

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.27405 OF 2014

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed to declare the action of the second and third respondents, in not paying the arrears of salary to the petitioner's husband in the cadre of Assistant Lineman (ALM) from 04.08.2002 till 19.11.2005; the action of the second respondent in issuing the proceedings vide Memo No.CGM(HRD)/GM(S)/AS-II/ POIII/ A2/ F.No.302/04, dated 19.11.2005 reverting the petitioner's husband to the post of Watchmen from the post of Assistant Linemen (ALM); the action of the second respondent in issuing the proceedings Memo No.CGM (HRD)/ GM (S)/AS (Estt)/PO.A/421-A1/08, dated 12.06.2008 denying pay protection to the husband of the petitioner in the cadre of ALM besides directing the third respondent to fix pay in the cadre of Watchman, and the action of the second and third respondents in fixing and paying terminal benefits of the petitioner's husband attached to the post of Watchmen instead of ALM, as illegal, opposed to the public policy, discriminative, colourable exercise of powers, opposed to the doctrine of legitimate expectation, misfeasance, malfeasance, nonfeasance besides violative of the provisions of the persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; and consequently direct the second and third respondents to pay arrears of salary of the petitioner's husband attached to the post of ALM from 04.08.2002 till 19.11.2005 to the petitioner with 24% of interest per annum, and also set aside the proceedings dated 19.11.2005 and 12.06.2008 of the second respondent by declaring the said reversion of the petitioner's husband to the cadre of Watchmen and denying pay protection respectively as illegal and opposed to the public policy, and also direct the second and third respondents to pay arrears of salary of the petitioner's husband duly re-fixing his salary in the cadre of ALM from 19.11.2005 till

07.03.2007 with 24% interest per annum and, also direct the second and third respondents to pay arrears of terminal benefits of the petitioner's husband duly re-fixing his terminal benefits in the cadre of ALM with 24% interest per annum and also direct the respondents to pay costs of this proceedings by imposing exemplary costs on the respondents.

02. The petitioner is the wife of the deceased N.Venkat Reddy. She being one of the legal heirs of the said N.Venkat Reddy filed the present writ petition subsequent to the death of her husband, who left the family members in harness, for the aforesaid reliefs contending that her husband-Venkat Reddy initially got appointed as Helper on 20.04.1984, subsequently promoted as Assistant Linemen on 19.07.1989, discharged his duties to the satisfaction of his superiors during the said period.

03. In the month of August, 2002 the husband of the petitioner while working in Jagityal Division of Karimnagar District, he installed electricity service meter in Morapally Village, Jagityal Mandal, Karimnagar District, in number of houses and while returning to home from attending duty, met with an accident, while he was on duty. Due to accident, his left leg was amputated and treated in the hospital for a period of one month.

04. After discharge of her husband from hospital, he was advised to take rest for one week and accordingly he had applied leave for one week. Thereafter, he approached the Divisional Engineer and requested to permit him to join duty, but he was not allowed, in turn he was informed that his case would be referred to Medical Board. Subsequently, he was referred to Medical Board, in turn the said Medical Board declared him unfit on medical grounds. Thereafter the petitioner and her husband-Venkat Reddy approached the Managing Director of the AP TRANSCO and in turn he directed the Divisional Engineer, Jagityal Division, AP NPDCL and asked him to allot lighter duties, instead of allotting field work. Despite such direction, neither her

husband-Venkat Reddy allotted any office duty nor allotted to discharge his duties. Since then Venkat Reddy requested the concerned officials to allot duties to him by taking into consideration, his health condition and also his poor financial condition.

05. Though he met with an accident while he was on duty, no salary was paid to him from the date of accident i.e. 04.08.2002 considering the said period as on duty. In fact, all the family members are starving due to non payment of salary to him or even to meet daily expenditure including medical expenses.

06. After a long correspondence between said Venkat Reddy and the Department, he was asked to make a written request to the effect that he is ready to attend any duty attached to the post inferior to the post of ALM. Accordingly, he made a representation dated 09.11.2005 to the first respondent expressing his readiness and willingness even to discharge the duties of the Watchmen. On the strength of the representation dated 09.11.2005 by Venkat Reddy to the first and second respondent, the second respondent vide impugned proceedings in Memo No.CGM (HRD)/GM(S)/AS-II/PO III/A2/F.No.302/04, dated 19.11.2005 reverted the petitioner's husband as Watchmen from Assistant Linemen without giving pay protection and without suspending the lien over the post of ALM against the principles of service jurisprudence and such act of the second respondent is illegal, arbitrary and discriminative, unfair exercise of power and in violation of the provisions of the persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, 'the Act'). Even after he was reverted to the post of Watchmen, he discharged his duties till his death on 08.03.2007. As petitioner's husband - Venkat Reddy met with an accident while discharging his duties, he is entitled to pay protection of the post which he was holding at the time of accident. But the respondents paid only benefits based on the post which was holding on the date of death as watchmen without extending benefits of the Act. Thus, the action of the respondents is

highly arbitrary and irrational.

