

HONOURABLE SRI JUSTICE P. NAVEEN RAO

**W.P.NO.19847 OF 2013, C.C.NOs. 604 OF 2016 AND
1863 OF 2017**

Date : 01.03.2017

WP No. 19847 of 2013:

Between :

Mohd. Allauddin S/o. late Md.Azeemuddin,
Aged 47 years, Occu: Driver APSRTC No.800033
of Gawel Pregnapur Depot, Medak District,
r/o. H.No.6-36/2, Yerrakuntam, Barkas,
Hyderabad.

.... Petitioner

And

The Vice Chairman & Managing Director,
APSRTC, Bus Bhavan, Musheerabad,
Hyderabad and others.

.... Respondents

The Court made the following:



HONOURABLE SRI JUSTICE P. NAVEEN RAO

**WRIT PETITION No.19847 of 2013, CONTEMPT CASE
NOS.604 OF 2016 AND 1863 OF 2017**

COMMON ORDER:

Writ Petition No.19847 of 2013 is filed praying to grant the following relief:

“to issue an appropriate Writ or order or direction more particularly one in the nature of WRIT OF MANDAMUS declaring the 2nd respondents action in not finalizing the case of the Petitioner by the 2nd respondent declaring "FIT" OR "UNFIT" for the post of driver under A1 category since 25-4-2013 is illegal, arbitrary, unjust and violation of Principles of Natural Justice and consequently direct the respondents to pay the sick salary to the petitioner till providing an any alternative emplacement under Section 47 of Disabilities Act keeping in view of the Sangareddy and Tarnhaka Hospital Doctors Opinion who declared unfit to the petitioner for A-1 category.

2. With the consent of learned counsel for petitioner as well as learned standing counsel, the writ petition and contempt cases are disposed finally by this common order.

3. Heard learned counsel for petitioner and learned standing counsel for respondent corporation.

4.1. Learned counsel for petitioner contended that Medical Officer declared him as unfit to be a driver; on a request made by petitioner, he was referred to Medical Board and as per the direction, petitioner appeared before the Medical Board on 24.04.2013 and the allegation that petitioner did not appear is false.

4.2. He would submit that after he was declared as unfit, all along he was kept out of duty, by compelling him to exhaust sick leave and other leaves to his credit causing lot of hardship and suffering.

4.3. He would submit that since petitioner was declared as medically unfit, till alternative job was provided, petitioner is entitled to salary and allowances for the period he was put off duty and sick leave and earned leave be credited to petitioner's account. Petitioner is entitled to pay and allowances in the cadre of Driver.

4.4. By referring to several directions issued by the Court, he would submit that by their action, respondents have disobeyed the orders of this Court with impunity and are liable to be punished under the Contempt of Courts Act.

5.1. The learned standing counsel primarily contended that cause in the writ petition does not survive and these issues cannot be gone into in the present writ petition.

5.2. He further contended that praying to vacate order dated 19.09.2013, made in WP MP No.24336 of 2013, WVMP No.368 of 2015 is filed and the same is not considered and without considering the WVMP, respondent Corporation cannot be hauled up for contempt and be directed to comply with the orders.

5.3. He would further submit that as petitioner was declared as medically unfit, he is not entitled to salary and allowances for the period he was put off duty and the said period would be treated as leave to which petitioner was entitled.

5.4. He would further submit that petitioner did not appear before the Medical Board in spite of several notices and, therefore, he is to be blamed for delay in assessment by Medical Board and he, therefore, cannot claim salary for the said period.

5.5. He would submit that as petitioner has not worked during January to May, 2016, he is not entitled to salary by applying the principle of no work no pay.

5.6. He further submitted that though petitioner was not entitled to salary for the period from September, 2013 till May, 2016 as he did not work, in compliance of Court orders, he was paid basic salary attached to the post and is not entitled to increments for this period as he did not work.

