
(2009) 06 KAR CK 0015
In the Karnataka High Court
Case No : Writ Petition No. 62429 of 2009

Hanamanth

APPELLANT

Vs

The Managing Director, North West Karnataka State Road
Transport Corporation and Another

RESPONDENT

Date of Decision : 24-06-2009

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 47

Citation : (2011) 2 KCCR 1191

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : H.M. Dharigond, for the Appellant; Shivakumar S. Badawadagi, for the Respondent

Final Decision : Allowed

Judgement

Ashok B. Hinchigeri, J.—The Petitioner has challenged the endorsement, dated 3/12.01.2009 (Annexure-G) issued by the second Respondent refusing the change of cadre sought by the Petitioner.

2. The facts of the case in brief are that the Petitioner was appointed as a driver in the services of the Respondent No. 1. While in service on 21.09.2007, he suffered a paralytic stroke. Because of his ill-health, he has been advised by the doctors to take up only the light work. He submitted the representations to the Respondents seeking the change of cadre from the post of driver to the post of the attender or office assistant. The copies of two representations, dated 02-02-2009 and 05-03-2009 are produced as Annexures-H and J respectively. The Respondent No. 2 has issued the endorsement that on medical examination, if he is found unfit for the driver's post, he would be compulsorily retired from service. This endorsement is impugned in this writ petition.

3. Sri H.M. Dharigond, the learned Counsel for the Petitioner submits that the issue raised in this writ petition is covered by the order, dated 30.05.03 passed in

W.P. No. 22052/02. He submits that the impugned endorsement is arbitrary and without application of mind. The medical certificates produced by the Petitioner and the representation submitted by him have not received any consideration at the hands of the Respondents.

4. Sri Shivakumar S. Badawadagi, the learned Counsel for the Respondents submits that the Petitioner has not yet undergone the test by the Respondents' Medical Board. If the Medical Board gives the opinion that he is unfit to drive the vehicle, then the Respondents would consider his case.

5. Sri Shivakumar S. Badawadagi further submits that there is no provision for the change of cadres in the Respondents' circulars in force.

6. I am not impressed of the arguments advanced on behalf of the Respondents that the Respondents' circulars do not provide for the change of cadres, if an employee acquires disability. The Respondent Corporation has got to bring its circulars in conformity with the Union Legislation. The Circulars of the first Respondent Corporation cannot prevail over the Union Legislation.

7. While the Petitioner's request is for the change of cadre, the Respondents have issued the impugned endorsement to the effect that he would be compulsorily retired, if he is found unfit to drive the vehicle. I am afraid, the request is for something else and consideration and the reply thereon are something else. The impugned endorsement is issued without considering the medical certificates produced by the Petitioner. For non-consideration of the material, the impugned endorsement is liable to be quashed and accordingly it is quashed.

8. For yet another reason too, the impugned order cannot but be held as unsustainable. It is not in keeping with the liberal and welfare oriented legislation. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("Disabilities Act" for short) was enacted with the avowed objective of counteracting any situation of the abuse and the exploitation of persons with disabilities. The Petitioner, who has put in the services as a driver for 10 years, cannot be shown the door on account of his suffering the paralytic stroke. The Respondent No. 1 is an instrumentality of the State within the meaning of Article 12 of the Constitution of India; it is therefore expected to behave reasonably and fairly. The Respondents are not justified in issuing the endorsement that if the Petitioner is found unfit to do the driving work, he shall be compulsorily retired from the service.

9. Here, it may be noted that the rights of an employee who acquires a disability during his service are protected and safeguarded by Section 47 of the Disabilities Act, which reads as follows:

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 employee 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.

10. Thus the enactment contemplates that the employee should be shifted to some other post with the same pay scale and service benefits; in the event of the alternative post not being available, the employer has to create supernumerary post, if disability has occurred during service.

11. Even before the introduction of Disabilities Act, the Hon"ble Supreme Court in the case of Narendra Kumar Chandla Vs. State of Haryana and others, , has this to say:

7. Article 21 protects the right to livelihood as an integral facet of right to life. When an employee is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the posts he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge the duties.

12. It is also profitable to refer to the Hon"ble Supreme Court's decision in the case of Bhagwan Dass and Another Vs. Punjab State Electricity Board, . The relevant portion of the said judgment is extracted herein below:

14. We understand that the concerned Officers were acting in what they believed to be the best interests of the Board. Still under the old mindset it would appear to them just not right that the Board should spend good money on someone who was no longer of any use. But they were quite wrong, seen from any angle. From the narrow point of view the officers were duty-bound to follow the law and it was not open to them to allow their bias to defeat the lawful rights of the disabled employee. From the larger point of view the officers failed to realise that the disabled too are equal citizens of the country and have as much share in its resources as any other citizen. The denial of their rights would not only be unjust and unfair to them and their families but would create larger and graver problems for the society at large. What the law permits to them is no charity or largess but their right as equal citizens of the country.

13. The Division Bench of Maharashtra High Court in the case of Shivaji v. State of Maharashtra reported in 2006 (108) FLR 1187 (Bom) has held that on acquiring the mental sickness, if the workman is unfit to work as Driver, he is entitled to protection u/s 47 of the Disabilities Act. It is held therein that he has to be given some light work, if it is available. If no such light work is available, the workman has to be entitled to be kept on a supernumerary post until suitable post is available or until his attaining superannuation, whichever is earlier. Similarly, Madras High Court in the case of V. Palanishanmugavel v. G.M., T.N.

State Transport Corpn., (Madurai) Ltd., reported in (2007) 4 CTC 478 (Madurai Bench) has held that it is the statutory obligation on the employer to protect an employee acquiring the disabilities during service; there is prohibition against dispensing with the service of such an employee.

14. It is also worthwhile to refer to the Division Bench judgment of this Court in the case of North East Karnataka Road Transport Corporation, Gulbarga Division, Gulbarga v. Vasanthrao reported in 2007(5) K. L.J. 131 wherein it is held that the Disabilities Act being a modern and social welfare oriented legislation, its provisions are to be construed and applied liberally.

15. The impugned endorsement is in breach of mandate of Section 47 of the Disabilities Act. The Petitioner's service cannot be dispensed with on his acquiring the disability.

16. In the light of the statutory provisions extracted hereinabove and the judgments of the Apex Court and of the High Courts to which the references are made hereinabove, I allow this petition by quashing the impugned endorsement and by directing the Respondents to provide the Petitioner with the change of cadre. It is also made clear that the Petitioner is entitled to the protection of the pay scale of his original post.

17. If the Respondents do not want to rely on the medical certificates issued by private hospitals, however reputed they are, it is also open to the Respondents to have the Petitioner examined by their Medical Board and thereafter pass the order providing him with the change of cadre on satisfying themselves that the Petitioner has suffered paralytic stroke and has consequently acquired the disability to drive the vehicles. The whole exercise shall be completed within an outer limit of two months from today.

18. No order as to costs.