

(2013) 06 AP CK 0052

In the Andhra Pradesh High Court

Case No : Writ Petition No. 38548 of 2012

Md. Subhan Khan

APPELLANT

Vs

The A.P.S.R.T.C., The Regional Manager and The Depot
Manager, A.P.S.R.T.C.

RESPONDENT

Date of Decision : 20-06-2013

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 47
Road Transport Corporations Act, 1950 — Section 45(1)

Citation : (2013) 06 AP CK 0052

Hon'ble Judges : Nooty Ramamohana Rao, J

Bench : Single Bench

Advocate : Kambham Madhava Reddy, for the Appellant; C. Sunil Kumar Reddy, SC for APSRTC, for the Respondent

Final Decision : Disposed Off

Judgement

Nooty Ramamohana Rao, J.—This Writ Petition is filed by a driver of the Andhra Pradesh State Road Transport Corporation (for brevity, henceforth referred to as "the Corporation") seeking a writ of mandamus for declaring the action of the respondents in not extending the retirement benefits, as provided for under Regulation 6(A)(5)(b) of the Andhra Pradesh State Road Transport Corporation Employees' (Service) Regulations, 1964 (for short, "the Regulations") as illegal and consequently, to direct the respondents to pay the writ petitioner the benefits that flow to him from May 2010 onwards. Heard Sri Kambham Madhava Reddy, learned counsel for the petitioner and Sri C. Sunil Kumar Reddy, learned Standing Counsel for the Corporation.

2. The petitioner joined the service of the Corporation as a driver, upon being selected for the said post. As is required by Regulation 6(A), the employees of the Corporation shall undergo medical examination by a Medical Officer appointed or nominated by it at such intervals of time as the Corporation may

deem it necessary. Drivers occupy a very sensitive post in the Corporation's service. Unless they maintain the appropriate standards of medical fitness, they will not be able to discharge the functions as such properly and correctly. Further, they may ever pose danger or risk to the passengers, whom they may have to ferry from one destination to another, by driving the buses of the Corporation and also similarly, capable of posing danger and risk to the other road users. When the petitioner has been subjected to one such medical examination at APSRTC Hospital at Tarnaka, on 10.05.2010, the Senior Medical Officer declared him unfit for service in A1 category due to "defective distant and near vision" and also because of "partial colour blindness". Thus, the writ petitioner has been put off duty from 10.05.2010 due to impaired vision. It is imperative that no driver, who is having defective distant and near vision, can be entrusted with the duty of driving the buses of the Corporation. However, a further opinion/confirmation of the findings of a Medical Officer is necessary, as per the policy of the Corporation for further processing the case. The Corporation took its own time to redress the grievance of the writ petitioner and ultimately, it referred the case of the petitioner for examination by the Medical Board. Accordingly, the Superintendent, APSRTC Hospital, Tarnaka constituted a Committee of Doctors to examine the writ petitioner which met on 10.02.2011 and found that the petitioner is unfit for the post of Driver in A1 category as per the medical standards of APSRTC because of the defective distant and near vision in both his eyes. However, the Medical Committee has found him fit for X2 category, as per Circular No. PD-06/2011, dated 25.01.2011. After 10.02.2011 also, the writ petitioner, according to his learned counsel, has not been provided with a suitable and appropriate alternative employment. In those set of circumstances, he has submitted a representation to the Depot Manager on 24.05.2011, i.e. more than after one year from the time he was put off duty. It will be appropriate to quote the contents of the said representation, dated 24.05.2011:

To

The Depot Manager,

APSRTC,

Mehdipatnam Depot,

Hyderabad.

Sir,

Sub: Found Medically unfit in our Tarnaka hospital - kindly settle monetary benefits.

I Subhan Khan, Driver of Mehdipatnam Depot bearing Staff No. 110039. As I was found medically unfit in our Tarnaka Hospital. So I kindly request you to settle monetary/better benefits which are left in the Corporation. I am not willing for alternative employment due to ill-health.

Thanking you,

Yours faithfully, (Subhan Khan) E-110039, Driver, Mehdiapatnam Depot

Accordingly, the petitioner had been made to retire on voluntary basis, after collecting one month's pay representing the notice period from him, in April 2012. In September 2012, the terminal benefits payable to the petitioner have been settled and thereafter, the present Writ Petition has been instituted on 12.12.2012 in this Court seeking benefits that flow from his retirement on medical fitness grounds.