6. The facts in brief are as under:

Petitioner was appointed as Casual Driver Grade-II and later regularized w.e.f. 31.07.1997. With effect from 17.10.2012, petitioner reported sick. Petitioner was subjected to medical examination on 31.12.2012 by the Medical Officer at Sangareddy and was also examined in Tarnaka hospital on 06.02.2013 and he was declared as unfit to work as Driver A1 category as he was diagnosed with, 'right sensori motor axonal neuropathy'. Petitioner submitted his representation dated 20.02.2013 requesting to refer him to re-medical examination at Board level. The said request was accepted and he was directed for re-medical examination by the Medical Board of the respondent corporation hospital at Tarnaka. According to Petitioner, the Medical Board also declared him unfit to work as Driver.

7. Petitioner filed the writ petition alleging that there was total inaction in taking further decision as a consequence to the declaration given by the respondent Corporation hospital at Tarnaka, causing lot of hardship and suffering.

8. This Court by order dated 19.09.2013 made in W.P.M.P.No.24336 of 2013, directed the respondent Corporation to release the salary of the petitioner from that date on words including for the month of September, 2013 until further orders.

9. Alleging that this direction was not complied with, petitioner filed C.C.No.1862 of 2013.

10. The stand of the respondent Corporation on the allegation of non- compliance of the directions of this Court, dated 19.09.2013, was that in spite of request made and directions issued, petitioner did not appear before the Medical Board and unless he is declared as unfit by the Medical Board, no action can be taken.

11. This Court by order dated 09.11.2015 directed the petitioner to appear before the Medical Board, which was scheduled to be held on 18.11.2015 and further directed the Medical Board to examine the petitioner and to place before the Court the report of Medical Board. Petitioner was accordingly examined. On assessment by the Medical Board, petitioner was declared as unfit to continue as Driver. It is now beyond pale of doubt that petitioner was unfit to continue as Driver.

12. The writ petition came up for consideration along with contempt cases on 07.01.2016. The Court noticed that even though on 19.09.2013, this Court directed payment of salary from

September, 2013 onwards but the salary was not paid. However, stand of the respondent Corporation was that salary sent through the Demand Draft to the petitioner was returned unserved. Whereas counsel for petitioner while accepting the fact that some amount was paid, but amount sought to be paid is not as per his entitlement and does not amount to full compliance of the interim orders dated 19.09.2013.

13. Having regard to these submissions, this Court by order dated 07.01.2016 directed the respondent Corporation to work out the amounts payable to the petitioner till December, 2015 and draw the said amount in the form of demand draft and to produce the same before the Court.

14. Petitioner filed CC No.604 of 2016 alleging non compliance of the directions issued by the Court on 07.01.2016.

15. When CC No.604 of 2016 was taken up for consideration on 13.12.2016, Court was informed by learned standing counsel that arrears of amounts payable to the petitioner applying the revision of pay scales was quantified, but according to the decision of the Corporation in all the cases of payments of arrears of amounts payable as per revised pay scales was split-up into three installments. The first two installments of 33,256/- and 25,356/- were paid vide cheque dated 31.08.2016 and 13.10.2016 respectively and third installment was converted into bonds as per the policy, to be released to the petitioner like all other employees after completion of the specified period.

16. In view of this clarification, the issue of payment of arrears of amounts by applying revised pay scales is resolved. After the report of the Medical Board, petitioner was provided alternate employment as Shramik by order dated 5.5.2016 and petitioner is working as Shramik. According to the learned standing counsel for respondent Corporation, salary is being paid from June, 2016 regularly. In view of the fact that petitioner is declared as medically unfit to work as Driver and that he is provided alternative employment as Shramik, the primary grievance of the petitioner stood resolved.

17. During the course of hearing of CC No.604 of 2016 on 13.12.2016, Court noticed that as per the statement at page 77 of the material papers appended to the counter affidavit, it was seen that continuously from April, 2013 to June, 2016 the basic pay of the petitioner is shown as Rs 10,230/-, implying thereby annual increments were not added and that salary from January to May, 2016 was not paid. By order dated 13.12.2016, Court directed the respondents to explain as to why increments are not added while undertaking fixation of pay and arriving at payment of arrears. They were also directed to explain the increment payable to the petitioner prior to the revised pay scales 2013 and also directed as to why the salary was not paid from January to May, 2016.

