

(2012) 04 AP CK 0071
In the Andhra Pradesh High Court
Case No : Writ Petition No. 9293 of 2012

M. Srinivas

APPELLANT

Vs

Andhra Pradesh State Road Transport Corporation and
Another

RESPONDENT

Date of Decision : 18-04-2012

Acts Referred:

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

Citation : (2012) 5 ALT 458

Hon'ble Judges : B. Chandra Kumar, J

Bench : Single Bench

Advocate : V. Narsimha Goud, for the Appellant; C. Sunilkumar Reddy, SC for APSRTC, for the Respondent

Judgement

B. Chandra Kumar

1. The petitioner was working as a Mechanic in Kushaiguda Depot. On 02.02.2007 during day shift at about 10.30 AM while the petitioner was attending RG work of vehicle No. 912, power steering oil leakage, suddenly a tree fell on the petitioner. He was sent to Tarnaka hospital by the mechanic supervising the work. Then, it appears that the petitioner was under treatment from 10.09.2008 at APSRTC hospital, Tarnaka. According to the petitioner, the doctors in APSRTC hospital, Tarnaka, advised him not to lift weights, take care of his back and take complete bed rest. Then it appears that the petitioner requested the respondents to send him for medical examination and to retire him on medical grounds. Then the petitioner was sent to APSRTC Hospital, Tarnaka, for medical examination. The doctors therein after examining found him unfit for M2 category vide MC No. 0/101154, dated 24.03.2009. Then notice was issued to him informing that he was found unfit to the post of Mechanic and that he has to be retired on medical grounds with effect from 24.03.2009. Then the petitioner submitted an application on 08.05.2009 requesting to settle his accounts and pay the amounts due to him. Accordingly, he was retired from

service on medical grounds with effect from 24.03.2009, vide office proceedings No. P3/756(7)/09-KG, dated 12.05.2009. It is also not in dispute that certain amounts have been settled and paid to the petitioner. Thus, a total amount of Rs.4,41,516/- seems to have been paid to the petitioner. Then the petitioner seems to have approached the State Commissioner under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short "the Act") and filed an application in Case No. 207 of 2010 and the said authority seems to have decided to refer the petitioner to State Medical Board. It appears that the petitioner was not in a position to pay the required fees for medical checkup and also appears that the Director for the Welfare of Persons with Disabilities and Senior Citizens addressed a letter No. C1/8285/2012, dated 20.01.2012 to the Superintendent, Gandhi Hospital, Secunderabad, to arrange for issue of medical certificate by the State Medical Board with free medical check up to the petitioner. Then, in the above circumstances, the petitioner seems to have withdrawn the petition pending before the State Commissioner under the Persons with Disabilities Act, 1995, and filed this present writ petition. Sri Sunil Kumar Reddy, learned Standing Counsel for the respondents-APSRTC, submits that unless a person has been certified as a disabled person by the competent medical board as per the provisions of the Act, he cannot claim any benefit under the provisions of the said Act. His second submission is that since the petitioner himself has submitted application for voluntary retirement on medical grounds and subsequently accepted all the retrial benefits and, therefore, he cannot claim any relief in this writ petition.

2. The main issue that falls for consideration is what is to be done by the employer and employee when a person becomes disabled or sustained injuries during the course of employment or while a person is in service. Section 47 of the Act is 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.

(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.

3. A reading of the above section makes it clear that the responsibility lies on

both employer and employee. However, initial responsibility lies on the employer. The employer at the initial stage should make an effort to provide alternative employment to the employee who sustained disability. Since the section begins with ostensible words such as no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service. Thus, the burden is cast upon the employer to comply with the provisions u/s 47 of the Act. The first proviso says 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. The second proviso says 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. Admittedly, in this case, the petitioner sustained injury while he was on duty. It is also not in dispute that from the work place he was shifted to APSRTC Hospital, Tarnaka. The claim of the petitioner that the doctors in the hospital advised him not to lift weights or not to do any hard work is not in dispute, more over the subsequent certificate issued by the Tarnaka hospital reveals that the claim of the petitioner is correct that he was not able to do work which he was earlier doing. It is also not in dispute that APSRTC Hospital, Tarnaka issued a certificate stating that the petitioner was unfit for M-2 category. Then the respondents ought to have taken steps to verify as to whether the petitioner was fit to do some other work in the organization. This exercise was not done. Then he was issued a notice to retire on medical grounds with effect from 24.03.2009. It has to be seen that after two months thereafter i.e., on 08.05.2009 the petitioner submitted an application to settle his final accounts. Thus, it appears that after he was disengaged and was issued a notice informing him that he was found unfit for the post of Mechanic, he waited for two months and then requested to settle his accounts. One can visualize the situation of an employee without any remuneration for two months, that too a person who was in hospital for a period of about five months. It is thus clear that the petitioner was forced to submit an application to settle his final accounts.

4. It is not the case of anybody that the petitioner was made aware of the provisions of the Act. It was obligatory on the part of every employer first of all to offer alternative job to the employee. While retiring a person on medical grounds, before settling retrial benefits, the employer must issue a notice to the employee that he is entitled for alternative job u/s 47 of the Act and the management, if thinks that it is necessary to obtain disability certificate from the competent medical board, it should refer the person to a competent medical board and obtain certificate at the cost of the management. It may not be possible for every employee to meet the expenses. As far as the present case is concerned, the situation appears to be some what different. In the present case, the petitioner has received the considerable amount as retrial benefits. When he had received retrial benefits he ought to have paid the required fees for medical examination when the Commissioner has referred him to the medical board. Anyhow, it appears that the petitioner seems to have submitted an application to

the concerned authorities and the Director for Welfare of Persons with Disabilities and Senior Citizens has issued a letter to the Superintendent, Gandhi Hospital, Secunderabad, to issue medical certificate by the State Medical Board free of cost.

5. Having regard to the facts and circumstances of the case, I consider it just and reasonable to dispose of the writ petition with the following directions.

6. Since there is no offer to provide alternative job, the impugned proceedings terminating the services of the petitioner are declared as illegal and are, accordingly, set aside. The petitioner is deemed to be continued in service with effect from 25.03.2009 and consequently he will be entitled to all the monetary benefits including back wages, continuity of service and all attendant benefits with effect from 25.03.2009. Whatever amounts that have been paid to the petitioner have to be paid back by the petitioner but in view of the awarding of back wages with effect from 25.03.2009 the respondents shall adjust the entire amounts towards back wages and if any further amount is due to be paid by the petitioner, the same shall be deducted by way of easy monthly instalments from the salary of the petitioner. If the respondents intend to refer the petitioner to Medical Board, they may refer him at their cost and obtain disability certificate for providing suitable, alternative job to the petitioner u/s 47 of the Act.

7. The writ petition is disposed of accordingly. No costs. As a sequel, WPMP No. 11760 of 2012 is closed.