

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

WRIT PETITION No.26326 OF 2012

ORDER:

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

“.. to issue an order or direction more particularly one in the nature of Writ of “*Mandamus*” declaring the action of the 2nd respondent herein in insisting the petitioner to do Conductor Job without providing alternate employment like Helper, Booking Clerk, Shramik or in any suitable post, due to medical unfit for Driver post, vide Proc.No.P2/255(09)/11-RM/W/G, Dt.05.03.2012 as illegal, contrary to the provisions of Sec.47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, unjust and arbitrary and as such liable to be set aside, as illegal, violative of Art.14, 16 and 21 of the Constitution of India and as such liable to be set aside in the interest of justice with a consequential direction to continue the petitioner in any suitable post except Conductor and to pay the arrears of wages w.e.f. 30.04.2009 to till 05.03.2012 forthwith and pass such other order as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

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

“63. The points are answered in favour of the petitioners. The Writ Petitions are allowed. The following directions are issued:

- 1) All the drivers who are not assigned work after they were declared as medically unfit are entitled to pay and allowances attached to the post of Driver till they were

retired from service / alternative job is provided to them. They shall be paid arrears of pay and allowances with 8% interest from the due date till the date of payment. This direction is general and applicable to all Drivers. The Corporations shall undertake review of all such claims and shall ensure that no driver is denied pay and allowances on this issue. The order shall be complied within eight (8) weeks from the date of receipt of the copy of the Order.

- 2) Petitioners and all Drivers who are declared as unfit to drive on account of 'acquiring disability' while in service are entitled to provision of alternative job as a matter of course. The Corporations shall endeavor to provide alternative job of the same status. For any reason, alternative job of the same status is not possible and the drivers are adjusted in any other post, they shall be paid the same pay and allowances as were paid to them as Drivers including the annual increments.
- 3) If alternative job cannot be provided, the Drivers shall be kept in a supernumerary post until a suitable post is available or till he attains the age of superannuation whichever is earlier and shall be paid pay and allowances of the post of Drivers until they attained the age of superannuation.
- 4) These directions are applicable to all similarly situated drivers.

3. Following the above said common order dated 29.01.2016 and for the reasons recorded therein, this Writ Petition is also allowed in terms of the above said common order. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

A. V. SESA SAI, J

Date:15.03.2016

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

B/o

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