3. One of the Law Officers of the Corporation has filed a counter-affidavit in the matter as he was authorized to do so and act on behalf of the Corporation. In paragraph 3 of the said counter-affidavit, it is asserted that the writ petitioner was found unfit for A1 category by the Senior Medical Officer, APSRTC Hospital at Tarnaka due to defective distant and near vision and partial colour blindness, but however, the date was erroneously stated as 10.05.2012 (in fact, it was 10.05.2010). The counter-affidavit was thereafter silent as to the steps and measures taken for rehabilitating the writ petitioner, who was declared medically unfit on 10.05.2010 by the Senior Medical Officer. To say the least, this attitude reflects rank casualness and carelessness on the part of the deponent of the counter-affidavit.

4. However, it is strenuously contended by the learned Standing Counsel, Sri C. Sunil Kumar Reddy that the writ petitioner has pre-empted the Corporation from considering his case for alternative employment by submitting his representation dated 24.05.2011, wherein he has categorically declared that he is not willing for alternative employment due to ill-health. Based upon this representation of the writ petitioner, Sri C. Sunil Kumar Reddy, learned Standing Counsel would contend that the petitioner is blowing hot and cold simultaneously and he shall not be permitted to do so. It is further contended that the writ petitioner was made known that if he seeks to retire on voluntary basis, he must either tender a notice of minimum of one month duration or in lieu thereof, must pay the wages for one month period. The petitioner has accordingly, availed the option to pay the wages of Rs. 20,236/- and he paid it in April 2012. Therefore, according to the learned Standing Counsel, the petitioner, having accepted to retire on voluntary basis and subsequently, having accepted the terminal benefits payable on that count in September 2012, has turned round and filed this Writ Petition thereafter. Therefore, by his own conduct, the writ petitioner is disentitled from securing any relief from this Court.

5. If a driver of a public-sector transport undertaking fails to maintain the adequate standards of medical fitness and in particular, with regard to his vision, his failure can also be attributable to a certain extent to the avocation pursued for long. Drivers, who render their service for long periods, are likely to lose out on their medical fitness standards, particularly relating to vision. By the very nature of the job, they will be required to acutely focus their vision and during

night duties as they constantly get exposed to fluctuating frequencies of light and darkness in rapid succession, chances are more for incurring loss of vision. In the instant case, the Senior Medical Officer, who examined the writ petitioner, has found him to be having defective distant and near vision apart from colour blindness. Therefore, he declared him unfit for A1 category on 10.05.2010. Consequently, the Corporation could not have continued the writ petitioner in service as a driver. They have promptly put the writ petitioner off duty. This far, there is no impropriety in the action of the Corporation. The Corporation could not have risked availing the services of the writ petitioner even for a day after 10.05.2010 and risk not only the passengers but also the other road users, but however, what is not being appreciated is the lack of prompt follow-up action initiated by the Corporation to rehabilitate the writ petitioner. The record does not disclose anywhere nor would the counter-affidavit sworn to by a Law Officer of the Corporation advert to the steps taken by the Corporation for the purpose of rehabilitating the writ petitioner by offering him an alternative employment or financial assistance for his sustenance. The Corporation has taken its own sweet time to refer the writ petitioner's case back to Tarnaka Hospital maintained by it for the purpose of constituting a medical team to assess and confirm his fitness. That medical team met on 10.02.2011 and declared him as unfit for A1 category, which is the requisite medical category for drivers. Even thereafter, no steps have been taken by the Corporation at least for the purpose of retiring the writ petitioner on medical unfitness grounds.

6. It will be relevant to notice the provisions contained in Regulation 6 of the Regulations, which are framed by the Government of Andhra Pradesh u/s 45(1) of the Road Transport Corporation Act, 1950 and consequently, they have enforceability. Regulation 6 dealt with the issue of retirement of the employees. Regulation 6(1)(a) declared that an employee shall retire from service with effect from the After Noon of the last day on the month in which he attains the age of 58 years. Thus, it declares the age of superannuation of the employees of the Corporation as 58 years. However, Regulation 6(1)(b) provides for an option for an employee, after giving one month's notice to the competent authority or upon payment of one month's salary (pay + D.A.) in lieu of notice, to retire from service voluntarily on or after putting in a minimum service of 20 years in the Corporation. Thus, Regulation 6(1)(b) provides for a voluntary retirement option to be availed by such employees, who have put in 20 years of service in the Corporation. Those employees, who retire voluntarily, are entitled to certain benefits, which have been enumerated in Regulation 6(1)(c). Regulation 6A was incorporated through a notification dated 06.08.1968. Regulation 6A dealt with retirement due to failure to conform to the requisite standard of physical fitness. Regulation 6A(3) and (4) offer certain assistance to understand the gamut of Regulation 6A. They read as under:

6A(3): The Medical Officer shall issue a certificate regarding the fitness or otherwise of the employee to discharge the duties of the post held by him which shall ordinarily be accepted.

