

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.4010 of 2009

ORDER:

The petitioner was appointed as driver in the first respondent Corporation on 04.08.1975 on regular basis. During the periodical medical examination he was referred to the Medical Officer on 10.01.1991 and he was declared unfit for the post of driver due to defective eye vision i.e., defective distant vision and deformity (flexion) of the left elbow joint. The petitioner was provided the post of cleaner as an alternative employment by proceedings dated 30.04.1991. The petitioner submits that though he is entitled for annual increments in the post of driver, he was given only personal pay protecting the scale of driver as he reached the maximum pay of cleaner at the time of providing alternative employment on 30.04.1991. He filed M.P.No.64 of 2003 before the Labour Court-I, Hyderabad, claiming difference of pay to an extent of Rs.3,17,961/- in view of the increments he is entitled in the post of driver from 30.04.1991 as per circular dated 28.11.1981. The Labour Court dismissed the petition on the ground that the circular made two categories of people and the pay of the driver is protected only in respect of the people suffering from colour blindness and in respect of other category of drivers suffering from problems of vision other than colour blindness, the pay would be regulated as per the said circular only indicated in paragraph II(5). Challenging the same, the petitioner filed

W.P.No.360 of 2009 and the same was dismissed on 22.04.2009 giving liberty to the petitioner to pursue the present Writ Petition, which was filed challenging the circular.

Learned Counsel for the petitioner submits that whatever may be the defective vision, since the petitioner was doing the same duties as were entrusted to the people suffering from colour blindness, the discrimination shown in the circular for protecting the pay of the driver in respect of the people who had colour blindness and those who have no colour blindness is bad in law.

In fact the petitioner relied on the same circular when he filed M.P.No.64 of 2003, and by relying on the same circular, the Labour Court dismissed the case because the circular made two categories and applied two differential criteria for pay fixation. If the petitioner had any grievance with regard to the pay, he was not precluded from challenging the circular before the Labour Court also or in W.P.No.360 of 2009 filed challenging the order in M.P.No.64 of 2003, dated 22.08.2006. But, he chose to file the present Writ Petition in the year 2009 when the circular was available in the year 1981 itself, and based on the said circular he initiated proceedings in 2003. As could be seen from the above facts, the pay of the petitioner was fixed from 1991 onwards in the alternative post of cleaner and he did not choose to take any steps challenging the circular for more than ten years. Now, the petitioner is aged about 70 years

and in view of the above fact of dismissal of W.P.No.360 of 2009, dated 22.04.2009, this Court is not inclined to grant any relief to the petitioner in the present Writ Petition filed challenging the circular after availing the above remedies.

The Writ Petition is, accordingly, dismissed. The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.

05.07.2017
vs



(A.RAMALINGESWARA RAO, J)