07. It is further stated that the daughter of the petitioner was given appointment as Office Subordinate on compassionate ground, since then she has been living separately and that the petitioner has no independent source of income except family pension payable to the legal heirs of the deceased-Venkat Reddy. Therefore, the petitioner claimed the aforesaid reliefs and to direct the respondents 2 and 3 to pay salary for the period of hospitalization and retirement benefits, fixing family pension in the cadre of Assistant Linemen, which he was holding as on the date of accident.

08. The respondent did not file counter. However, since the facts are not in dispute, this matter was heard at the stage of admission itself.

09. The contention of Sri Peeta Raman, learned counsel for the petitioner, that in view of Section 47 of the Act, the deceased-Venkat Reddy was entitled to pay protection and also entitled for salary during the period of hospitalization, but non payment of the salary for the period of hospitalization and payment of death benefits in the cadre of Watchmen is illegal and drawn attention of this Court to several judgments.

10. Whereas the learned counsel for the second respondent supported the orders passed by the second respondent in reverting Venkat Reddy to the post of Watchmen from the post of Assistant Linemen and non payment of the amount with the arrears of salary and other benefits in the cadre of Assistant Linemen, the post which was holding at the time of accident and that to the deceased-Venkat Reddy during his life time, gave a representation expressing his willingness to discharge his duties inferior to the post of Assistant Linemen. In such case, the respondents are not liable to pay any amount and prayed to dismiss the writ petition.

11. Considering the rival contentions, perusing the material on record, the point that arise for consideration are as follows:

Whether the respondents 2 and 3 are liable to pay salary for the period from 04.08.2002 till 19.11.2005 i.e. period of hospitalization and death

benefits in the cadre of Assistant Linemen extending pay protection in terms of Section 47 of the Act? If so, the action of the respondents be declared as illegal and arbitrary?

POINT:

12. Admittedly, Venkat Reddy-husband of the petitioner received grievous injuries in the accident while he was on duty as Assistant Lineman and his leg was amputated. After prolonged hospitalization, he became disabled and unable to discharge his duties as Assistant Linemen, the post which he was holding on the date of accident and he is entitled to shift some other post with same pay scale or service benefits.

13. Section 47 of the Act deals with Non-discrimination in Government employment which reads as follows:

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.”

14. The contention of learned counsel for the second respondent is that the petitioner’s husband-Venkat Reddy himself voluntarily accepted to work as Watchmen on account of his permanent disability and when he voluntarily accepted, he is not entitled to claim benefits under Section 47 of the Act.

15. Undisputedly, the said Venkat Reddy during his life time after sustaining disability made a representation for his appointment in the lower cadre dated 09.11.2005 and appointed as Watchmen as he was suffering from disability due to accident, but not a person with disability as defined under Section 2 (t). According to Section 2(t) of the Act, ‘person with disability’ means a person suffering from not less than forty percent of any disability as certified by a medical authority. The said Venkat Reddy suffered amputation which disabled him to discharge his duties as Assistant Linemen and apart from that the duties of the

Linemen is to climb electrical poles and attend to the repairs of electricity lines, but on account of his permanent disability i.e. amputation of leg, he cannot climb electricity poles.

16. Under Section 2 of the Act, '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 V. UNION OF INDIA**^[1].

17. Undoubtedly, the said Venkat Reddy-husband of the petitioner submitted a representation expressing his readiness and willingness to discharge his duties in the lower cadre of Assistant Linemen. Taking advantage of this letter, the respondents contended that he is not entitled to claim benefits of Section 47 of the Act. But it is not known whether Venkat Reddy was aware of the benefits that he is entitled under Section 47 of the Act and in fact he was not put to notice of the benefits available to the person who acquired disability while discharging his duties in any manner by respondents 2 and 3. This contention is without any substance in view of the judgment of the Apex Court in **BHAGWAN DASS AND ANR. v. PUNJAB STATE ELECTRICITY BOARD**^[2]. In the facts of the above judgment, the appellant was a Class IV employee, Linemen. He lost vision completely and he was not aware of any protection that the law afforded him and apparently believed that blindness would cause him to lose his job, the source of livelihood of his family and accepted for payment of amount instead of his removal from service. Taking advantage of it, he was paid some amount and removed from service. The basis for rejection of benefits under Section 47 of the Act was that he submitted a letter to the Department, but the Apex Court considered the same and concluded that the enormous mental pressure under which he would have been at that time is difficult to imagine. In those circumstances, it is the duty of the superior officers to explain to him the correct legal position and to tell

