

(2007) 03 KAR CK 0023
In the Karnataka High Court
Case No : Writ Appeal No. 1779 of 2006

North East Karnataka Road Transport Corporation	APPELLANT
Vs	
Vasanthrao	RESPONDENT

Date of Decision : 21-03-2007

Acts Referred:

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

Citation : (2007) 5 KarLJ 131 : (2007) 3 KCCR 125 SN

Hon'ble Judges : Chidananda Ullal, J; Ashok B. Hinchigeri, J

Bench : Division Bench

Advocate : H.R. Renuka, for the Appellant;

Final Decision : Dismissed

Judgement

Ashok B. Hinchigeri J.

1. There is a delay of 52 days in filing this appeal. We are satisfied with the explanation offered. We therefore allow IA.II of 2007 and condone the delay of 52 days in filing the appeal.

2. This appeal is directed against the learned Single Judge's order, dated 24th July, 2006 passed in Writ Petition No. 5599 of 2006.

3. The facts of the case in brief are that the respondent was working as a Senior Driver in the appellant-Corporation. He suffered the disability while in service. On account of his suffering the disability, he was shifted from the cadre of Senior Driver to that of Peon. Thereafter, he was being given the salary, etc. attached to the cadre of the Peon only. On ventilating his grievances before the Labour Court in Reference No. 549 of 1999, the Labour Court, by its award dated, 5th November, 2004 directed the appellant to extend the benefit of the scale of the Senior Driver, which the respondent was drawing with effect from 24th December, 1996 inclusive of the revision of pay from time to time. Aggrieved by the aforesaid award, the appellant instituted the writ petition. As the Labour

Court's award was in keeping with the provisions contained in Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 [hereinafter referred to as "the said Act" for short] and the judgment of the Hon'ble Supreme Court in the case of Kunal Singh Vs. Union of India (UOI) and Another, , the learned Single Judge declined to interfere with the matter and consequently rejected the writ petition.

4. Smt. H.R. Renuka, the learned Counsel appearing for the appellant-Corporation, has urged the following contentions vehemently:

(i) Unless the employee produces the disability certificate issued by the Medical Board under Rule 4 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996 [hereinafter referred to as the said Rules" for short], the question of extending the same pay-scale and service benefits, which he had prior to the change of cadre does not arise at all;

(ii) As on the material date of seeking the change of cadre, the said Act had not come into force;

(iii) The respondent is not a person with disability as defined u/s 2(t) of the said Act;

(iv) The change of cadre (from Senior Driver to Peon) is effected strictly in accordance with Regulation 20(3) of the KSRTC Servants" (Conduct and Discipline) Regulations, 1971.

5. The submissions of the learned Counsel have received our anxious consideration. The said Act is a piece of social and beneficial legislation. Therefore no hyper-technical approach is warranted. That apart, the respondent has furnished the incapacity or disability particulars in paragraph 4 of his claim statement before the Labour Court. The same reads as follows:

The first Party submits that he had undergone surgery of left hip with AMP Hemiarthropology in the year 1994 and the District Surgeon, Superintendent District Hospital Gulbarga, vide letter dated MDX/219/96, dated 22nd September, 1996 informed the Second Party to the effect that the First Party was not fit to discharge his duties to bus driving and it was recommended that the First Party be given the duties of the sedentary nature (other than driving duties).

6. This emphatic statement of the respondent is neither contradicted nor denied by the appellant in its counter to the claim statement before the Labour Court

7. What is to be ensured is the compliance with the substance and not the form. Just because a Medical Board is not constituted, the consideration of the respondent's case cannot be deferred indefinitely. It is also worthwhile to refer to another important aspect of the matter. It is only on satisfying itself of the respondent's disability that the appellant employer has effected the change of cadre. If appellant were not satisfied of the respondent suffering the disability and the consequent incapacity to drive the bus, it would not have facilitated the

change of cadre. For these reasons, Smt. Renuka's first submission fails.

8. We do not see any merit in the second submission urged on behalf of the appellant-Corporation. When the consideration of the respondent's case was under way, the beneficial legislation has come into force. So it is not desirable to deny the application of beneficial legislation to the pending cases.

9. The said Act is modern legislation, which has some beneficial object behind it. In the case of social benefit-oriented legislation, its provisions are to be construed liberally to achieve the purpose of the enactment. Equitable considerations have to find an important place in the construction of beneficial provisions. The inhibition against retrospective construction has to be applied with less insistence in the case of welfare legislation and remedial statutes. Just because a part of the cause of action is drawn from the time antecedent to the passing of the Act, the respondent-workman cannot be deprived of the protection granted by the Act. We have no hesitation in holding that a prospective benefit under a statutory provision may accrue from the antecedent facts. In this regard, it is profitable to refer to the latest decision of the Apex Court in the case of *Vijay Vs. State of Maharashtra and Others*, . The relevant portion is extracted hereinbelow:

12. ... When a law is enacted for the benefit of the community as a whole, even in the absence of a provision, the statute may be held to be retrospective in nature.

10. We are not: impressed of the submission that the respondent is not entitled to any benefit because the said Act had not come into force as on the material date of making the application for the change of cadre, for another reason too. The appellant is an instrumentality of State within the meaning of Article 12 of the Constitution of India. It is expected of the appellant to be a model employer. Propriety and fairness require that the respondent, who has acquired the incapacity to drive the bus, should be given the same salary, etc. attached to the cadre of a Senior Driver.

11. Similarly, we find that Smt. Renuka's third contention is also untenable. Section 2(t) of the said Act states that "person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority. As per Section 2(i) of the said Act "disability" means- (i) blindness; (ii) low vision; (iii) leprosycured; (iv) hearing impairment; (v) locomotor disability; (vi) mental retardation and (vii) mental illness. Section 2(o) states "locomotor disability" means disability of the bones, joints of muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy. The District Surgeon/Superintendent, District Hospital, Gulbarga, vide his letter, dated 22nd September, 1996 has certified that the respondent is not fit to drive the vehicle and hence has recommended that he be given the duties of sedentary nature (other than driving duties). The three factors namely, (a) the respondent-workman suffering the locomotor disabilities; (b) the District

Surgeon giving a certificate in the matter and (c) the appellant-Corporation acting on the recommendations of the District Surgeon and effecting the change of cadre, substantially entitle the respondent-workman to be treated as a person with disability and to claim the protection guaranteed under the said Act.

12. We are also not in a position to give our acceptance to the last submission urged on behalf of the appellant-Corporation that the appellant-Corporation's Regulations do not provide for the protection of the salary and service benefits. We have no hesitation in holding that the internal service Regulations of the appellant-Corporation are required to be brought in conformity with the legislation made by the Parliament from time to time.

13. Thus, viewed from any angle, we find the learned Single Judge's order to be irreversible. This appeal is sans merit. It is dismissed with no order as to costs.