

*IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

*The Hon'ble Sri Justice V.RAMASUBRAMANIAN
and

*The Hon'ble Sri Justice M. GANGA RAO

+WRIT APPEAL No.1635 OF 2017

%Date:06.11.2017

#Between:

Andhra Pradesh State Road Transport Corporation,
Rep. by its Vice Chairman & Managing Director,
RTC House, Pandit Nehru Bus Station,
Vijayawada and others.

...Appellants

Vs.

E. Rehamathulla S/o. Vennur Sab,
Aged about 40 years, Driver (unfit) E.No.577967,
R/o.Urvakonda Depot., Anantapur District.

.. Respondent

!Counsel for Appellants : Sri Aravala Rama Rao

^Counsel for Respondent : Sri A.K. Jaya Prakasha Rao

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?Cases referred:



HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON' BLE SRI JUSTICE M. GANGA RAO

WRIT APPEAL No.1635 OF 2017

JUDGMENT: (per V. Ramasubramanian, J)

Aggrieved by the grant of the benefit of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short 'the Act'), by the learned Single Judge to the respondent -employee, the Transport Corporation has come up with the above writ appeal.

2. Heard Mr. Aravala Rama Rao, learned Standing Counsel appearing for the appellant-Corporation.

3. The respondent was appointed as a Driver in the appellant Corporation on 22.05.2010 on contract basis. His services were regularized on 12.10.2013.

4. In the year 2015, the respondent was sent for routine periodical medical examination for assessing his suitability. On 09.06.2015, the respondent was declared unfit for A1 category on the ground that he was suffering from colour blindness. He was then referred to the Medical Board, which also declared him medically unfit for the post of A1 category. It was further declared that he was not entitled even for alternative employment.

5. Claiming that the disability was acquired during the course of employment and that he was protected by the statutory regime as well as by a regime outside the Act, the petitioner filed a writ petition. The writ petition was allowed by a learned single Judge, following an order passed in a batch of cases in WP No.24323 of 2012, dated 21.09.2016.

Aggrieved by the said order, the Corporation has come up with the above writ appeal.

6. The main contention of Mr. Aravala Rama Rao, learned Standing Counsel for the appellant corporation is that in the first batch of cases that came up before a learned single Judge in WP No. 24323 of 2012 and batch, the learned single Judge held that there was no scope for restricting the meaning of the word “disability” appearing in Section 47 of the Act. So holding, following the judgment of this Court, the learned single Judge allowed a batch of writ petitions by order, dated 21.09.2016.

7. It appears that the order passed in the said batch of writ petitions, was taken on appeal in W.A. Nos. 1120 of 2015 and batch. The Divisions Bench dismissed the writ appeals filed by the appellant Corporation.

8. As against the judgment of the Division Bench in the batch of cases, the appellant Corporation filed Special Leave Petitions before the Supreme Court. After granting leave, the Supreme Court allowed the appeals filed by the State Transport Corporation in Civil Appeal Nos. 3428 of 2017 and batch, by a judgment dated 23.02.2017, holding that the benefit of Section 47 of the Act will be available only to those who satisfied the definition of the expression “disability” under Section 2 (i) of the Act. After so holding, on the interpretation of law, the Supreme Court gave liberty to the appellant Corporation to take a decision on individual grievances of the employees and the employees were also granted liberty to work out their remedies.

9. On the basis of the judgment of the Supreme Court, it is contended by Mr. Rama Rao, learned Standing Counsel for the appellant Corporation that the cases of persons like the respondent who are

declared medically unfit on the ground of colour blindness, did not come within the definition of the expression “disability” under Section 2 (i) of the Act and that therefore, the benefit of Section 47 of the Act cannot be granted. But, that contention, however overlooks a very important aspect. We do not know whether the said aspect was projected in the previous batch of cases which went up to the Supreme Court.

10. At least in so far as the case on hand is concerned, the respondent relied upon a settlement entered into between APSRTC Employees’ Union with the Management under Section 12 (3) of the Industrial Disputes Act, 1947. Clause 14 of the said settlement entered into in the presence of the Joint Commissioner of Labour dealt with colour blind drivers.

11. Paragraph No.14 of the said settlement reads as under:

“ 14. Colour Blind Drivers:

- a) The long pending issue has been decided and it was agreed to given alternate job to the Drivers found colour blind during the periodical examination. While giving the alternate job, the time scale and pay drawn by the Driver at the time of disqualification would be protected. Circular instructions would be issued in this regard incorporating the cases arising after the issue of circular No.P1/ 210(1)/ 76-PD, dt.16-8-1976.
- b) Having been the alternative job, the seniority of Drivers will, however, be continued in the Drivers cadre, and they shall take their further promotions at appropriate time as per Cadre & Recruitment Regulations.
- c) Drivers who are found Colour Blind during periodical Medical Examination would be given day duties subject to availability of such duties in the Depots.
- d) Regarding the suggestion of the Union for finding out an alternate test for Ishara test, the VC & GM agreed to request the Eye Specialist of RTC Hospital Dr.E. Babu Rao and after hearing the views of few other eye Specialists, the

decision would be taken whether to continue the Ishara Test or a suitable alternate test is available for determination of colour blindness keeping in view the safety of passengers and the vehicle.”

12. In the affidavit in support of the writ petition filed by the respondent, there is a specific reference to the settlement under Section 12(3) of the Industrial Disputes Act.

13. Therefore, the issue can be looked at from two angles, namely, (a) whether the colour blind drivers would be entitled to the benefit of Section 47 de hors Section (2) (i) of the Act, and (b) whether they will be entitled to the benefit of Section 47 of the Act by virtue of the settlement reached under Section 12(3) of the Industrial Disputes Act. What is covered by the judgment of the Supreme Court, relied upon by the Corporation, is only the first aspect and not the second aspect. Therefore, the learned Judge was right in granting relief to the respondent, as a settlement under Section 12 (3) of the Industrial Disputes Act is sacrosanct and is placed on a higher pedestal than the ... the settlement under Section 18(1) of the Industrial Disputes Act.

14. Therefore, the writ appeal is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

M. GANGA RAO, J

November 06, 2017
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