him about his legal rights. Instead of doing that, they threw him out of service by picking up a sentence from his letter, completely/ out of context. The action of the concerned officers of the Board is depreciable. Finally, the Apex Court held that the action of the Board in terminating the services of the disabled employee must be held to be bad and illegal and in view of the provisions of Section 47 of the Act, the appellant must be deemed to be in service and he would be entitled to all service benefits including annual increments and promotions etc. till the date of his retirement. The amount, of terminal benefits paid to him should be adjusted against the amount of his salary. If any balance remains, that should be adjusted in easy monthly installments from his future salary and shall continue in service till his date of superannuation according to the service records; he should be reinstated and all due payments, after adjustments as directed, should be made to him within six weeks from the date of presentation of a copy of the judgment before the Secretary of the Board.

18. The facts of the present case are almost identical to the facts in the above judgment, except variation of disability, which disabled the Linemen from discharging his duties of the post which he was holding at the time of acquiring disability. The principle laid down in the above judgment is directly applicable and on the strength of the above judgment, the denial of salary for the period from 04.08.2002 till 19.11.2005 and payment of death benefits of the said Venkat Reddy-husband of the petitioner in the cadre of Assistant Linemen is illegal and arbitrary.

19. Learned counsel for the petitioner mostly relied on the judgments of this Court and this Court, wherein discussed about the rights of the employee, who acquired disability during service while discharging duties. In **APSRTC REP. BY ITS MANAGING DIRECTOR, HYDERABAD VS ABDUL ASAD**^[3] 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.

20. In **G.MUTHU VS TAMILNADU STATE TRANSPORT CORPORATION**^[4], 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."

21. In **APSRTC, MUSHEERABAD, HYDERABAD AND OTHERS VS K.MOSES^[5]**, 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.

The Division Bench of this Court held as follows:

"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.”

22. In **S.RENUKA SWAMY VS MANAGING DIRECTOR, APSRTC, HYDERABAD AND 3 OTHERS**^[6], 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.”

23. In **AP STATE ROAD TRANSPORT CORPORATION AND OTHERS VS M.V.RAMANA RAO**^[7] (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.

24. In **APSRTC, DEPOT MANAGER, JEEDIMETLA DEPOT, HYDERABAD AND OTHERS VS G.DARSHAN**,^[8] 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.

25. In **J.MALLESAM VS APSRTC, MANAGING DIRECTOR, HYDERABAD AND OTHERS**^[9] a 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.

26. In **APSRTC, MUSHEERABAD, HYDERABAD AND OTHERS VS B.SAILOO**^[10] 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**^[11], 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.”

27. In **STATE BANK OF PATIALA AND OTHERS VS VINESH KUMAN BHASIN**^[12] 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.”

30. In **ANIL KUMAR MAHAJAN VS UNION OF INDIA**^[13] 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**^[14] 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 retirement 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.”

31. In **UNION OF INDIA AND OTHERS VS B.BANERJEE**^[15]

in para No.14 the Apex Court held that:

“14. In case of medically de-categorized 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.”

32. In the facts of above judgment, the respondent was a driver in Indian Railways entitled to claim running allowance, as per Rules, at 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.

33. In **UNION OF INDIA AND OTHERS VS DILEEP KUMAR SINGH**^[16] 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 difference 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.”

34. In **SUDARSHAN RAJPOOT v. U.P. STATE ROAD TRANSPORT CORPORATION**^[17] the Apex Court decided the similar issue and held that a person who acquired disability during service is entitled to the benefits provided under Section 47 of the Act, while holding that the termination of the employee from service as illegal and the same was set aside.

