

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT APPEAL NO.448 OF 2018

JUDGMENT: (per SK,J)

The Andhra Pradesh State Road Transport Corporation (*hereinafter*, 'APSRTC') is in appeal against the order dated 03.01.2018 passed by a learned Judge of this Court disposing of W.P.No.35422 of 2017 directing the APSRTC to subject the respondent/writ petitioner to medical examination afresh by constituting a Medical Team. This Team was directed to examine the case of the writ petitioner and if it fell within the definition of 'disability' as per Section 2(i) read with the definition of 'locomotor disability' under Section 2(o) of the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995 (for short, 'the Act of 1995'), the respondent/writ petitioner was held entitled to alternate employment under Section 47 thereof. This exercise was directed to be completed within a time frame.

Sri S.V.Ramana, learned counsel for the APSRTC, would contend that the respondent/writ petitioner was subjected to physical examination in November, 2015. He would further submit that after disposal of this writ petition, the Chief Medical Officer, APSRTC, Vijayawada, was asked to clarify as to whether 'Post Lumbar Laminectomy With Failed Back Syndrome', the disability suffered by the respondent/writ petitioner, would fall within the disabilities defined under Section 2(i) of the Act of 1995.

By communication dated 29.11.2017, the Chief Medical Officer, APSRTC Hospital, Vijayawada, was stated to have informed the Senior Law Officer of the APSRTC that 'Post Lumbar Laminectomy With Failed

Back Syndrome' did not fall under any of the disabilities covered under Section 2(i) of the Act of 1995. A copy of the said letter is placed before us and perusal thereof reflects that the Chief Medical Officer, APSRTC Hospital, Vijayawada, did not even deem it necessary to record his reasons as to why the said disability would not amount to a 'locomotor disability' as defined under Section 2(o) of the Act of 1995.

Needless to state, the Act of 1995 is a welfare legislation and needs to be interpreted and given effect to accordingly. It is not open to the employer to baldly state that the disability suffered by its employee does not fall in any of the categories mentioned in Section 2(i) of the Act of 1995 and divest him of his right to alternate employment under Section 47 thereof. The decision taken as to whether the disability falls in any of the categories under Section 2(i) of the Act of 1995 must be fair and objective duly keeping in mind the definitions of the various categories of disabilities under the other provisions of Section 2 of the Act of 1995.

In the case on hand, there is no indication as to why the APSRTC's Medical Officer is of the opinion that the disability suffered by the respondent/writ petitioner would not amount to a 'locomotor disability'. The aforesaid communication dated 29.11.2017 of the said Chief Medical Officer therefore does not commend itself for acceptance. Further, we find that the learned Judge merely directed the APSRTC to constitute a fresh Medical Team to examine the respondent/writ petitioner and thereby, take a decision in terms of Sections 2(i) and 2(o) of the Act of 1995. We find no reason for the APSRTC to be aggrieved by such a direction so as to maintain an appeal thereagainst.

Viewed from any angle, the writ appeal is devoid of merit and is accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed.

No order as to costs.

SANJAY KUMAR,J

M.GANGA RAO,J

Date:19.03.2018

GJ

