

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SMT JUSTICE K.VIJAYA LAKSHMI

WRIT APPEAL No.1493 of 2017

Date:10.10.2017

Between.

TSRTC, reptd by its Managing
Director, Hyderabad and three others.

..... Appellants

And.

S.Bixapathi,
S/o Saraiah

.....Respondent

Counsel for the appellants: Mr. B.Mayur Reddy

Standing Counsel for TSRTC

Counsel for the respondents: Mr. A.G.Satyanarayana Rao

The Court made the following:

JUDGMENT: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

This Writ Appeal is filed against common order, dated 28.9.2016, to the extent it pertains to Writ Petition No.37435 of 2015, whereby the learned single Judge allowed the said Writ Petition and directed the appellants to protect the pay scale of the respondent applicable to the post of Driver in the down graded post of Shramik by extending the benefit of Section-47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, 'the Act').

The respondent was driver in the Telangana State Road Transport Corporation (for short 'TSRTC'). On the ground that he has suffered certain disability, which according to the Corporation does not fall within the definition of "disability" under Section-2(i) of the Act, he was declared as medically unfit for the said post. However, he was provided with alternative employment of Shramik by fixing the pay scale applicable to the said post. Invoking the benefit of Section-47 of the Act, the

respondent filed the afore-mentioned Writ Petition and sought for protection of pay as applicable to the post of driver.

Following the common judgment, dated 21.9.2016, in Writ Petition No.24323 of 2012 and batch, as confirmed by a Division Bench of this Court, the learned single Judge allowed the afore-mentioned Writ Petition. Feeling aggrieved by the same, the TSRTC filed this Writ Appeal.

At the hearing, Sri B.Mayur Reddy, learned Standing Counsel for TSRTC, placed reliance on the order of the Supreme Court in Civil Appeal No.3529 of 2017 and batch and submitted that in the said order, the Supreme Court has reversed the judgment of the Division Bench of this Court, whereby the judgment of the learned single judge rendered in a batch of cases was confirmed, holding that disability need not fall under Section-2 (i) of the Act for claiming the benefit under Section 47 of the Act. A perusal of this order shows that the Supreme Court has approved the view in *Hawa Singh Vs. Delhi Transport*

*Corporation*¹ and *Kumar Bharat Prasad Narain Singh Vs. Airport Authority of India*² and held that the view taken by this Court in line with that taken in *G.Muthu Vs. Management of Tamil Nadu State Transport Corporation (Madurai) Limited*³ is not a correct view. Accordingly, while allowing the said Civil Appeals, the Supreme Court has left the appellants–Corporation free to take a decision on the individual grievances of the employees. The employees were also given liberty to avail their remedies in terms of the order.

Inasmuch as the Supreme Court while setting aside the judgments of this Court gave liberty to the employees to approach the Corporation which was directed to take appropriate decisions on the individual cases, we are of the opinion that it is not appropriate for us to decide whether the disability in the present case falls under Section 2 (i) of the Act or not. It is for the Corporation to take an informed decision, if

¹ 2012 (3) LLJ 564

² 2005 (5) AD (Del.) 513

³ 2006 (4) Mad.L.J. 1669

necessary, by consulting medical experts on the nature of disabilities in respect of the individual employees. Therefore, as per the order of the Supreme Court, the respondent is permitted to make a detailed representation to the appellants. The appellants shall consider such representation, pass a detailed speaking order within two months from the date of receipt of such representation and communicate the same to the respondent.

Subject to the above, the impugned order of the learned single judge under appeal is set aside. The Writ Appeal is, accordingly, allowed

As a sequel, WAMP.No.2772 of 2017 stands dismissed as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE K.VIJAYA LAKSHMI

10th October 2017

DR