

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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WRIT PETITION No.19245 of 2012

ORDER:

The petitioner was initially appointed as Badli Filler on 10.11.1973 and thereafter he was confirmed as permanent employee. He passed competent examination in his career and worked as Shot Firer and Sirdar upto 25.09.1981. He passed the examination for the post of Overman and he was promoted as Overman on 26.09.1983. Thereafter, he was promoted as Head Overman on 01.10.1993. However, while he was working as Head Overman, he had indifferent health and his case was referred to the Osmania General Hospital on 25.11.1997. He was admitted as an inpatient. The Doctors opined that there is no heart problem, but he was advised to do light work on surface for one month. However, after examining him by the Medical Officer, he was declared as unfit to discharge the duty as Head Overman with effect from 10/11-06-1998 and his services were terminated. In the case of persons, who were declared unfit, a settlement was arrived on 12.03.1990 for providing alternate job. Though his case was recommended for the post of Instructor (surface) by the Chief Medical Officer on 01.09.1998, he was not given any post, but he was provided the Telephone Operator job only in April 2001. In those circumstances, he filed W.P.No.13653/2003 challenging his appointment as Telephone Operator Trainee and for consequential direction to the respondents to provide his original posting as Head Overman/Overman and the consequential benefits by protecting his pay scale and salaries from 1998 onwards. In the said writ petition, no counter affidavit was filed. This Court, after hearing the learned counsel for petitioner as well as the respondents

therein, disposed of the writ petition by order dated 28.06.2011 with the following observations:

“5. Therefore, from the letter addressed by the 3rd respondent it could be seen that General Manager has informed in his letter dated 19.8.1998 that the petitioner will be employed in MVTC RG-I as Instructor and that he need not go down the mine and accordingly, the 3rd respondent found him fit to work as Instructor (Surface) at MVTC. In these circumstances, and in the light of the agreements entered into between the union and Management under Section 12(3) of the Industrial Disputes Act, the respondent–management ought to have considered the case of the petitioner for providing Instructor (surface), by protecting his pay.

6. The learned counsel for the petitioner submitted that the petitioner is even now ready to undergo test by the Medical Board and that the case of the petitioner is that he is medically fit to work as Head Overman.

7. In view of the above facts and circumstances, and in the interest of justice, the writ petition is disposed of with the following directions:

1. The respondent–Management shall constitute a Medical Board and examine the petitioner with regard to his fitness to work as Head Overman underground the mine. During the said examination, the petitioner is also permitted to produce evidence with regard to his fitness and the same shall also be considered by the Board, before arriving at a conclusion.

2. In case the petitioner is found medically unfit to hold the post of a Head Overman underground the mine, having regard to his length of service, his case shall be considered for providing alternative employment by protecting his pay in the light of the letter 3rd respondent dated 1.9.1998 in proceedings CHK/Corp./MED/U/134/3748 addressed to the Head Office and also the settlements arrived at between the union and Management under Section 12(3) of the Industrial Disputes Act, 1947.

3. The above exercise shall be completed in accordance with law within a period of six weeks from the date of receipt of a copy of this order.

4. No order as to costs.”

It appears that the petitioner expired on 19.06.2013 while in service. After continuing the petitioner as Telephone Operator, he was appointed as Head Overman by order dated 15.12.2011 stating as follows:

7. On your appointment as Head Overman (Surface) your basic pay will be fixed as under:

“To fix the same basic which he was drawing as on the date of medical unfitness by giving notional increments in his original category / grade for the period between the date of Medical unfitness / date of alternative employment in lower category and the date of appointment as Head Overman (Surface) T&S Gr.A in terms of the order dated 28.06.2011 of the Hon’ble High Court of A.P. as he has worked in a lower category and drawn increments in lower category if any.”

Challenging the said order and denying the wages from 11.06.1998 till providing the alternate job in April 2001 and not protecting the pay from April 2001, the present writ petition was filed.

A counter affidavit is filed stating that in compliance with the orders of this Court in W.P. No.13653/2003 the respondent Company constituted a Corporate Medical Board and conducted medical examination on 07.09.2011, on which date the petitioner attended before the Medical Board and was appointed as Head Overman (Surface) T&S Gr.A with effect from the date he report for duty by proceedings dated 15.12.2011. He reported for duty on 21.12.2011. His basic pay was protected taking the basic pay

which he has drawn at the time of declaration as medically unfit in the year 1998 in his original category/grade for the period between the date of medical unfitness/date of alternative employment in lower category and the date of appointment as Head Overman (Surface) T&S Gr.A. It is further stated that the petitioner availed half pay special leave from 06.11.1997 to 05.05.1998 as he was suffering from heart disease. He was declared as unfit to work as Head Overman on 11.06.1998 and he was provided alternative employment as Telephone Operator (Trainee) in April 2001. As he did not work during that period, he was not entitled to any salary. After he joined as Telephone Operator (Trainee), he was paid wages in lower category granting the increments/upgradations as per the Company Rules till he joined as Head Overman (Surface) on 21.12.2011. During the period he worked as Telephone Operator in the lower category from 11.04.2001 to 21.12.2001, he was paid wages accordingly. Since he did not work as Head Overman in Grade-A during the above period, he is not entitled for Head Overman Grade-A wages and difference of wages.

Thus, it is clear that the petitioner was declared as medically unfit on 11.06.1998 and he was provided alternative employment as Telephone Operator in April 2001 and he worked as such from 11.04.2001 to 21.12.2001 and he was appointed as Head Overman.

The point in the present writ petition is with regard to payment of wages from 11.06.1998 to 11.04.2001 and from 11.04.2001 to 21.12.2001. Though the respondents submit that since the petitioner did not work from 11.06.1998 to 11.04.2001 and he was paid wages as Telephone Operator in the lower category from 11.04.2001 to 21.12.2001, in view of the order

passed by this Court in W.P. No.13653/2003, the petitioner should have been protected his pay as Head Overman (Surface) and he should not have been denied the wages, due to him, only on the ground that he worked in the lower category. However, with regard to the non-duty period from 11.06.1998 to 11.04.2001, it has to be seen that in spite of recommendations by the Chief Medical Officer, respondents did not choose to provide any alternative employment till 11.04.2001. The petitioner cannot be held responsible for not working during that period. This Court categorically said in the earlier round of litigation that the petitioner is entitled for protection of his pay while he was provided alternative employment or continued in the post of Head Overman (Surface). Since the respondents have not implemented the said order in its true letter of spirit, this Court is constrained to set aside the order dated 15.12.2011 passed by respondent No.2 to the extent of denying the wages of Head Overman (Surface) and difference of wages during the period the petitioner worked in the lower category and also for the period from 11.06.1998 to 11.04.2001.

Accordingly, this Writ Petition is allowed and the respondents are directed to compute the wages payable to the petitioner, who is no more, and pay the same to his legal representatives, who came on record, within a period of three (3) months from the date of receipt of a copy of this order. No order as to costs.

Miscellaneous petitions pending, if any shall stand closed.

A.RAMALINGESWARA RAO, J

25.07.2016

MVA