18. The only issue remains for consideration is whether action of the respondent Corporation in denying increments to the petitioner since 2013 and denying the salary for the period from January to May, 2016 is valid, more so in view of the directions of the Court dated 19-09-2013 ?

19. In this factual background, to appreciate the contentions of learned standing counsel, it is necessary to have a brief look at the Persons with Disabilities (Equal, Opportunities, Protection of Rights and Full Participation) Act, 1995 (Act 1 of 1996) and various administrative decisions/regulations of the respondent Corporation on the issue of medical invalidation and consequential measures.

20. Section 47 of the Act 1 of 1996 reads as under:

S. 47. (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.

21. In **Kunal Singh vs. Union of India and another**¹, applicant suffered injury to his left leg while on duty resulting in amputating the leg. He was declared permanently incapacitated for further service. Challenging the same and claiming alternative job he filed writ petition. The said writ petition was dismissed. In Supreme Court reliance was placed on Section 48(1) of the Act, 1996 in support of appellant. Respondents opposed said claim on the ground that in accordance with definitions contained in Section 2,

¹ (2003) 4 SCC 524

appellant is not a person with disability. Supreme Court held as under:

“9. Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of “disability” and “person with disability”. It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that a person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature.

.....

In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service.

10. The argument of the learned counsel for the respondent on the basis of the definition given in Section 2(t) of the Act that benefit of Section 47 is not available to the appellant as he has suffered permanent invalidity cannot be accepted. Because, the appellant was an employee, who has acquired “disability” within the meaning of Section 2(i) of the Act and not a person with disability.

.....

12. Once it is held that the appellant has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay scale and service benefits; if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation, whichever is earlier. “

22. In **G.Muthu vs. Tamilnadu State Transport Corporation**², the petitioner/appellant was declared as unfit to perform his duties as Driver as he was diagnosed as suffering from colour blindness. He was discharged from service and was not provided alternative job.

² (2007) ILLJ 9 Mad

Single Judge dismissed the writ petition on the ground of delay. Division Bench allowed the Writ Appeal. The SLP filed against said decision is dismissed. On elaborate consideration of the precedents on the term 'unless the context otherwise requires' occurring in other Statutes and significance of different terminology used in Section 47 and other provisions in chapters IV to VII, the Madras High Court, succinctly put as under:

"14. On a close reading of such provisions contained in Chapters IV to VII, we could discern that the benefits which are conferred under those provisions are to be made available to persons who already suffer a disability. In other words, the two categories, namely a person 'with a disability' is always distinguishable from a person who later on 'acquires a disability'. Viewed in that respect, it will have to be held that the expression 'disability' used in Section 47 of the Act can, by no stretch of imagination, be equated with a case of a person 'with the disability'. A close reading of section 47 of the Act would show that the benefit granted under the said provision was to be conferred on a serving employee in an establishment who acquires a 'disability' during such service. When such 'disability' was acquired by him during his service, the Parliament thought it fit to ensure that his service is not in any way affected because of acquisition of such a 'disability' and with that view directed that he should be shifted to some other post with the same pay scale and service benefits and in the event of such alternate post not being available, to create a supernumerary post until a suitable post is available or till he attains the age of superannuation.

15. In other words, the term 'disability' used in Section 47 can draw support not only in respect of the defined 'disabilities' as contained in Section 2(i) of the Act but will also encompass such other 'disability' which would disable a person from performing the work which he held immediately prior to acquisition of such 'disability' and thereby entitle him to avail the benefits conferred under the said provision for having acquired such a 'disability'.

.....

