

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

WRIT APPEAL No.1060 of 2017

22.08.2017

Between:

The Andhra Pradesh State Road Transport Corporation (A.P.S.R.T.C.),
represented by its Managing Director, Musheerabad, Hyderabad
and others

..Appellants

and

Dokku Rama Krishna

..Respondent

Counsel for the appellants: Mr.P.Durga Prasad
standing counsel for A.P.S.R.T.C.

Counsel for the respondent: Mr.M.Pitchaiah

The Court made the following:



JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This writ appeal arises out of order, dated 27.08.2015, whereby the learned Single Judge has allowed W.P.No.24560 of 2015 filed by the respondent – driver in the 1st appellant corporation following the judgment of this Court in a batch of cases holding that even if the disabilities on account of which the employees' services are terminated do not fall under the enumerated disabilities under Section 2(i) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short 'the Act'), they are entitled to the benefits of the provisions of Section 47 of the Act. It is not in dispute that in A.P.S.R.T.C. vs. B.S.Reddy¹, the Supreme Court has reversed the view taken by the learned Single Judge as confirmed by the Division Bench of this Court in the said batch of cases. The appellants have, accordingly, relied upon the order of the Supreme Court in B.S.Reddy (1 supra), while challenging the order of the learned Single Judge.

2. Mr.M.Pitchaiah, learned counsel for the respondent, has advanced two submissions, viz., (1) that in Hawa Singh vs. Delhi Transport Corporation² based on which the Supreme Court has reversed the judgments of this Court, the Delhi High Court has not differed with the view taken by another Bench of the same Court in Union of India vs. Suresh Kumar³, wherein it was held that the colour blindness also falls within the definition of 'blindness', an enumerated disability, and (2) that even if Section 47 of the Act is ignored, a settlement was reached between the 1st appellant corporation and the employees' union, as per which, irrespective of whether a disability falls under Section 2(i) of the

¹ Civil Appeal No.3529 of 2017, dated 23.02.2017

² 2012(3) LLJ 564

³ W.P.(C)No.9443/2007, dated 17.12.2007

Act or not, the disabled employee is entitled to an alternative employment.

3. As regards the first submission of the learned counsel for the respondent, the learned standing counsel for the appellants has submitted, that in *Union of India vs. Devendra Kumar Pant and others*⁴, the Supreme Court held that lack of colour perception is neither blindness nor low vision and is, therefore, apparently, not a disability under the Act. In the said judgment, the Supreme Court held as under:

“13. 'Blindness' is a disability defined in clause (b) of section 2 and refers to (i) total absence of sight or (ii) visual acuity not exceeding 6/60 or 20/200 (snellen) in the better eye with correcting lenses; or (iii) limitation of the field of vision subtending an angle of 20 degree or worse. 40% disability referred to in Section 2 (t) to identify persons with disabilities, will apply to categories (ii) and (iii) of section 2(b) but will be irrelevant in regard to persons with total absence of sight falling under category (i) of section 2(b). Section 2(u) defines a "person with low vision" as "a person with impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device". Lack of colour perception is neither blindness nor low vision and is therefore apparently not a disability under the Act. It is therefore, doubtful whether a person lacking colour perception can claim to be a person entitled to any benefit under the Act. Be that as it may. We will examine the issue assuming that respondent is a person with disability.”

4. Coming to the second submission, the only ground on which the respondent filed the writ petition was that he was protected by the provisions of Section 47 of the Act and his writ petition was allowed only on that ground following the judgments of this Court in the batch of

⁴ AIR 2010 SC 1253

cases. The Supreme Court, however, reversed the view taken by this Court in the batch of cases that even if the disabilities do not fall under the enumerated disabilities under Section 2(i) of the Act, still the employees are entitled to the benefit of Section 47 of the Act. The learned counsel for the respondent, however, submitted that even if the learned Single Judge has not referred to the settlement, in view of Order XLI Rule 22 C.P.C., his client is entitled to support the order under appeal with reference to any other ground. We are afraid, we cannot accept this submission because the respondent can take the aid of Order XLI Rule 22 C.P.C. if he has raised the relevant pleas and the material placed on such pleas are part of the record in the writ petition. Admittedly, neither the respondent had raised the plea of settlement nor the said settlement was made part of the record before the learned Single Judge.

5. The Supreme Court in B.S.Reddy (1 supra), while setting aside the judgments of this Court in the batch of cases, gave liberty to the employees to approach the Corporation, which, in turn, was directed to take appropriate decisions on individual cases. We are, therefore, of the opinion that it is not appropriate for us to decide whether the respondent's case falls under Section 2(i) of the Act or not and whether *de hors* Section 47 of the Act, the respondent is entitled to the relief under a settlement. It is for the appellants to take an informed decision, if necessary, by consulting medical experts on the nature of the disabilities in respect of individual employees and also by examining the settlement.

6. Therefore, the respondent is permitted to make a detailed representation to the appellants. The appellants must consider and pass a detailed speaking order within a period two months from the date of

receipt of such representation and communicate the same to the respondent.

7. Subject to the above, the order of the learned Single Judge is set aside. The Writ Appeal is, accordingly, allowed.

8. As a sequel to allowing the writ appeal, W.A.M.P.Nos.2040 and 2130 of 2017 filed by the appellants, shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

M.S.K.JAI SWAL, J

22nd August, 2017
GHN

