

(2011) 11 AP CK 0130
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 1153 of 2010

Andhra Pradesh State Road Transport Corporation	APPELLANT
Vs	
K. Moses	RESPONDENT

Date of Decision : 14-11-2011

Acts Referred:

Constitution of India, 1950 — Article 14
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 47

Citation : (2012) 2 ALD 772 : (2012) 2 ALT 410 : (2012) 134 FLR 307 : (2012) 4 LLJ 74

Hon'ble Judges : Nooty Ramamohana Rao, J; Ghulam Mohammed, J

Bench : Division Bench

Advocate : C. Sunil Kumar Reddy Standing Counsel for APSRTC, for the Appellant; V. Narasimha Goud, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Ghulam Mohammed, Acting Chief Justice

1. This appeal is directed against the order and judgment rendered by our learned brother Justice Sanjay Kumar who allowed the writ petition instituted by the respondent herein.

2. The respondent-petitioner was employed as a driver with the first respondent-A.P.S.R.T.C. He met with an accident on 03.01.2006 while returning home from duty, rendering him unfit to continue in service as a driver because of the disability sustained in that accident. When he got served legal notice on 13.08.2007, the A.P.S.R.T.C responded by calling upon him to receive his terminal benefits. On 31.08.2007, the writ petitioner, has instead reiterated his claim for alternative employment. At that stage, he instituted W.P. No. 2058 of 2007. By an interlocutory order passed therein on 12.10.2007, a learned single Judge directed the A.P.S.R.T.C to consider his case for alternative employment in accordance with the provision contained u/s 47 of The Persons With Disabilities

(Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, henceforth referred to as Disabilities Protection Act. In response to that order, the A.P.S.R.T.C conveyed the decision through the proceedings dated 14.12.2007 of the Regional Manager, A.P.S.R.T.C, Nizamabad, that since the writ petitioner has submitted his option in the prescribed format expressing willingness for retirement on medical grounds and opted for payment of additional monetary benefit, in lieu of alternative employment, the writ petitioner was accordingly retired from service and hence is not eligible for alternative employment under the provisions of Section 47 of the Disabilities Act. That gave rise to the institution of Writ Petition No. 3031 of 2008, challenging the validity of the proceedings dated 13.11.2006 retiring him from service and the order dated 14.12.2007 rejecting his claim for alternative employment. The stand of the A.P.S.R.T.C is that the disability sustained by the petitioner did not occur during the course of his employment and he was found not fit to be retained in service as a driver and in view of the circular instructions passed on by the A.P.S.R.T.C on 26.08.2005, a driver can opt for retirement on medical grounds and that the petitioner has voluntarily submitted his option in Annexure-A on 20.07.2006 seeking to retire on medical grounds and accepting the same, the A.P.S.R.T.C has sanctioned him additional monetary benefits and having thus availed the alternative benefit, he cannot now seek for alternative employment. The stand of the petitioner is that he was not explained as to the significance of the statements contained in the printed format, Annexure-A, at the time when his signatures have been obtained thereon. The petitioner would submit that his own conduct in soliciting alternative employment all through will lend appropriate support to his claim that he was never in the know of the true contents of the Annexure-A or it's effect on his claim for alternative employment in accordance with the provision contained in Section 47 of the Disabilities Protection Act.

3. At the meeting to launch the Asian and Pacific Decade of Disabled Persons 1993-2002 convened by the Economic and Social Commission for Asia and Pacific Region held at Beijing between 1st to 5th December, 1992, a Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region was adopted. India was a signatory to the said Proclamation and thus with a view to honour the international commitment made and to live up to it's Social Responsibility to protect and provide for full participation and equity of the people with disabilities, the Indian Parliament enacted "The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, Act 1 of 1996. Therefore, while dealing with the provisions contained in this enactment, every effort should be made to promote the social objective behind the enactment by interpreting the provisions contained therein for securing maximum advantage and benefit for the persons with disabilities. Section 47 of the Disabilities Protection Act reads as under:

47. Non-discrimination in Government employment:

(1) No establishment shall dispense with, or reduce in rank, an employee who

acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employees against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

4. The above provision sanctions injunctions against the establishment in which the person with disability is employed. It prevents every establishment from dispensing with or reducing in rank any employee who acquires a disability during his service. It goes further and mandates the establishment, by directing it to shift such a person to some other post with the same pay-scale and service benefits provided he is found not suitable for the post he was holding at the time of incurring/acquiring disability. The provision goes further by requiring the employer, to adjust the disabled employee against a supernumerary post until a suitable post becomes available for him or until he attains the age of superannuation whichever is earlier. Therefore, Section 47 of the Disabilities Protection Act has conceived of protection in absolute terms in favour of persons acquiring disability during the course of employment by sanctioning appropriate injunctions against the employer. The provision contained in Section 47 is a comprehensive one and not a contingent one. The amplitude of Section 47 has been explained by the Supreme Court in *Kunal Singh Vs. Union of India (UOI)* and *Another*, in the following words:

9. Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that a person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected u/s 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of the section reads

"no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The section further provides that if an employee after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service.

