

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

WRIT APPEAL NO.1376 OF 2016

J U D G M E N T

(Per Hon'ble Sri Justice Sanjay Kumar)

The Andhra Pradesh State Road Transport Corporation (APSRTC) and its officials, being the respondents in W.P.No.21129 of 2014, filed this appeal aggrieved by the order dated 13.04.2016 passed therein by a learned Judge, disposing of the said writ petition in terms of the earlier order passed by another learned Judge of this Court in W.P.No.36337 of 2012 and batch.

By order dated 22.12.2016 passed in this appeal, a Division Bench of this Court granted interim stay of the order of the learned Single Judge. W.A.M.P.No.2186 of 2017 was filed by the respondent-writ petitioner to vacate the said order.

Heard Sri G.Vidyasagar, learned senior counsel appearing for Sri N.Vasudeva Reddy, learned counsel for the appellants, and Sri V.Narasimha Goud, learned counsel for the respondent.

The respondent, a driver in the service of the APSRTC, lost his vision in the right eye due to a bus accident on 28.01.2009 in the course of duty. He was provided alternative employment as a Record Tracer in the APSRTC. Sri V.Narasimha Goud, learned counsel, would contend that the period that the respondent was kept out of service prior to his being accommodated in the alternative post of Record Tracer should be treated as 'on duty' for all purposes and the APSRTC was not entitled to deny him financial benefits, as it was under a statutory duty to keep him employed notwithstanding his disability, as per Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (*for brevity*, 'the Act of 1995').

The issue is as to whether the respondent is entitled to the benefit of Section 47 of the Act of 1995 in relation to the period that he remained out of service, viz., from 28.01.2009 to 13.11.2011.

As per Section 47 of the Act of 1995, no establishment should dispense with, or reduce in rank, an employee who acquires a disability during his service and if he is found unsuitable for the post that he was holding, he should be shifted to some other post with the same pay scale and service benefits. The provision further states that in the event it is not possible to adjust such an employee against any other post, he should be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

The learned Judge, relying upon the order dated 29.01.2016 passed in W.P.No.36337 of 2012 and batch, disposed of the writ petition in terms thereof. As per the said order, the respondent would be entitled to protection under Section 47 of the Act of 1995. It is stated that the learned Judge was informed of the fact that the said order was subjected to appeal in W.A.No.246 of 2016 and batch, which was pending adjudication at that point of time. Presently, it is the admitted position that W.A.No.246 of 2016 and batch filed before this Court finally culminated in the order dated 23.02.2017 passed by the Supreme Court in ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION REP. BY ITS MANAGING DIRECTOR V/ s. B.S.REDDY¹. Therein, the Supreme Court categorically held that the benefit of Section 47 of the Act of 1995 would be available only to those who were covered by the definition of 'disability' in Section 2(i) thereof. In effect, unless the disability suffered by the respondent due to his accident came within the scope of the definition of 'disability' in Section 2(i)

¹ Civil Appeal No.3529 of 2017 and batch

of the Act of 1995, the question of his claiming monetary benefits under Section 47 of the Act of 1995 would not arise.

Section 2(i) of the Act of 1995 defines 'disability' to mean, amongst others, 'blindness' and 'low vision'. 'Blindness' is defined under Section 2(b) while a 'person with low vision' is defined under Section 2(u) of the Act of 1995.

The material placed before this Court would demonstrate that the respondent did not fulfil the requirements of either Section 2(b) or Section 2(u) of the Act of 1995. He was therefore neither 'blind' nor was he a 'person with low vision' in terms of these definitions. Sri V.Narasimha Goud, learned counsel, also does not dispute the fact that the respondent does not fall either under Section 2(b) or under Section 2(u) of the Act of 1995.

Sri V.Narasimha Goud, learned counsel, would however place reliance on the observation of the Supreme Court in *DISABLED RIGHTS GROUP V/ s. UNION OF INDIA*² to the effect that a disability is only a disability when it prevents someone from doing what they want or need to do. It is however clear that this observation was made in the general sense and not in the context of 'disability' as defined under Section 2(i) of the Act of 1995 for the purposes of Section 47 thereof. When it is an admitted fact that the respondent has not suffered a 'disability' as defined by Section 2(i) of the Act of 1995, the question of his claiming monetary benefits under Section 47 thereof would not arise in the light of the decision of the Supreme Court in *B.S.REDDY*¹.

The writ appeal is accordingly allowed holding that the respondent is not entitled to any monetary benefits under Section 47 of the Act of 1995 in

² (2018) 2 SCC 397

relation to the period from 28.01.2009 till 13.11.2011, during which he remained out of service.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

M.GANGA RAO, J

27th NOVEMBER, 2018

Sv

