. While having this in mind, in construing the material provisions of such an act, if two views are reasonably possible, the courts

should prefer the view which helps the achievement of the object. In construing the relevant provisions of the Act what the courts have to ask themselves is, "Is the object for which the Act has been introduced, achieved?" Thus, the interpretation shall fit in with the object for which the Act has been introduced and it should be considered in the light of the object intended to be achieved.

22. Welfare legislations are meant to ensure benefits to the needy. They should be interpreted in such a way so that the purpose of the legislation is allowed to be achieved. Even assuming that there is any ambiguity in the provisions of the Act, in view of the object underlying the Act, it requires a reasonable interpretation of Section 2(i) of the said act so as to make it applicable to the case on hand. The legislative purpose must be noted and the statute must be read as a whole."

32. The same issue has fallen for consideration of Mumbai High Court in **Municipal Corporation of Greater Mumbai vs Mr. Shrirang Anandrao Jadhav** (W.P.No.1900 of 2009). The Mumbai High Court elaborately considered the background for notifying Act 1 of 1996, the United Nations Convention of 2006 and its binding nature in this country and the decisions of Madras High Court.

33. In the said case, Driver was declared unfit on account of injury to one of his fingers while on duty. The defense against claim was, Section 47 of the Act 1 of 1996 is not attracted as disability suffered was less than 40%. The Bombay High Court held as under:

- i) The expression "person with disability" is distinct from the expression "employee who acquired disability during his service". Parliament has legislated two separate requirements. The first is for an employee who acquires a disability while in service. The second is for persons with disability who are to be provided employment by making reservations.
- ii) A right had been conferred to protect his existing service benefits and pay scale. Once the dispensation of service was illegal, as it must be held to be so, no

settlement purported to have been arrived at with the workman can override the right conferred upon the workman by the provisions of Section 47.

- iii) The Persons with Disabilities Act, 1995, is a Parliamentary recognition of the special needs of persons with disabilities; of the affirmative action that is required to protect their life and liberty under Article 21 of the Constitution and to ensure them a right of dignified existence.
- iv) A case governed by Section 47 cannot be treated at par with cases where the services of an employee have been dispensed with as a result of an act of misconduct, or for the matter as a result of volition on the part of the employee. In a case where the employer has been in breach of the mandatory obligation under Section 47, it would not be permissible to deprive the employee of consequential benefits when the Court sets aside an illegal action. An employer in the public sector must be held to strict compliance with the Persons with Disabilities Act, 1995 and any dereliction of the obligation mandated by Section 47 will have to be visited with the grant of consequential benefits.

34. In **Airport Authority**, employee was working as a Co-pilot. As he suffered cardiac arrest, he was declared medically unfit. He was discharged from the post of Co-pilot and was appointed afresh as Aerodrome Officer. He was not given pay protection. Division Bench of Delhi High Court held that employer has no legal obligation to give alternative employment, but a compassionate view was taken. The Division Bench held that definition of 'disability' is exhaustive and covers all contingencies. The Division Bench also held that claim of employee fails on the ground of delay and laches. It is to be noted that said employee was terminated prior to coming into force of Act 1 of 1996.

35. In **Hawa Singh**, Driver was implanted Automatic Implantable Cardioverter Defibrillator and was advised light duties. His claim to

assign light duties was stoutly refused by Delhi Transport Corporation (DTC) and for long spells he was put on rest. However, during the pendency of WP (C) No. 8129 of 2007, he was assigned light duties. Thus, only issue remained for consideration was whether the Driver was entitled to salary for the intervening period. His claim was rejected on the ground that his ailment is not covered by the definition of 'disability' and, therefore, not entitled to the benefits of Section 47. Though, G.Muthu decision was considered by the Division Bench, the Delhi High Court rejected the claim of Driver in view of earlier Division Bench decision in Airport Authority case stating that the same is binding on the Co-ordinate Bench.

36. The Division Bench held,

“In so far as issue at hand is concerned, it is squarely covered by the Division Bench judgment of this Court in **Airport Authority of India vs. Kumar Bharat Prasad Narain Singh** (LPA 1601 of 2015 decided on 14.12.2005) and since judgment of a Coordinate Bench is binding, we find no merit in this writ petition which is accordingly dismissed.”

