

(2003) 04 AP CK 0012
In the Andhra Pradesh High Court
Case No : Writ Petition No. 3440 of 2003

M.V. Ramana Rao

APPELLANT

Vs

APSRTC and Others

RESPONDENT

Date of Decision : 10-04-2003

Acts Referred:

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

Citation : (2003) 3 ALD 550 : (2003) 4 ALT 150 : (2003) 2 APLJ 201

Hon'ble Judges : R. Subhash Reddy, J

Bench : Single Bench

Advocate : Donday Ram Mane, for the Appellant; P. Venkateswarlu, SC, for the Respondent

Final Decision : Allowed

Judgement

R. Subhash Reddy, J.—The petitioner, a driver of "A.1"-Category in the first respondent-Corporation, whose services are dispensed with on medical grounds, has filed this Writ Petition for Writ of Mandamus, to issue appropriate directions to the respondents to give him any alternate suitable post, seeking assistance under the provisions of the Persons With Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995.

2. Necessary facts for disposal of the Writ Petition are as under: The writ petitioner was appointed as driver in A.1 -Category and posted to Podili Depot of Prakasam District It is his case that during the tenure of his employment, he suffered disease called "Tinnitus", which resulted hearing impairment. As such, he is unfit to work as driver and the same is certified to that effect by the very authorities of the State Road Transport Corporation. As such, he made a representation requesting for providing of any desk job, which is equivalent to A.1-Category driver. When the petitioner was not provided with alternative and suitable job and when he was forced to go on leave, earlier he filed Writ Petition No. 18143 of 2002. This Court disposed of the said Writ Petition by judgment

dated 2-12-2002 directing the respondent authorities to consider the claim of the petitioner. Consequently, in accordance with the directions issued in the said judgment by this Court, he made representation, on which, now, the second respondent-Regional Manager, Ongole has issued proceedings dated 17-1-2003 stating that the drivers who were found unfit for the post of Driver are to be considered to the post of "Sharamik" under 10% quota as per Circular No. 1 12/87 , dated 24-10-1987. Further it is stated that in view of the financial restraints of the Corporation, even recruitment to the post of "Shramik" have been deferred and referring to the same, the petitioner was informed that it is not possible to provide suitable alternative job to him.

3. In the counter-affidavit filed by the Law Officer on behalf of the respondent-Corporation, it is clearly admitted that when the petitioner made representation for alternative employment, he was referred to their Hospital at Tarnaka and the Senior Medical Officer, APSRTC has certified that the petitioner is unfit to discharge the duties of driver due to defective hearing and in view of the disease "Tinnitus" developed in him. Further it is stated that in view of the certification of the Doctor, the petitioner was placed under forced leave with effect from 30-1-2002. With regard to the benefits claimed by the petitioner under the provisions of the Persons With Disabilities (Equal opportunities Protection of Rights and Full Participation) Act, 1995, it is stated in paragraph 6 of the counter-affidavit that the said Act is not applicable to the Corporation and the disease "Tinnitus" is not a disability within the meaning of the said Act to extend the benefits under the said Act.

4. Heard Sri Dhonday Ram Mane, learned Counsel for the petitioner and Sri Posani Venkateswarlu, learned Standing Counsel for the respondent-Corporation.

5. Having regard to the pleadings and contentions referred to above, it is not in dispute that the petitioner was appointed as driver in A.1-Category in the respondent-Corporation and according to the certification made by the Senior Medical Officer of the respondent-Corporation, he is suffering from hearing impairment and the disease called "Tinnitus". It is also certified that the petitioner is unfit to discharge the duties of driver. With regard to the applicability of the provisions of the Persons With Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995, it is already held by this Court that the Act referred to above is applicable to the employees of the State Road Transport Corporation and the same is also evident from the provisions of the said Act that the Act is made applicable to the establishments of the State Government also. As such the plea of the respondents-Corporation that the said Act cannot be made applicable to the Corporation is not tenable. Further the stand of the Corporation that hearing impairment and the disease "tinnitus" is not a disability, cannot be accepted. Hearing impairment is also one of the disabilities as defined u/s 2(1) of the Act, i.e., the Persons With Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995; as such it is not open to the respondents to put forth the plea that the disease

"Tinnitus", which resulted in hearing impairment is not a disability attracting the provisions of the said Act. The above referred Act is an Act to give full protection and equal participation of the people with disabilities and the very action of the respondents in asking the petitioner to go on forced leave without providing suitable alternative employment is contrary to the scheme of the said Act.

6. Act 1 of 1996, i.e., the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is a central piece of beneficial legislation for the disabled. In view of the protection provided u/s 47 of the said Act, no establishment shall dispense with or reduce in rank of employee, who acquired disabilities during his/her service. Of course, in the instant case, an attempt is made to plead that the disability suffered by the petitioner is not during the course of his employment. To consider the said aspect, the same will depend on the nature of the disability and merely, because, it has not happened suddenly, like a locomotive disability, during the course of employment, automatically it cannot be said that the disability like one suffered by the petitioner is not in the process of employment. Hearing impairment is one disability, which cannot happen overnight. As admittedly, the petitioner was in service of the respondent-Corporation for more than ten years and therefore, it cannot be said that he has not suffered the disability during the course of his employment. The words "disability during the course of service" as mentioned in Section 47 of the said Act has to be construed meaningfully keeping the objects of the Act in mind and the nature of the disability suffered by the employee. As such, I hold that the disability suffered by the petitioner has to be construed as suffered during his service only and therefore, he is entitled to the benefits of the said Act.

7. Apart from the provisions of the said Act, there is also a scheme for rehabilitation for those, whose services are dispensed with on medical invalidation. As such, there is clear provision u/s 72 of the Act to the effect that the provisions of the Act or Rules made thereunder are in addition to, and not derogation of any other law for time being in force or any instructions issued or enacted for the benefit of the persons with disabilities. Applying the provisions of the said Act, if an employee acquires the disability during his service, and not suitable for the post held by him, he/she could be shifted to some other post with same pay scale and service benefits. Even in case, if it is not possible immediately, it is obligatory on the part of the employer to create supernumerary post, until suitable post is available. As such, it is not open for the respondents to plead that there are no vacancies to consider the claim of the petitioner, to provide alternative employment. As the petitioner, admittedly served the respondent-Corporation for more than ten years and as I held that the petitioner suffered the disability during the course of his service, he is entitled to the benefits of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. As such, the action of the respondents in dispensing with the services of the petitioner and asking him to go on leave is illegal and contrary to the scheme of the Act referred to above.

8. For the foregoing reasons, it is obligatory on the part of the respondents-Corporation to provide suitable alternative employment to the petitioner, protecting his pay-scale, continuity of service etc.

9. The Writ Petition is accordingly allowed and the respondents are directed to provide suitable employment by protecting his pay-scale and other service benefits. The respondents shall pass appropriate orders, as directed above, within a period of one month from the date of receipt of a copy of this order. No costs.