

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.3218 of 2002

ORDER:

This writ petition is filed seeking writ of *Mandamus* declaring the action of the respondents in disengaging the services of the petitioner on medical grounds without providing alternative employment vide impugned proceedings No.P1/785(3)/99-DBK dated 29.9.1999 as arbitrary and illegal and consequently to direct the respondents to consider the case of the petitioner for providing alternative employment for the post of Shramik or in any suitable post.

Heard Sri V.Narsimha Goud, learned counsel for the petitioner and Sri. Vasudeva Reddy, standing counsel for respondent-Corporation.

It is contended by the petitioner that he was initially appointed as a driver in the respondents-Corporation on 7.3.1992. while the petitioner was working as a driver, he had indulged in a fatal road accident and the respondent-Corporation has construed the said act of the petitioner as misconduct and conducted regular departmental enquiry and after conducting regular departmental enquiry, he was removed from service on 7.7.1995. The petitioner had filed I.D.No.98 of 1996 challenging the order of removal before the Labour court and the Labour Court after considering the case passed award on 17.6.1999 by setting aside the order of removal and directing that the petitioner be reinstated into service with continuity of service and back wages. The petitioner, after the Labour Court had passed the award, has reported before the

respondent-Corporation for reinstatement. The respondent-Corporation has subjected the petitioner for medical examination and in the medical examination, he was declared unfit for A1 category due to colour blindness vide orders dated 23.9.1999. Basing on the said report, the Depot Manager had passed orders of disengagement of the petitioner vide order dated 29.9.1999. The present writ petition is filed seeking a direction to provide alternative employment to the petitioner consequent upon he being declared medically unfit to continue as driver.

Learned Standing counsel appearing for the respondent - Corporation contends that the Labour Court had directed reinstatement of the petitioner subject to he being medically fit to discharge his duties. As his driving skills were not sufficient to comply with the directions of the Labour Court, the respondent-Corporation has subjected the petitioner to medical examination and in the medical examination it was revealed that the petitioner suffered with colour blindness and, hence, the petitioner was disengaged from service vide impugned orders dated 29.9.1999. Therefore, the petitioner was rightly disengaged from service. Learned standing counsel further contends that the Hon'ble Supreme Court in Civil Appeal No.3428 of 2017 and batch dated 23.2.2017 has reversed the judgment of a Division Bench of this Court, whereby the judgment of a learned Single Judge was confirmed, holding that the benefit of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, 'the Act') will be available only to those who satisfied the definition of the expression "disability" under Section 2(i) of the Act. It would mean that the

disabilities which fall under section 2(i) of the above Act are only to be taken into consideration for providing alternative employment. It is not for this Court to decide whether the disability falls under section 2(i) of the Act. A Division Bench of this Court in W.A.(SR).No.213809 of 2016 dated 21.8.2017 has also held that “We are of the opinion that it is not appropriate to decide whether individual case falls under section 2(i) of the Act or not. It is for the Corporation to take a decision, if necessary, by consulting medical experts on the nature of disabilities in the case of individual employees.”

Therefore, it is not for this Court to decide whether disability of colour blindness falls under Section 2(i) of the above said Act and whether the petitioner is entitled for alternative employment. It is for the respondent-Corporation to take a decision whether the petitioner is entitled for alternative employment. Therefore, this aspect was not considered by the respondent-Corporation, while disengaging the service of the petitioner vide impugned order dated 29.9.1999, whether the disability suffered by the petitioner falls within section 2(i) of the Act or not.

Having considered the rival submissions of the parties, this Court is of the view that ends of justice would be met, if the impugner order is set aside.

Accordingly, impugned proceedings No.P1/785(3)/99-DBK dated 29.9.1999 are set aside. The petitioner is directed to submit a fresh representation to the respondent-Corporation within two weeks from the date of receipt of a copy of this order and the respondent-Corporation is directed to reexamine whether the case of the petitioner falls under section 2(i) of the Act and whether the

petitioner is entitled for alternative employment and pass orders within a period of six weeks thereafter.

Accordingly, the Writ Petition is allowed. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

Date: 24/07/2018

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