37. It is to be noted that in both cases, employees were suffering from heart ailment. In both cases the decision of Supreme Court in **Kumal Singh vs. Union of India** was not considered. The United Nations Convention on the Rights of Persons with Disabilities, 2006, to which India is a signatory changes the complexion of the issue.

38. This issue has come up for consideration in this Court on several occasions. Series of judgments are rendered. In all the cases discussed here under, respondent corporations are party. They have unsuccessful in their challenge and have complied with the orders. Few of them are discussed here under.

39. In **APSRTC, Musheerabad, Hyderabad and others v.**

K.Moses^[18], 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. ”

40. In **S.Renuka Swamy** (WP No.18418 of 2012, 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. Learned single Judge 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.”

41. In **A.P. 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 job was rejected. Aggrieved thereby, he filed writ petition. The claim of Ramana Rao 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. 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 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** – [2003 (6) ALD 322].

42. It is thus beyond pale of doubt that the provisions of Section 47 of the Act are attracted if a serving employee 'acquires disability', irrespective of degree of disability and even if such disability is not

covered by definition clauses in Section 2. The respondent corporations are bound by the said mandate and the United Nations Convention.

43. **Anand Bihari and others vs. Rajasthan State Road Transport Corporation, Jaipur**^[19] is a case prior to Act 1 of 1996. Several drivers working in Rajasthan State Road Transport Corporation were prematurely terminated from their services on the ground that they became medically unfit to drive the heavy vehicles as they developed defective eyesight and not meeting the required vision for driving the heavy motor vehicles.

44. Drivers contended that the said termination violates Section 2(oo) of the Industrial Disputes Act, 1947 and also contrary to an agreement between the drivers' union and the corporations, where under it was agreed to provide alternative job to the drivers declared as unfit. While rejecting both contentions, Supreme Court, however, found that the action of the respondent corporations therein was not proper, equitable and justified on the touch stone of the constitutional mandate. The Court noticed that the drivers developed defect in their eyesight due to the nature of job undertaken by them. They were required to drive the heavy motor vehicles during hot sun, rain, dust and dark hours of night. They require high degree attention and concentration and, therefore, there would be lot of strain on the eyes. Thus, the Supreme Court was of the view that the defects developed by the drivers was directly attributable to the nature of the employment. The Supreme Court found fault in treating such drivers on par with any other employee in invoking provision in Section 2(oo) (c) of the Act. As suggestion made by the Court to formulate a scheme to ameliorate their suffering was not properly responded by the respondent corporation, the Supreme Court itself formulated the scheme. Salient features of the scheme formulated by the Supreme

Court were, (i) to provide alternative job that may be available to which a driver is eligible; (ii) in case no alternative job is available, the driver should be paid retirement benefits and additional compensatory amount; the Supreme Court indicated payment of amounts depending on the left over service; (iii) Supreme Court further directed that if the alternative job was not immediately available, it should be offered as and when such job is available. The scheme formulated by the Supreme Court in the above case is now incorporated in Section 47 of the Act.

45. In **Narendra Kumar Chandla vs. State of Haryana and others** ^[20], Supreme Court held that Article 21 protects the right to livelihood as an integral facet of right to life. When an employee is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the post he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge his duties. This case was also decided prior to Act 1 of 1996.

46. Thus, even before the Act 1 of 1996 was notified, Supreme Court was of the opinion that having regard to the constitutional mandate an employer cannot throw the employee to hindrance on account of disability suffered by him during the course of the employment, which disability is directly attributable to the nature of the employment.

47. Having regard to the above discussion, it is necessary to notice various decisions taken by the respondent corporations over a period of time to extend special benefits to Drivers declared medically unfit to drive.

48. The respondent Corporations formulated schemes for provision of alternative job and other financial packages exclusively to Drivers. As noticed by the Supreme Court in **Kunal Singh** case (supra), Act 1 of 1996 intend to provide some sort of succor to the disabled persons.

Section 72 of the Act, makes it clear that what is provided in Act 1 of 1996 is in addition to and not in derogation of any other law. Having regard to the provisions contained in Section 72 of the Act, Regulation 6A of the Regulations, 1964 and the Circular Instructions issued from time to time assume significance.

