

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.31126 of 2018

ORDER :

Heard the counsel for petitioner, and the learned Government Pleader for Labour, for respondents.

2. This Writ Petition is filed by the Andhra Pradesh State Road Transport Corporation (for short, 'the Corporation') challenging the order dt.06.02.2015 passed in I.D.No.52 of 2013 of the Industrial Tribunal-cum-Labour Court, Ananthapur.

3. The 1st respondent herein was employed as a contract driver by the Corporation in 2005.

4. His services were terminated on 25.10.2012 by the Corporation on the ground that he did not attend for medical examination before the Medical Board to test him for colour blindness.

5. Initially, he was declared unfit to hold the post of Driver A-1 category on 18.08.2010 due to partial blindness. He preferred an appeal to the Appellate Authority and he was directed to the Superintendent and Chief Medical Officer, Tarnaka Hospital, Hyderabad, who declared that he was unfit to work as Driver in A-1 category due to partial colour blindness.

6. The 1st respondent again preferred an appeal for review medical examination by the Medial Board.

7. Ex.M.8 letter was addressed by the Superintendent, APSRTC, Hospital, Tarnaka, Hyderabad to the 1st respondent to appear on 20.10.2011, but the said letter was received by the 1st respondent on 20.10.2011 and so he could not appear before the Medical Board on the said date.

8. Later, Ex.M.11 letter dt.23.11.2011 was addressed to the 1st respondent asking him to report to the Superintendent, APSRTC, Hospital, Tarnaka, Hyderabad for appearing before the Medical Board on 24.11.2011, the very next day.

9. On the ground that he did not appear before the Medical Board for review medical examination on 24.11.2011 and on subsequent dates, the impugned termination order was issued on 25.10.2012 by the Depot Manager, Madanapalle.

10. Invoking Section 2-A(2) of the Industrial Disputes Act, 1947, (for short, 'the Act') the 1st respondent raised a dispute before the Industrial Tribunal-cum-Labour Court, Ananthapur which was numbered as I.D.No.52 of 2013.

11. The Tribunal held that the 1st respondent was not given opportunity to appear before the Medical Board for review medical examination as Exs.M.8 and M.11 indicated that adequate time was not granted to petitioner to attend the Medical Board for review medical examination and that the Corporation was at fault for the same. It considered the domestic enquiry report Ex.M.19 and held

that the enquiry was conducted *ex parte* and findings were given holding that the charges leveled against 1st respondent were proved, and the same cannot be sustained; that 1st respondent would be entitled to alternative employment even if he was medically unfit and it directed the Corporation to take 1st respondent into service as *Shramik* / Cleaner afresh subject to his medical fitness on contract basis within one (01) month.

12. Assailing the same, the present Writ Petition is filed on 28.08.2018.

13. In the affidavit filed in support of the Writ Petition, it is merely stated that after receiving the certified copy of the Award, the Personnel Officer, Ananthapur addressed a letter to the Law Department, at Head Office, for opinion on the Award of the Labour Court; the Law Department informed the Personal Officer, Anantapur that a Writ Petition can be preferred against the Award of the Labour Court, and directed the original copy of the Award to be sent for taking further steps in the matter; the Law Department was awaiting the Labour Court record; during bifurcation of the Corporation, files were mixed with other files and it was recently traced out; and then the file was sent to the Office of the Standing Counsel for drafting and filing, and that was how delay occurred.

14. No dates were mentioned in the affidavit filed in support of the Writ Petition of any of these events.

15. The bifurcation of the composite State of Andhra Pradesh into the State of Telangana and the State of Andhra Pradesh took place on 02.06.2014, long before the Award was passed by the Labour Court.

16. The date when the bifurcation of the Corporation took place is not even mentioned in the affidavit filed in support of the Writ Petition. There is no valid explanation for the delay of (3 ½) years in filing the Writ Petition after the Award had been passed in favour of 1st respondent. That apart, the finding of fact by the Tribunal that adequate opportunity was not afforded to 1st respondent to appear for the review medical examination is not demonstrated by the Corporation to be based on no evidence or perverse.

17. It is settled law that this Court under Article 226 of the Constitution of India does not review evidence like an appellate court.

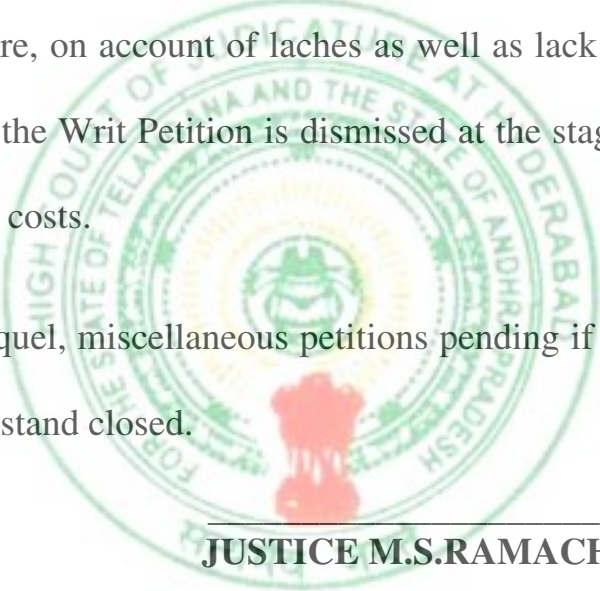
18. It is also important to note that several points which are not raised before the Labour Court are now sought to be urged in the present Writ Petition for the first time, viz., (a) that the respondent is a contract employee and service regulations do not contemplate giving him any additional monetary benefit; and (b) that benefit under Section 47 of the Rights of Persons with Disabilities Act, 2017 cannot be granted to the petitioner. The petitioner cannot be allowed to raise contentions not raised before the Tribunal before this Court for the first time.

19. A further contention is raised that 1st respondent was medically unfit to work as driver, and he cannot invoke Section 2-A(2) of the Act.

20. This contention is without any merit because there was a termination of the contract of service of the 1st respondent through an order passed on 25.10.2012 on the ground that he did not attend for medical examination before the Medical Board. Therefore, the 1st respondent was entitled to invoke Section 2-A(2) of the Act.

21. Therefore, on account of laches as well as lack of merits in the Writ Petition, the Writ Petition is dismissed at the stage of admission. No order as to costs.

22. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.



JUSTICE M.S.RAMACHANDRA RAO

Date: 22.10.2018

Ndr/*