
(2012) 10 AP CK 0040
In the Andhra Pradesh High Court
Case No : Writ Petition No. 8690 of 2012

Md. Sultan

APPELLANT

Vs

Andhra Pradesh State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 09-10-2012

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 47, 47(1)

Citation : (2013) 2 ALT 617

Hon'ble Judges : P.V. Sanjay Kumar, J

Bench : Single Bench

Advocate : S.M. Subhan, for the Appellant; H. Venugopal, SC for APSRTC, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Sanjay Kumar, J.—The petitioner, a Driver in the Andhra Pradesh State Road Transport Corporation (APSRTC), was retired from service on medical grounds as he suffered from defective vision. This retirement was effected on 12.11.2008. He was paid his retirement benefits and also additional monetary benefit to the tune of (Sic) in lieu of alternative employment. The petitioner thereafter appears to have realized his folly and applied for alternative employment in terms of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for brevity "the Act of 1995"). It appears that the APSRTC insisted upon the petitioner refunding the additional monetary benefit as a condition precedent for considering his case for alternative employment. Aggrieved the petitioner is before this Court

2. In the counter, the APSRTC stated that the petitioner himself addressed letter dated 6.11.2008 requesting permission to retire on medical grounds. As he himself did not seek alternative employment, the APSRTC justified its action in retiring him on medical grounds as per his own request

3. Section 47 of the Act of 1995, to the extent relevant, 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 benefit:

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

4 Thus, disability is not sufficient for the employer to turn his back on such an afflicted employee The first proviso to Section 47(1) of Act of 1995 mandates that the service benefits of the disabled employee should also be duly protected while appointing him to another post The petitioner would therefore be entitled to be appointed in a suitable alternative post duly protecting his service benefits This Court is fortified in taking this view by the observations of the Supreme Court in Kunal Singh Vs. Union of India (UOI) and Another,

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 obligation of the APSRTC to abide by the statutory mandate of Section 47 of the Act of 1995 was again confirmed by a Division Bench of this Court recently in Andhra Pradesh State Road Transport Corporation Vs. K. Moses,

6. Viewed thus, the action of the APSRTC in denying alternative employment to the petitioner is violative of the statutory mandate of Section 47 of the Act of 1995

7. It is also to be noticed that the APSRTC itself issued instructions under Circular No. PD-06/2011 dated 25.1.2011 that drivers found unfit to continue as such because of visual disability should be given only alternative employment These instructions were only a reiteration of the earlier instructions in Circular No. PD-60/2008 dated 25.2.2008 The APSRTC was therefore required not only by the statute but by its own circular instructions to inform the disabled drivers and other such disabled employees of the option available to them to seek alternative employment Without doing so, the APSRTC cannot take advantage of the ignorance of the disabled employee in this regard and deny his request for alternative employment thereafter The same would not only be violative of the statutory mandate of Section 47 of the Act of 1995 but also the APSRTC's circular directions

8. However, the petitioner, having already received substantial amounts on the basis of his retirement on medical grounds, would not be entitled to retain the same if he seeks alternative employment in terms of Section 47 of the Act of 1995

9. There shall accordingly be a direction to the APSRTC to consider the case of the petitioner for alternative employment in terms of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 with all consequential benefits provided thereunder, upon the petitioner refunding the amounts paid to him at the time of his retirement along with interest at 6% per annum from the date of actual receipt of those amounts by him. The Writ Petition is disposed of with the above direction WPMP No. 10978 of 2012 stands dismissed in consequence No order as to costs