49. Original Regulation 6A did not provide for alternative job, but only dealt with the additional financial component on account of retirement on medical invalidation grounds. The provision was also general and applicable to all employees. Having realized that drivers of the Corporations constitute a separate class and they need to provide additional benefits, Regulation 6A was amended and special provision is incorporated in the form of Regulation 6A (5)(b) which envisages additional monetary component to the drivers.

50. Relevant provision in Regulation 6A reads as under:

Regulation 6A: Retirement due to failure to conform to the requisite standard of physical fitness:

(5)(a) In the case of retirement on medical grounds, the employee may be extended all terminal benefits including the following benefits;

(i) employer's contribution to provident fund and payment of gratuity will be regulated as if the employee had put in 5 more years of service or the remainder service upto the date of normal superannuation whichever is less.

(ii)(a) Employees whose left over service is 5 years or below: 15 days wages for each year of service leftover.

(b) Employees whose leftover service is above 5 years and below 10 years: 20 days wages for each year of service leftover.

(c) Employees whose leftover service is 10 years and above: 25 days wages for each year of service leftover, subject to a maximum of 10 years.

Service of more than six months shall be treated as one year.

The Pay & DA for the above purpose however be the same as those drawn on the actual date of retirement on Medical grounds.

For employees who have not completed 20 years of service or attained the age of 48 years (forty eight) as on the date of retirement, the compensation should be reduced in proportion to the service rendered by them in the Corporation as shown hereunder:-

No. of years of service rendered by employee in the Corporation X 10/20.

(5)(b) In the case of retirement of a Driver on medical grounds he may be extended all terminal benefits apart from an Ex-gratia payment equivalent to one and half month's emoluments (Pay + DA) last drawn, for each completed year of service or the monthly emoluments at the time of retirement on medical grounds multiplied by the balance months of service left before normal date of retirement whichever is less.

Service of more than 6 months shall be treated as one year.

51. Sub-regulation (5)(a) deals with the benefits payable to the employee retired on medical grounds. Specific provision is made in sub-regulation (5)(b) covering the Drivers. Having regard to the peculiar nature of the job of a Driver, in addition to grant of all terminal benefits as mentioned in sub-regulation (5)(a), he is also granted Ex-gratia payment equivalent to 1½ months emoluments last drawn, which include pay and dearness allowance for each completed year or service or the monthly emoluments at the time of retirement on medical grounds multiplied by the balance months of service left before normal date of retirement. Thus, the Ex-gratia is the additional component given to the driver. However, having realized its Ex-gratia component is not sufficient to deal with injustice meted out to the drivers on account of their retirement on medical invalidation grounds further instructions are issued. The policy decisions notified in the form of Circular Instructions extensively referred hereunder recognize the necessity to extend the provision of Section 47 of Act 1 of 1996 and to provide for alternative employment as Conductor Grade-II subject to educational qualifications or as Shramik/Routine Clerks/Record Tracers.

52. Though regulations are not amended further, by way of policy decisions notified from time to time, certain benefits are extended to the drivers. In Circular No.PD-144/1989, dated 06.11.1989 a decision was taken to provide alternative employment as Cleaners subject to ceiling of 10% and fitness to hold the post. It also prescribes formula for pay fixation on such appointment. In Circular No.PD-55/1990, dated 21.04.1990 it was clarified that if there is no vacancy in the cadre of Cleaner readily available, the Driver who is declared unfit to hold a post of driver should be shown in the muster. In circular No. PD-64/1997 dated 19.9.1997 further clarifications are issued on pay protection. A table is appended to the circular on mode of pay fixation. In order to improve further the benefits extendable to the drivers, in Circular No.PD-105/1999, dated 18.11.1999, the Corporation extended provision of alternative employment to the post of Conductor subject to the person possessing requisite qualifications. Circular also deals with regulation of pay in the Conductor Grade-II post on such appointment. The instructions would imply that pay protection is required to be given on such appointment and if there is variation in the pay the difference is to be treated as personal pay. Initially higher educational qualification was prescribed for such appointment. On further representation by the recognized Unions, the qualification is also relaxed to 8th class pass vide circular No. PD-70/2000 dated 11.12.2000. After the approval given by the Government for amendment of regulation 6A (5), Circular No.PD-40/2005, dated 26.08.2005 was issued. Annexure-A is appended to the circular which is a proforma to be submitted by the driver on being declared as unfit to hold the post of driver for additional monetary benefits in lieu of alternative employment. On 25.2.2008, Circular No. PD-16/2008 was issued which comprehensively deals with all aspects. The scheme of alternative employment is extended to the posts of Routine Clerks/Record Tracers. Taking the welfare measures further, vide