6A(4): If in the opinion of the Medical Officer, the employee is unfit to discharge the duties of the post held by him, he shall, forthwith be retired from service on medical grounds subject to condition that if he has held any post previously and he opts for reversion, he shall be reverted forthwith subject to the medical fitness.

(emphasis is mine)

7. As per Regulation 6A(3), the opinion and the certificate of a Medical Officer regarding the fitness or otherwise of an employee shall ordinarily be accepted. In the instant case, the opinion of the Senior Medical Officer dated 10.05.2010 was accepted and the petitioner was put off duty. Regulation 6A(4) further makes it clear that whenever a Medical Officer has tendered his opinion declaring an employee unfit to discharge the duties attached to the post held by him, such an employee shall forthwith be retired from service on medical grounds, subject to the condition that if he has held any post previously and he exercises an option for reversion to his previously held post, he shall be reverted forthwith, subject, of course, to maintaining medical fitness standards to hold even against that post.

8. In the instant case, the question of the petitioner exercising any option for reversion would not simply arise, because he held no other post than that of a driver in the service of the Corporation. Therefore, in my opinion, when Regulation 6A(3) and (4) are read together, it is incumbent upon the Corporation to retire the writ petitioner forthwith on 10.05.2010 when the Senior Medical Officer declared him as unfit for A1 category, namely for functioning as a driver. There is no option available in the hands of the Corporation, but however, if the Corporation is desirous of offering an alternative employment to a person, who has been declared as medically unfit, albeit due to its obligation arising u/s 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, such a measure is liable to be adopted by the Corporation promptly or at least within a reasonably proximate time of 3-4 months. Therefore, in my view, there is nothing more that an employee is required to do when once he is declared as medically unfit by a Medical Officer appointed by the Corporation itself. I therefore, have no hesitation to hold that the Corporation was at fault in not retiring the petitioner from service on his failure to maintain the necessary standards of medical fitness for functioning as a driver on 10.05.2010 and when he cannot seek reversion to any other post.

9. The Court can derive an inference legitimately in view of the spiralling inflationary trends prevailing, particularly for those who are depending upon their monthly wages for their sustenance, that the petitioner has been arm twisted into submission by the procrastination of the Corporation. It would become nearly impossible to survive, with the least amounts of honour, if they were not to be paid their monthly wages for long periods. The counter-affidavit is blissfully silent as to what kind of financial assistance has been rendered to the petitioner since 10.05.2010. A person occupying a lowly-placed position as that of a driver

of a bus can hardly be expected to save so much of money and preserve it in his bank accounts to see him through for months together. At best, with whatever little savings one could have, a period of two to three months can be carried on but not beyond that. If a person has also failed on his medical fitness standards, his own creditworthiness in the society will come down. In the absence of any financial assistance, which has been rendered by the Corporation in the aftermath of 10.05.2010, and when the issue of his retirement is being dragged on one pretext or the other, the writ petitioner, I am entitled to draw this inference, has been forced by the Corporation and its managers to opt for voluntary retirement, in terms of Regulation 6(1)(b), so as to get into his hands his terminal benefits for the purpose of surviving and discharging the obligations which he has towards the rest of his family members. I am also constrained to observe that the Corporation was totally unkind to the cause of the writ petitioner when it demanded and accepted a sum of Rs. 20,236/- from him in the month of April 2012 in lieu of one month notice pay for retiring on voluntary basis in terms of Regulation 6(1)(b). While Regulation 6(1)(b) talks of tendering pay + D.A. towards the notice pay, the Corporation has taken a sum of Rs. 12,460/- representing his pay, Rs. 3,468/- representing his D.A., and additionally a sum of Rs. 3,738/- representing his H.R.A. and Rs. 250/- representing his city compensatory allowance. The unfairness of the action of the Corporation and its managers is visible when they demanded and accepted a sum of Rs. 3,738/- towards H.R.A. and Rs. 350/- as CCA which is totally unjust when viewed in the backdrop of Regulation 6(1)(b).