17. In the same line of reasoning, it will have to be held that the specific expression contained in Section 47 to the effect that 'a person who acquires a disability' should be applied with particular reference to the context in which the said expression was used. We also do not find any scope of comparison of those provisions with that of Section 47 when we consider the submission of the learned counsel for the appellant,

according to whose submissions the definition of 'disability' under Section 2(i) was not exhaustive and that the expression 'disability' used in Section 47 will have to be independently applied to the facts of the each case."

23. This issue has come up for consideration in this Court on several occasions. Series of judgments are rendered. In all the cases, respondent corporation is party. It was unsuccessful in its challenge and has complied with the orders. In several decisions this court directed payment of pay and allowances for the period when driver was put off duty after he was declared unfit.

24. In **Abdul Asad** (W.A.No.739 of 2013) the issue for consideration was whether respondent was entitled to count the period when he was put off duty for the purpose of seniority, payment of salary and other attendant benefits. Learned single Judge directed to treat the period as on duty. The decision of learned single Judge was upheld. Division Bench also held that petitioner is entitled to count his seniority from the initial date of regular appointment as Driver notwithstanding the fact that he was thereafter shifted to the post of Record Tracer. The case on hand is identical.

25. **Anand Bihari and others vs. Rajasthan State Road Transport Corporation, Jaipur**³ is a case prior to Act 1 of 1996. Several drivers working in Rajasthan State Road Transport Corporation were prematurely terminated from their services on the ground that they became medically unfit to drive the heavy vehicles as they developed defective eyesight and not meeting the required vision for driving the heavy motor vehicles.

³ (1991) 1 SCC 731

26. Drivers contended that the said termination violates Section 2(oo) of the Industrial Disputes Act, 1947 and also contrary to an agreement between the drivers' union and the corporations, where under it was agreed to provide alternative job to the drivers declared as unfit. While rejecting both contentions, Supreme Court, however, found that the action of the respondent corporations therein was not proper, equitable and justified on the touch stone of the constitutional mandate. The Court noticed that the drivers developed defect in their eyesight due to the nature of job undertaken by them. They were required to drive the heavy motor vehicles during hot sun, rain, dust and dark hours of night. They require high degree attention and concentration and, therefore, there would be lot of strain on the eyes. Thus, the Supreme Court was of the view that the defects developed by the drivers were directly attributable to the nature of employment. The Supreme Court found fault in treating such drivers on par with any other employee in invoking provision in Section 2(oo) (c) of the Act. As suggestion made by the Court to formulate a scheme to ameliorate their suffering was not properly responded, the Supreme Court itself formulated the scheme. Salient features of the scheme formulated by the Supreme Court were, (i) to provide alternative job that may be available to which a driver is eligible; (ii) in case no alternative job is available, the driver should be paid retirement benefits and additional compensatory amount; the Supreme Court indicated payment of amounts depending on the left over service; (iii) Supreme Court further directed that if the alternative job was not immediately available, it should be offered as and when such job is available. The scheme formulated by the

Supreme Court in the above case is now incorporated in Section 47 of the Act.

27. In **Narendra Kumar Chandla vs. State of Haryana and others**⁴, Supreme Court held that Article 21 protects the right to livelihood as an integral facet of right to life. When an employee is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the post he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge his duties. This case was also decided prior to Act 1 of 1996.

28. Thus, even before the Act 1 of 1996 was notified, Supreme Court was of the opinion that having regard to the constitutional mandate, an employer cannot throw the employee to hindrance on account of disability suffered by him during the course of the employment, which disability is directly attributable to the nature of the employment.

29. Having regard to the above discussion, it is necessary to notice various decisions taken by the respondent corporations over a period of time to extend special benefits to Drivers declared medically unfit to drive.

30. The respondent Corporations formulated schemes for provision of alternative job and other financial packages exclusively to Drivers. As noticed by the Supreme Court in **Kunal Singh** case (supra), Act 1 of 1996 intend to provide some sort of succor to the disabled persons. Section 72 of the Act, makes it clear that what

⁴ (1994) 4 SCC 460

is provided in Act 1 of 1996 is in addition to and not in derogation of any other law. Having regard to the provisions contained in Section 72 of the Act, Regulation 6A of the Regulations, 1964 and the Circular Instructions issued from time to time assume significance.