circular No. PD-19/2015 dated 3.6.2015, scheme of compassionate appointment to dependant family member is also introduced. It is appropriate to note clause 11 of this Circular. It reads as:

“A clear undertaking must be obtained from the employees retired on medical grounds that by opting for employment to the spouse or child, he/she discharges the Corporation from the liability under Section 47 of Persons with Disabilities Act or for payment of Additional Monetary Benefit in future. The option once exercised by them will be treated as final and irrevocable under any circumstances.”

53. Reading of Annexure-A to circular No. PD-40 /2005 and the consolidated Circular no.PD-16/2008, dated 25.02.2008, amply demonstrates resolve of the Corporations to extend the scheme of Section 47 to Drivers declared unfit to work as Drivers, provides alternative employment and extends the pay protection. This would amply demonstrate that the Corporations intend to protect and safeguard the interest of drivers who were forced to retire on medical invalidation grounds on account of higher standard of medical fitness required to the post and they have voluntarily extended the scheme of Section 47 to the category of Drivers. The Drivers of respondent corporations are a class by themselves and deserve special treatment, which is rightly extended.

54. Ordinarily, a driver once appointed to service is entitled to continue in service until he attains the age of superannuation or disciplinary action initiated against him ends in abrupt termination of his service. The medical invalidation only advanced his retirement, a premature retirement. Such medical invalidation, in most cases, is on account of higher standards of fitness required for a driver but such employee is suitable to any other job. Such medical invalidation is acquired during the course of employment. The employer recognizes this fact and therefore formulated special schemes to drivers.

55. In the RTC, high standard of fitness is required for a person to hold the post of driver. On an average the Driver carries with him several passengers. Any slackness in the driving of the vehicle can cause danger to life of the passengers traveling in the Bus in addition to the road users. Therefore, high degree of competence and alertness is required. The RTC monitors the fitness of the drivers. They are subjected to periodical medical examination. Major issue of fitness of the driver relates to eyes. Over a period of time due to stress of driving, more particularly night driving, driving during midday, during rainy season and air pollution can have an impact on the eye sight. There can be physical injuries to a driver for various reasons that would disable a person to continue as driver. However, these disabilities do not prevent person from discharging any other duty.

56. Section 47 of the Act emphatic about the need to provide another job of same status. It also emphasis that in case alternative job of same status cannot be provided, at least pay protection should be given. It is beyond pale of doubt that corporation evolved its own scheme to provide alternate job and pay protection. Even otherwise it is imperative to provide alternate job and pay protection.

57. A person who acquired disability while in employment and declared as unfit to work as driver and capable of doing any other job with equal competence cannot be denied right to work with dignity, honor and self respect. He cannot be denied at least protection of pay he was drawing though post offered to him is lower than he was holding.

58. Accepting a post lower than he was holding itself amounts to sacrificing his self respect, though financial constraints compel them to take the job offered. If an employee is declared as unfit to perform the duties of the post of Driver on the ground that he acquired disability while in employment, he must be treated with dignity and respect he

deserves. Employee has every right to command such respect from employer. It is the responsibility of employer to provide alternate job of equal status and emoluments. If it is not feasible to provide alternative job of same status, it is incumbent on employer to at least to provide him pay protection hitherto drawn by him. The corporations accept the necessity to grant pay protection but err in drifting at the stage of granting pay protection. This appears to be more because of lack of understanding of pay protection and on the assumption that since person is now holding the post of Conductor, Shramik, Record Keeper, etc., he shall draw the pay and increment of that post only. While assessing so, corporations forget the status of such employee previously held and their policy to provide alternative job and pay protection. Thus, the error is more in the process of enforcement of the policy which is generating litigation. The problem appears to be that the authorities of the corporations are treating the alternative job as fresh job in a lower post and not as continuous employment, whereas, it is continuation of employment but in a different post. Thus, employee is entitled to pay protection in all respects.