5. The employer, therefore, is under an obligation to look up for suitable alternative employment for providing the same to the persons who acquire disability during service. Learned standing counsel for the Corporation, Sri C. Sunil Kumar Reddy contended that the writ petitioner has acquired the disability entirely on his own making and hence, this is not a case where he has acquired disability all because of his service with the A.P.S.R.T.C. The expression "during service" found in Section 47 of the Act is not intended to convey the meaning that the disability should have been acquired all due to employment. Instead, it conveys the meaning that such disability should have been acquired during the currency of the contract of employment. Therefore, for securing the benefit of the provision contained u/s 47 of the Act, one does not require to acquire the disability all due to employment. Hence, we have no hesitation to reject the contention in this regard, raised by the learned standing counsel of the Corporation.

6. Learned standing counsel has also drawn our attention to the definition of the expression "Person With Disability" as set out in Section 2(t) of the Disabilities Protection Act, which expression means a person suffering from not less than 40% of any disability as certified by a Medical Authority. Learned standing counsel would submit that unless the petitioner is certified by a Medical Authority, which expression is defined in Section 2(p) as a hospital or institution specified for the purpose of this Act by notification by the appropriate Government, that he has suffered disability of not less than 40%, the writ petitioner cannot avail the benefit of the provision contained in Section 47 of the Act. This argument is fallacious. It is undoubtedly true that, unless a person is said to be suffering from a disability of not less than 40%, he cannot be treated or construed to be a person with disability. At the initial stage of employment of such a person, the employer will not have any readily available yard-stick to

assess the degree of disability suffered by such a candidate. Therefore, at the stage of initial employment of persons with disability, a medical authority constituted by the appropriate Government, has to issue necessary certificate after examining and assessing the disability suffered by the individual, based thereon, the issue of employability of such a person can be examined. In the instant case, it is the authorities of the hospital run and managed by the A.P.S.R.T.C which has assessed the suitability of the writ petitioner and rendered its opinion that the petitioner is not suitable for the post he was holding. It is that opinion that formed the basis for the competent authority of the A.P.S.R.T.C to retire the writ petitioner from service on medical grounds. Therefore, for purposes of Section 47, assessment of disability suffered by the employee from the stand point of view of his further suitability/continuity in service, has got to be examined by the employer himself. If the employer is satisfied that the employee who suffered the disability is not suitable for further continuation in service against the post held by him, it would be sufficient for him to provide for an alternative employment to such an employee. If the decision of the employer is intended or required to be challenged by the employee then, perhaps, the necessity to secure assessment and certification by the competent Medical Authority constituted by the appropriate Government would arise. If on the other hand, if the employee does not wish to dispute the correctness of the assessment made by the employer about his non-suitability to continue to hold the post and he is willing to take up alternative employment, the decision of the employer about his disability acquires finality. It is not necessary to be called in question. Based upon the decision of the employer, it is he who has to give effect to the rest of the obligations. Section 47, it is well to remember, thrust the obligation on the employer to provide for alternative employment but not on the employee to seek alternative employment. As it was already noticed supra, if there is no direct or immediately suitable alternative post available, a supernumerary post has got to be created for accommodating the person with disability. In our opinion, the provision contained in Section 47 of the Persons With Disabilities Act is intended to prevent discrimination against persons with disabilities and prevention of discrimination, as is too well known, is one of the facets of Article 14 of our Constitution itself.

7. As was noticed supra, it is for the employer to provide for an alternative employment and it is not required for an employee to solicit or explore all the avenues/opportunities for securing alternative employment.

8. So long as the A.P.S.R.T.C, on its own, with reasonable expedition does not provide for alternative employment at the first instance to any person who acquires disability, who has been assessed by it as not suitable for continuing to hold the post against which he is employed, the burden does not get discharged and does not shift on to the shoulders of the employee. It is a different matter, if upon the offer made by the A.P.S.R.T.C, the employee concerned finds it hard to accept such an alternative employment, and declines to accept it. The moment he declines to accept alternative employment, the burden of the employer in

terms of Section 47 of the Persons with Disabilities Act gets completely discharged. Thereafter, it is for the employee to avail the other suitable package of compensation in lieu of alternative employment. Hence, we are convinced that the appellant-A.P.S.R.T.C has failed to discharge its primary obligation. We therefore do not find any merit in this writ appeal.

9. However, the learned single Judge has imposed costs of Rs. 10,000/- on the appellant. In view of the fact that the employee has received additional monetary benefit in lieu of alternative employment, it may not be the most appropriate case for imposing costs against the appellant. By virtue of the directions issued by the learned single Judge, the additional monetary benefit enjoyed by the writ petitioner will have to be refunded to the A.P.S.R.T.C. In such circumstances, the equities between both the parties could have been struck more easily by directing the writ petitioner to return the additional monetary benefits received by him, without interest, within a period of 30 days from the date of receipt of the order. Accordingly, we direct the writ petitioner to refund, within 30 days of receipt of this order, the additional monetary benefits received by him from the appellant, A.P.S.R.T.C, in lieu of alternative employment.

10. Therefore, modifying the result of the writ petition only to the extent of imposition of costs of Rs. 10,000/-, this writ appeal, otherwise fails and it is accordingly dismissed.