31. Original Regulation 6A did not provide for alternative job, but only dealt with the additional financial component on account of retirement on medical invalidation grounds. The provision was also general and applicable to all employees. Having realized that drivers of the Corporations constitute a separate class and they need to be provide additional safeguards, Regulation 6A was amended and special provision is incorporated in the form of Regulation 6A(5)(b) which envisages additional monetary component to the drivers.

32. Relevant provision in Regulation 6A reads as under:

Regulation 6A: Retirement due to failure to conform to the requisite standard of physical fitness:

(5)(a) In the case of retirement on medical grounds, the employee may be extended all terminal benefits including the following benefits;

(i) employer's contribution to provident fund and payment of gratuity will be regulated as if the employee had put in 5 more years of service or the remainder service upto the date of normal superannuation whichever is less.

(ii)(a) Employees whose left over service is 5 years or below: 15 days wages for each year of service leftover.

(b) Employees whose leftover service is above 5 years and below 10 years: 20 days wages for each year of service leftover.

(c) Employees whose leftover service is 10 years and above: 25 days wages for each year of service leftover, subject to a maximum of 10 years.

Service of more than six months shall be treated as one year.

The Pay & DA for the above purpose however be the same as those drawn on the actual date of retirement on Medical grounds.

For employees who have not completed 20 years of service or attained the age of 48 years (forty eight) as on the date of retirement, the compensation should be reduced in proportion to the service rendered by them in the Corporation as shown hereunder:-

No. of years of service rendered by employee in the Corporation X 10/20.

(5)(b) In the case of retirement of a Driver on medical grounds he may be extended all terminal benefits apart from an Ex-gratia payment equivalent to one and half month's emoluments (Pay + DA) last drawn, for each completed year of service or the monthly emoluments at the time of retirement on medical grounds multiplied by the balance months of service left before normal date of retirement whichever is less.

Service of more than 6 months shall be treated as one year.

33. Sub-regulation (5)(a) deals with the benefits payable to the employee retired on medical grounds. Specific provision is made in sub-regulation (5)(b) covering the Drivers. Having regard to the peculiar nature of the job of a Driver, in addition to grant of all terminal benefits as mentioned in sub-regulation (5)(a), he is also granted Ex-gratia payment equivalent to 1½ months emoluments last drawn, which include pay and dearness allowance for each completed year or service or the monthly emoluments at the time of retirement on medical grounds multiplied by the balance

months of service left before normal date of retirement. Thus, the Ex-gratia is the additional component given to the driver.

34. However, having realized its Ex-gratia component is not sufficient to deal with injustice meted out to the drivers on account of their retirement on medical invalidation grounds further instructions are issued. The policy decisions notified in the form of Circular Instructions extensively referred hereunder recognize the necessity to extend the provision of Section 47 of Act 1 of 1996 and to provide for alternative employment as Conductor Grade-II subject to educational qualifications or as Shramik/Routine Clerks/Record Tracers.

35. Though regulations are not amended further, by way of policy decisions notified from time to time, certain benefits are extended to the drivers.

36. In Circular No.PD-144/1989, dated 06.11.1989 a decision was taken to provide alternative employment as Cleaners subject to ceiling of 10% and fitness to hold the post. It also prescribes formula for pay fixation on such appointment. In Circular No.PD-55/1990, dated 21.04.1990 it was clarified that if there is no vacancy in the cadre of Cleaner readily available, the Driver who is declared unfit to hold a post of driver should be shown in the muster.

37. In circular No.PD-64/1997 dated 19.9.1997 further clarifications are issued on pay protection. A table is appended to the circular on mode of pay fixation.