35. In **DALCO ENGINEERING PRIVATE LTD. v. SHREE SATISH PRABHAKAR PADHYE AND ORS**^[18], the Apex Court, basing on the judgment reported in **KUNAL SINGH** (supra), at paragraph 15 held as follows:

“15....the socio-economic legislations should be interpreted liberally. It is also true that Courts should adopt different yardsticks and measures for interpreting socio-economic statutes, as compared to penal statutes, and taxing statutes. But a caveat. The courts cannot obviously expand the application of a provision in a socio-economic legislation by judicial interpretation, to levels unintended by the legislature, or in a manner which militates against the provisions of the statute itself or against any constitutional limitations. In this case, there is a clear indication in the statute, that the benefit is intended to be restricted to a particular class of employees, that is employees of enumerated establishments (which fall within the scope of ‘state’ under Article 12). Express limitations placed by the socio-economic statute can not be ignored, so as to include in its application, those who are

clearly excluded by such statute itself. We should not lose sight of the fact that the words "corporation established by or under a Central, Provincial or State Act" is a term used in several enactments, intended to convey a standard meaning. It is not a term which has any special significance or meaning in the context of the Disabilities Act or any other socio-economic legislations. It is a term used in various enactments, to refer to statutory corporations as contrasted from non-statutory companies. Any interpretation of the said term, to include private sector, will not only amount to overruling the clear enunciation in Dhanoa which has held the field for nearly three decades, but more importantly lead to the erasure of the distinction maintained in the Constitution between statutory corporations which are 'state' and non-statutory bodies and corporations, for purposes of enforcement of fundamental rights. The interpretation put forth by the employee would make employees of all companies, public servants, amenable to punishment under the provisions of Indian Penal Code and Prevention of Corruption Act; and would also result in all non-statutory companies and private sector companies being included in the definition of 'State' thereby requiring them to comply with the requirements of non-discrimination, equality in employment, reservations etc."

36. In M.VENKATESWARLU AND OTHERS V. ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION, REP. BY ITS MANAGING DIRECTOR, HYDERABAD AND OTHERS^[19] this

Court held at paragraph 63 as follows:

"21..... 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."

37. In view of the law declared by the Apex Court in catena of perspective pronouncements, the petitioner being the wife of the deceased-Venkat Reddy who died while in service, is entitled to claim death benefits on account of death of her husband-Venkat Reddy and salary for the period of hospitalization based on the salary which Venkat Reddy was receiving as on the date of acquiring disability i.e. in the cadre of Assistant Linemen in view of pay protection under Section 47 of

the Act. But the respondents taking advantage of the letter dated 09.11.2005 submitted by Venkat Reddy, denied the extension of benefits under Section 47 of the Act, such contention is not open to the respondents 2 and 3, as they are expected to act fairly so as to protect the rights of the employees working under them. Instead of doing so, the respondents 2 and 3 avoided to pay the benefits to the petitioner as per the provisions of the Act. Since the respondents 2 and 3 did not act fairly in payment of death benefits, salary for the period of hospitalization and issued Memos contrary to the law and such acts are irrational and thereby this Court can interfere with such unfair and irrational acts of the employer by exercising the power of judicial review under Article 226 of the Constitution of India declaring the action of the respondents 2 and 3 as illegal and arbitrary

38. Therefore, in view of the perspective judicial pronouncements of the Apex Court and this Court, the petitioner being the wife of the deceased is entitled to salary for the period from 04.08.2002 to 19.11.2005 in the cadre of Assistant Linemen, so also death benefits in the same cadre in view of the pay protection provided under Section 47 of the Act and the respondents are liable to pay the same and the petitioner is entitled to all consequential benefits. Accordingly, the point is held in favour of the petitioner and against the respondents.

39. In the result, the writ petition is allowed. No costs.

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

M. SATYANARAYANA MURTHY, J

24-06-2016
BV

[\[1\]](#) 2003 (3) ILD 920 (SC)

[\[2\]](#) AIR 2008 SC 990

[\[3\]](#) W.A. No.739 of 2013

[\[4\]](#) (2009) 14 SCC 546

[\[5\]](#) 2012 (2) ALD 772 (DB)

[\[6\]](#) W.P. No.18418 of 2012

[\[7\]](#) 2003 (6) ALD 322

[\[8\]](#) 2013 (6) ALD 317 (DB)

[\[9\]](#) 2014 (3) ALD 597

[\[10\]](#) 2014 (6) ALD 112 (DB)

[\[11\]](#) (2009) 15 SCC 221

[\[12\]](#) 2010 (4) SCC 368

[\[13\]](#) 2013 (7) SCC 243

[\[14\]](#) W.P © No.2622 of 2010 decided on 20.04.2010 (Delhi)

[\[15\]](#) (2013) 10 SCC 265

[\[16\]](#) (2015) 4 SCC 421

[\[17\]](#) (2015) 2 SCC 317

[\[18\]](#) AIR 2010 SC 1576

[\[19\]](#) 2016(3) ALT 141