59. Post of Driver Grade II is in the scale of Rs.13780-35680. While appointing him as Conductor in the scale of Rs. 12610-33550/- or Shramik Rs. 10880- 28760/-, he is placed in the scale of said posts by duly reckoning the last pay drawn by him in the post of Driver while fixing his pay in the alternative post. Later, he is granted the increments of Conductors/Shramiks. This is the narrow area of controversy.

60. It appears officers of the corporation are not well versed on its policies. Though pay protection, albeit to a limited extent is granted it is hotly contest as if Drivers are not entitled to pay protection. Contrary to the policy decisions taken from time to time, earlier stand is expressed in the counters and arguments were advanced. The issues of providing alternative job and pay fixation are highlighted only when

actual pay fixation information is furnished to the court and various circulars issued by corporation were placed on record as directed. Only, when Court directed, the additional counter and relevant documents are filed bring on record the correct facts.

61. In the additional counter affidavit on behalf of Telangana State Road Transport Corporation (for short TSRTC), deposed on 23.12.2015 by Sri R.Shiva Kumar, working as Law Officer, it is stated as under;

“3. It is submitted that keeping in view the safety of the passengers, the Corporation subjects the Drivers to periodical medical examination so as to assess their physical fitness for the post of Drivers. The drivers who do not fulfill the requisite medical standards prescribed by the Corporation will not be allowed to discharge their duties as drivers. To mitigate the hardship of such drivers the Corporation has adopted several measures and the circular instructions issued from time to time.....

4. It is submitted that the above cited circular instructions demonstrates that the corporation has been treating the medically unfit drivers as a special category by extending the additional monetary benefits or in considering their cases for providing alternative employment in the Corporation. The benefits under the policies are extended without reference to Act 1 of 1995.....”

62. The approach and attitude is because of flawed employment policies, not only on the issues in these writ petitions but on several other aspects of employment and is generating flood of litigation in this Court and in labour Courts. There is no litigation policy. Each case is contested individually even though decision is rendered by this Court on the same subject and the directions are complied in individual cases, driving others to litigate. Hope better counsels will prevail in both corporations and appropriate steps are taken to prevent harassment to drivers declared as medically unfit and a comprehensive policy and guidelines are formulated.

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.

Miscellaneous petitions, if any, pending in these writ petitions shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date: 29.01.2016

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Note: LR Copy to be marked : Yes

HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION NOS.36337, 39206, 39353, 39354 of 2012, 4233, 7633, 18451, 24113, 26188, 26551, 33765, 33987, 34189 of 2013, 2614, 2734, 5531, 7281, 7316, 7354, 12254, 15516, 19726, 22292, 34206 of 2014, 10698, 10832, 32784, 35578, 35588, 36135, 36157, 36348, 36690, 36692, 36700, 36728, 36747, 37539, 37550, 37838, 38060, 39767, 40775, 40824, 40935 of 2015

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Date: 29.01.2016

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- [1] LAW (SC)-2013-7-39
[2] (2007) ILLJ 9 Mad
[3] (2009) 14 SCC 546
[4] 2008 (1) SCC 579
[5] 2010 (2) SCR 6
[6] (2013) 1 SCC 353
[7] 2012 (2) ALD 772 (DB)
[8] (2003) 4 SCC 524
[9] (2013) 10 SCC 772
[10] (2012) 3 LLJ 564
[11] 1995 Supp (2) SCC 348
[12] (2009) 3 SCC 709
[13] (2013) 7 SCC 182
[14] 1957 SC 23 [(S) AIR V 44 C 5 Jan.]
[15] AIR 1960 SC 936 (V 46 C 166)
[16] (1997) 2 SCC 53
[17] (1998) 8 SCC 1
[18] 2012 (2) ALD 772 (DB)
[19] (1991) 1 SCC 731
[20] (1994) 4 SCC 460