38. In order to improve further the benefits extendable to the drivers, in Circular No.PD-105/1999, dated 18.11.1999, the Corporation extended provision of alternative employment to the post of Conductor subject to the person possessing requisite qualifications. Circular also deals with regulation of pay in the Conductor Grade-II post on such appointment. The instructions would imply that pay protection is required to be given on such appointment and if there is variation in the pay the difference is to be treated as personal pay. Initially higher educational qualification was prescribed for such appointment.

39. On further representation by the recognized Unions, the qualification is also relaxed to 8th class pass vide circular No. PD-70/2000 dated 11.12.2000.

40. After the approval given by the Government for amendment of regulation 6A (5), Circular No.PD-40/2005, dated 26.08.2005 was issued. Annexure-A is appended to the circular which is a proforma to be submitted by the driver on being declared as unfit to hold the post of driver for additional monetary benefits in lieu of alternative employment.

41. On 25.2.2008, Circular No. PD-16/2008 was issued which comprehensively deals with all aspects. The scheme of alternative employment is extended to the posts of Routine Clerks/Record Tracers.

42. Taking the welfare measures further, vide circular No. PD-19/2015 dated 3.6.2015, scheme of compassionate appointment to dependant family member is also introduced.

43. It is appropriate to note clause 11 of this Circular. It reads as:

“A clear undertaking must be obtained from the employees retired on medical grounds that by opting for employment to the spouse or child, he/she discharges the Corporation from the liability under Section 47 of Persons with Disabilities Act or for payment of Additional Monetary Benefit in future. The option once exercised by them will be treated as final and irrevocable under any circumstances.”

44. In the additional counter affidavit filed on behalf of Telangana State Road Transport Corporation (for short TSRTC) in W.P.No.36337 of 2012 and batch, deposited on 23.12.2015 by Sri R.Shiva Kumar, working as Law Officer, it is stated as under;

“3. It is submitted that keeping in view the safety of the passengers, the Corporation subjects the Drivers to periodical medical examination so as to assess their physical fitness for the post of Drivers. **The drivers who do not fulfill the requisite medical standards prescribed by the Corporation will not be allowed to discharge their duties as drivers.** To mitigate the hardship of such drivers the Corporation has adopted several measures and the circular instructions issued from time to time.....

4. It is submitted that the above cited circular instructions demonstrates that the corporation has been treating the medically unfit drivers as a special category by extending the additional monetary benefits or in considering their cases for providing alternative employment in the Corporation. The benefits under the policies are extended without reference to Act 1 of 1995.....”

45. Reading of Annexure-A to circular No. PD-40 /2005 and the consolidated Circular no.PD-16/2008, dated 25.02.2008, amply demonstrates resolve of the Corporations to extend the scheme of Section 47 to Drivers declared unfit to work as Drivers, provides alternative employment and extends the pay protection. This would amply demonstrate that the Corporations intend to protect and safeguard the interest of drivers who were forced to retire on medical invalidation grounds on account of higher

standard of medical fitness required to the post and they have voluntarily extended the scheme of Section 47 to the category of Drivers. The Drivers of respondent corporations are a class by themselves and deserve special treatment, which is rightly extended. The resolve of the Corporation to extend special benefits to Drivers is reiterated in the affidavit filed before this Court, extracted above.

46. Ordinarily, a driver once appointed to service is entitled to continue in service until he attains the age of superannuation or disciplinary action initiated against him ends in abrupt termination of his service. The medical invalidation only advanced his retirement, a premature retirement. Such medical invalidation, in most cases, is on account of higher standards of fitness required for a driver but such employee is suitable to any other job. Such medical invalidation is acquired during the course of employment. The employer recognizes this fact and therefore formulated special schemes to drivers.

47. In the RTC, high standard of fitness is required for a person to hold the post of driver. On an average the Driver carries with him several passengers. Any slackness in the driving of the vehicle can cause danger to life of the passengers traveling in the Bus in addition to the road users. Therefore, high degree of competence and alertness is required. The RTC monitors the fitness of the drivers. They are subjected to periodical medical examination. At the initial stage of medical examination, if a Driver is found as unfit to drive, he will not be allowed to drive and he will be put off duty, till further medical examination is made. This measure is

required to protect the passengers from any untoward incident if driver is not fit to drive.

