

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE T.RAJANI

WRIT APPEAL NO.909 OF 2017

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in WP.No.35741 of 2016 dated 25.10.2016.

After recording the submissions of the learned counsel on both the sides, that the issue raised in that Writ Petition was covered by the order in WP.No.34864 of 2016 and Batch dated 18.10.2016, the learned Single Judge held that the respondent-writ petitioner was entitled to pay and allowances till he retired from service; and the arrears of pay and allowances should be paid by the respondents with interest at 8% from the due date till the date of payment, after taking into account the amounts, if any, already paid.

Against the order in WP.No.34864 of 2016 and Batch dated 18.10.2016, the Road Transport Corporation carried the matter in appeal; and, against the said order of the Division Bench, the matter was carried in further appeal to the Supreme Court. The Supreme Court, in its order in Civil Appeal No.3529 of 2017 and Batch dated 23.02.2017, expressed its inability to subscribe to the view taken by the Madras High Court which had followed the order passed by this Court, and approved the view taken by the Delhi High Court in **Hawa Singh v. Delhi Transport Corporation**¹ and **Airport Authority of India v. Kumar Bharat Prasad Narain**

¹ Judgment in W.P. (C) No.7880 of 2011

Singh². The Supreme Court observed that, even though Section 2(i) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (“the Act” for brevity) may not cover every disability, the scheme of the Andhra Pradesh and Telangana Transport Corporations covered even those employees who were not covered by Section 2(i) of the Act; thus those who were disabled, within the meaning of Section 2(i), were not without any benefit whatsoever; and they were thus entitled to invoke such schemes, but not Section 47 of the Act. The appeals of the Corporation were allowed, and it was held that the benefit of Section 47 of the Act would be available only to those who were covered by Section 2(i) of the Act. The Supreme Court left it open to the appellant-Corporation to take a decision on the individual grievances of the employees, and granted liberty to the employees to avail their remedies in terms of the said judgment.

Section 47 of the Act reads thus:

47. **Non-discrimination in Government employments:-** (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability.

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification exempt any establishment from the provisions of this section.

Under the first proviso to Section 47(1) of the Act if any employee, after acquiring disability, is not suitable for the post he was holding, he can be shifted to some other post with the same pay scale and service benefits.

² Judgment in L.P.A.No.1601 of 2005 dated 14.12.2005

The word “disability” is defined in Section 2(i) of the Act as under:

2(i) “disability” means-

- (i) blindness;
- (ii) low vision;
- (iii) leprosy-cured;
- (iv) hearing impairment;
- (v) locomotor disability;
- (vi) mental retardation;
- (vii) mental illness.

As held by the Supreme Court, the benefit under Section 47 of the Act is available only to those who suffer from such of the disabilities as are mentioned in Section 2(i) of the Act. The law declared by the Supreme Court, in the aforesaid judgment, is binding on the High Court.

Sri M.Pitchaiah, learned counsel for the respondent-writ petitioner, would contend that the order of the learned Single Judge is a consent order; as no counter affidavit was filed, it is not open to the appellants to now put forth their submission on merits; the respondent-writ petitioner is continuing in service, and the dispute relates only to his emoluments and other entitlements; and in the light of the order of the learned Single Judge, following the earlier order in WP.No.34864 of 2016 and batch dated 18.10.2016, no interference is called for.

All that was conceded before the learned Single Judge by the learned counsel for the appellants was that the issue raised in that Writ Petition was covered by the order in WP.No.34864 of 2016 and batch dated 18.10.2016. It is only, thereafter, that the Supreme Court passed the order in Civil Appeal No.3529 of 2017 and batch dated 23.02.2017. In the light of the order of the Supreme Court, the law declared by this Court in WP.No.34864 of 2016 and batch

dated 18.10.2016 would no longer be applicable. The question, whether the respondent-writ petitioner is entitled for emoluments and other benefits, is now required to be examined in terms of the order of the Supreme Court in Civil Appeal No.3529 of 2017 and batch dated 23.02.2017. The order under appeal is set aside. WP.No.35741 of 2016 is restored to file. The Learned Single Judge shall examine the petitioner's claim, for payment of emoluments and other benefits, in the light of the order of the Supreme Court in Civil Appeal No.3529 of 2017 and batch dated 23.02.2017.

The Writ Appeal is, accordingly, disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.



(RAMESH RANGANATHAN, ACJ)

(T.RAJANI, J)

5th July 2017
RRB