10. If a man's arm has been twisted, invariably one is bound to bend forward and seek for mercy. A man, who has lost out on medical fitness standards and is unable to perform his duties as a driver, has a very little choice. He was caught between the deep sea and the devil. The managers of the Corporation have chosen to take the role of devils in this case. They were so merciless that they put him off duty and did not move in the matter for the next one year and thus they thrust upon the writ petitioner the only option to get into his hands the legitimate retiral benefits for his survival by forcing him to opt for voluntary retirement. The poor man fell in the trap unable to survive in any dignified manner and he opted for it in April 2012 and coughed up a sum of Rs. 20,236/- towards the notice pay as well. The ego, obviously, of the managers has been satisfied thereafter and they started processing his retirement benefits and they took a cool four or five months' time later on to settle the same. Only after he got into his hands the retirement benefits, which are otherwise legitimate to him, did the man take courage to come to this Court and file this case. In an unfair environment of working conditions like that are demonstrated in the instant case, I admire the courage of the writ petitioner to have chosen to come to this Court. He has picked up enough morale notwithstanding the victimization that has been unleashed on him mercilessly by the managers of the Corporation. So unkind were they towards him that they had not accepted any of his pleas and all his beggings went unheeded to. He was pleading with them that he had

to get his daughter married. Wherefrom would one get money to get his daughter married? How can a man discharge his responsibility of getting his daughter married without any financial support in the current day world? He chose lesser of the evils by opting for voluntary retirement. For the unfair attitude exhibited by the Corporation in not sticking to the compulsions thrown upon them by Regulation 6A(3)(4), the inevitable conclusion that I have to draw is that the Corporation has acted in the manner in which it did only to avoid payment of the compensatory money, which the petitioner would have received in terms of Regulation 6A(5)(b), which reads as under:

In the case of retirement of a Driver on medical grounds he may be extended all terminal benefits apart from an Ex-gratia payment equivalent to One and Half month's emoluments (pay + DA) last drawn, for each completed year of service or the monthly emoluments at the time of retirement on medical grounds multiplied by the balance months of service left before normal date of retirement whichever is less.

11. A proper analysis of Regulation 6A(5)(b) discloses that if a driver is retired on medical grounds, he may be extended all the terminal benefits, apart from an Ex-gratia payment equivalent to one and half month's emoluments last drawn by him for each completed year of service or the monthly emoluments at the time of retirement on medical grounds multiplied by the balance months of service left before normal date of retirement whichever is less. Regulation 6A(5)(b) has been incorporated as a special provision to exclusively deal with the cases of drivers. The State, which framed these Regulations, is conscious that the drivers, by their nature of avocation of putting in long years of focused vision on the roads while performing duties, are bound to lose out on the medical standards of fitness. This special provision has been incorporated in the Regulations by the State to provide for that additional monetary benefits in the form of Ex-gratia. The managers of the Corporation have thought it otherwise and planned to denude the writ petitioner of this benefit. Because of their anxiety to unjustly save some more money to the Corporation, they have chosen to violate the mandate of Regulation 6A(5)(b). In these set of circumstances, the mandate of sub-regulation (5)(b), when it is read with sub-regulations (3) and (4) of Regulation 6A, leaves no option to this Court except to declare that the writ petitioner has retired from service of the APSRTC with effect from 11.05.2010, the date following the date on which the Senior Medical Officer, APSRTC Hospital at Tarnaka declared him as unfit for holding the post of a driver in A1 category due to lack of distant and near vision apart from colour blindness and which opinion was confirmed as well by the Medical Board later on. The respondents are directed to calculate the benefits payable to the petitioner strictly in accordance with Regulation 6A(5)(b) within 30 days from today and tender the same through a crossed account payee demand draft drawn on any nationalized bank and forward the same to his last known address by Registered Post without the petitioner having to undertake the trouble of going around their offices.

12. The 1st respondent the Vice Chairman and Managing Director of the APSRTC has got to examine the conduct of all those persons, who have been involved in this episode. He shall necessarily fix the accountability and responsibility for mismanagement of the affairs of the Corporation and suitably deal with them, so that this kind of a palpable injustice would not get repeated in the service of the Corporation henceforth. This apart, the lack of clarity and lack of purpose in filing the counter-affidavits on the part of the Law Officers of the Corporation, which has become a general feature and in particular, in this case, must also be considered by the Vice-Chairman and Managing Director for taking appropriate and suitable corrective measures. I fail to understand, a Law Officer not realizing the obligation to make a complete statement of facts in a counter-affidavit to be filed into this Court.

13. This Writ Petition is allowed with costs quantified at Rs. 10,000/- (Rupees ten thousand only) payable by the Corporation along with the terminal benefits ordered to be paid now. It goes without saying that the unjust amount of Rs. 20,236/-, which has been recovered from the petitioner representing the one month's notice pay, shall also be refunded, but however, I prefer not to order the said amount to carry any interest. Consequently, the miscellaneous applications, if any shall stand disposed of.