48. As seen from the letter No.SP/19(M.B.II)/2013.TH dated 18.07.2013 of the Tarnaka Hospital, at least petitioner has appeared before the Medical Board on 18.07.2013. The Medical Board advised review after treatment. It is relevant to note at this stage that on 02.01.2013 petitioner was declared as unfit to drive, by the Medical Officer. On appeal, this was affirmed on 06.02.2013. Though, initially Medical Board advised treatment, finally affirmed the assessment of Medical Officer as unfit. Respondents admit in the counter affidavit that petitioner appeared before the Medical Board on 25.04.2013, but the Medical Board could not examine him. Reasons are not forthcoming. He was again examined on 18.07.2013. At this stage, he was advised treatment and further review. It appears, after this date petitioner did not appear before the Medical Board even though he was asked to appear. This conduct of petitioner could have been seen as dilatory tactics to cover up his health condition, but for the fact that he was declared as unfit by the Medical Board after he was examined on 18.11.2015. This report confirms original assessment made on 06.02.2013. He has not gained any undue advantage by such delay. He had his own assessment for not appearing. He has in fact suffered as proper salary and allowance were not paid. He had to litigate and pursue his grievance. Counter affidavit do not point out any deliberate mischief played by petitioner on his health condition and Corporation do not dispute the assessment made by Medical Officers. For all this period, petitioner was not allowed to work as Driver. It is also appropriate to note that during this

period petitioner has submitted several representations and caused legal notices and has been pursuing his grievance. Thus, no adverse inference can be drawn to deny the benefits to which petitioner is entitled.

49. As per the policy of the respondent corporation, once a driver is declared as unfit, he would not be allowed to perform his duties. Petitioner was not allowed to work and was put off duty. However, until a final decision was taken on his fitness and alternative employment was provided, he was asked to be on leave and no salary and allowance was paid, till a direction was issued by this court and Contempt Case is filed. It is not a case of unauthorized absence without just cause or reason. Petitioner never refused to work. Petitioner was not allowed to work as he was declared medically unfit. Having regard to safety of the passengers, Corporation does not allow drivers to perform their duties once they are declared as medically unfit.

50. Thus, when employer puts employee off duty on the ground that he is unfit to drive, non-payment of salary and allowances for the period employee was put off duty is contrary to the mandate of Act, 1995, the regulations and the policy of the Corporation and the principle of law laid down in several decisions by this Court and by the Apex Court. Thus, denial of pay and allowances for the period he was put off duty with annual increments is *ex facie* illegal and amounts to arbitrary exercise of power. Further, no satisfactory explanation is offered why petitioner was not paid salary from January, 2016 to May, 2016. On account of flawed policy of treating the employee as on leave when he was put off

duty, if the payment schedule is not updated by the employer in the computer data base, employee cannot be faulted. It is an internal administrative problem of the employer, for which employee is no way responsible. Since employee was put off duty by the management, employee cannot be denied increments for the period. The principle of no work no pay is also not attracted to case of this nature. Thus, petitioner is entitled to salary and periodical increments for the period when he was put off duty till he was provided alternate employment and is entitled to salary for the period from January, 2016 to May, 2016. The arrears of amounts due and payable shall be worked out and paid to petitioner within eight weeks from the date of receipt of the order.

51. With the above directions, writ petition and contempt cases are disposed of. There shall be no order as to costs. Miscellaneous petitions if any pending shall stand closed.

Date: 01.03.2017
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JUSTICE P.NAVEEN RAO

HONOURABLE SRI JUSTICE P. NAVEEN RAO



**W.P.NO.19847 OF 2013, C.C.NOs. 604 OF 2016 AND
1863 OF 2017**

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