

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 4063 of 2002

ORDER:

This writ petition is filed by the petitioner under Article 226 of the Constitution of India seeking to issue a writ of mandamus declaring the impugned proceedings dated 28.02.2001 of the 2nd respondent corporation as arbitrary and illegal. A consequential direction is also sought to the 2nd respondent corporation to consider the case of the petitioner for appointment in any suitable post reserved for physically handicapped persons, in terms of the judgment of the Labour Court, dated 24.07.1996 in I.D.No.334 of 1995 and the judgment of this Court dated 05.10.1999 passed in W.P.No.14852 of 1997.

2. Heard Sri P.B. Vijay Kumar, learned counsel for the petitioner, and learned standing counsel for the 2nd respondent corporation.

3. When the petitioner's case was not considered for appointment under the physically challenged persons quota, he filed I.D.No.334 of 1995 on the file of the Industrial Tribunal-cum-Labour Court, Visakhapatnam. The Labour Court after considering the entire case passed an order dated 24.07.1996 justifying the action of the management of the 2nd respondent corporation in removing the petitioner from service vide proceedings dated 09.02.1994, and directing the management to consider the case of the petitioner for appointment in any post reserved for physically handicapped persons

or in any other post like attender, etc. and adjust him in any work at least on daily wage basis. Aggrieved by the orders passed by the Labour Court, the petitioner filed W.P.No.14852 of 1997 and the same was disposed of vide orders dated 05.10.1999 whereby the order passed by the 2nd respondent was set aside and the 2nd respondent was directed to consider the case of the petitioner for appointment in respect of the vacancies reserved for physically handicapped persons in any post to which he is suitable. Accordingly, the 2nd respondent considered the case of the petitioner and rejected his case vide proceedings dated 28.02.2001. Challenging the same, the present writ petition is filed.

4. Vide orders dated 05.10.1999, this Court disposed of the W.P.No.14852 of 1997, the operative portion of which is as follows:

“After considering the rival contentions as well as the material on record, I find that the charges framed against the petitioner were found proved and the petitioner having found guilty of the charges and consequently removed from service by the corporation; the said findings as well as the punishment imposed on the petitioner were upheld by the Labour Court. However, the present circumstances are that the petitioner had lost one of his legs and is not in a position to provide maintenance to himself as well as to his family members. Therefore, taking a sympathetic view of the petitioner, the Labour Court directed the Corporation to consider his case for appointment in respect of the post reserved for physically handicapped persons. The said direction was not accepted by the corporation by passing an order by the 2nd respondent. I do not find it proper for the second respondent to reject the case of the petitioner for being considered in the vacancies reserved for physically handicapped persons. Even in the absence of any specific provision in the Regulations, as the petitioner is in the rank of physically handicapped persons, he is entitled for consideration of his case in respect of the posts reserved for physically handicapped persons. Apart from that, the

Labour Court had given direction taking a sympathetic of the petitioner, as he had served the Corporation for about 14 years. Therefore, the Labour Court was justified in giving such direction and the 2nd respondent was not justified in not accepting the said direction given by the Labour Court. The consequential order passed by the 2nd respondent is therefore set aside and he is directed to consider the case of the petitioner for appointment in respect of the vacancies reserved for physically handicapped persons in any post to which the petitioner is suitable.”

5. Having considered the submissions made by the learned counsel for the parties and having perused the entire record, I am of the view that the 2nd respondent corporation had not complied with the orders passed by this Court in W.P.No.14852 of 1997 dated 05.10.1999 in true spirit and rejected the case of the petitioner only on the ground that there is a ban on all direct recruitment posts except the posts of driver, conductor and cleaner, and that the petitioner is not even suitable for the post of cleaner under the physically handicapped quota, due to loss of right leg from knee to foot in an accident and also due to weak physique. As an extraordinary case, the 2nd respondent corporation ought to have considered the case of the petitioner for an alternative employment. Therefore, the action of the 2nd respondent corporation in rejecting the case of the petitioner is arbitrary and illegal.

5. Accordingly, the writ petition is allowed and the 2nd respondent corporation is directed to treat that the petitioner is in service from the date of filing of the writ petition till he had attained the age of

superannuation, and pay the terminal benefits to him, within a period of four (4) weeks from the date of receipt of a copy of this order.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand closed. There shall be no order as to costs.

ABHINAND KUMAR SHAVILI, J

20th July, 2018
cbs



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(disposed of)

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