

(2011) 02 AP CK 0048
In the Andhra Pradesh High Court
Case No : Writ Petition No. 177 of 2006

R. Johnwesly.

APPELLANT

Vs

A.P.S.R.T.C

RESPONDENT

Date of Decision : 24-02-2011

Acts Referred:

Andhra Pradesh State Road Transport Corporation Employees (Service) Regulations,
1964 — Regulation 6A
Road Transport Corporations Act, 1950 — Section 45, 45(1)

Citation : (2011) 4 ALD 146

Hon'ble Judges : Nooty Ramamohana Rao, J

Bench : Single Bench

Advocate : P. Govinda Rajulu, Ad`, for the Appellant; C. Sunilkumar Reddy, for the Respondent

Judgement

Nooty Ramamohana Rao, J.—This Writ Petition has been instituted by a former conductor employed with the state-owned Andhra Pradesh State Road Transport Corporation (henceforth referred to as "the Corporation"), seeking a writ of mandamus directing the Respondents to pay him additional monetary benefits, in lieu of alternative employment, as per Circular No. PD-40/2005, dated 26.08.2005.

2. The facts, which are relevant for our enquiry, are:

The writ Petitioner, while serving the Corporation as a conductor, had retired from service on the basis of a medical certificate issued by the medical officer on 05.07.2005, declaring him unfit for being continued in service as a conductor. Hence, the writ Petitioner had to be retired from service on 16.07.2005, much before he attained the age of superannuation prescribed by the Corporation. The writ Petitioner, therefore, claimed certain additional monetary benefits in lieu of alternative employment. He draws inspiration for staking a claim for these additional monetary benefits on Circular No. PD-40/2005, dated 26.08.2005, issued by the Corporation.

3. The Corporation framed Regulations called "APSRTC Employees" (Service) Regulations, 1964, (henceforth referred to as "the Regulations") with the previous sanction of the Government of Andhra Pradesh, in terms of Section 45(1) of the Road Transport Corporation Act, 1950. These Regulations have been amended pursuant to Resolution No. 172 of 1968 passed by the Corporation on 06.08.1968, introducing a new Regulation called 6A dealing with the right of the Corporation to retire an employee due to his failure to conform to the requisite standards of physical fitness. Clause (1) of the newly incorporated Regulation 6A empowers and authorizes the Corporation to require any employee to undergo medical examination by a medical officer appointed or nominated by it, at such times or at such intervals as may be deemed necessary by it. Clause (4) thereof further empowers the Corporation to retire any such employee from service on medical grounds, if, in the opinion of the medical officer, the employee is found unfit to discharge the duties of the post held by him. Clause (4) has also incorporated a provision for the medically unfit employee to roll back to a post held by him previously by way of voluntary reversion, provided he possesses the necessary standards of medical fitness to hold such a previous post. Clause (5) of Regulation 6A provided for certain additional terminal benefits to such of those employees, who are retired on medical grounds. This Clause (5) of Regulation 6A had been amended by the Corporation by its Resolution No. 128 of 2003 passed on 28.07.2003. The amended Clause (5) of Regulation 6A has attempted to provide for additional monetary benefits for those retired on medical grounds by classifying the employees into two different segments; one being the drivers and the other, the rest of the employees other than the drivers. Sub-clauses (a) and (b) have been incorporated for the said purpose. Sub-clause (a) dealt with the cases of employees other than drivers, while Sub-clause (b) dealt with the cases of drivers.

4. In the case of drivers, who have been retired on medical invalidation grounds, they are extended all terminal benefits apart from an ex gratia payment equivalent to 1 1/2 months emoluments (pay + D.A) last drawn, for each completed year of service or the monthly emoluments received by him at the time of such premature retirement on medical grounds multiplied by the balance months of service left for normal date of retirement, whichever is less. In other words, a driver, who is retired on medical grounds, is offered an additional monetary benefit in the form of ex gratia amount, which will be equivalent to 1 1/2 months of emoluments last drawn for each completed year of service or the last drawn wages multiplied by the reminder length of service left for normal retirement, whichever is less. This ex gratia payment is obviously intended to cover the cases of drivers only in recognition of the fact that by the very nature of their calling, the drivers are likely to fall on their medical fitness standards over a period of time, whereas, such a situation may not arise in case of other employees.

5. It is not very difficult to visualize a situation where a good number of drivers would be put to duties on such of the buses plied at night times. While driving

the buses during night time, the drivers are required to focus greater attention on the road conditions as well as the vehicular traffic moving in the opposite direction. In the process, they get exposed to constant and varying degrees of light intensity. Sometimes, from out of the pitch darkness, they get exposed to focus lighting of the vehicular traffic coming in the opposite direction. The intensity of the light therefore, keeps fluctuating and this factor can have an impact upon the standards of vision of drivers and hence, the management has recognized that drivers as a class are more prone for losing the standards of fitness required to be maintained by them much faster than the rest of the employees. Therefore, to my mind, classification of the employees of the Corporation into two different segments, one of drivers and the rest comprising the other employees, cannot be considered to be either discriminatory or arbitrary. There is a rational relationship attempted by the Corporation in devising this classification. The need to compensate additionally the drivers is obviously more acute than the necessity to compensate the rest of the employees, who all due to other factors than their very nature of calling may be prone for losing the standards of fitness. Therefore, the classification attempted by Resolution No. 128 of 2003 and granting additional monetary benefits in the form of ex gratia to the drivers cannot be treated as wholly unjust or impermissible.

6. Therefore, Resolution No. 128 of 2003 passed by the Board of the Corporation dealt with the cases of drivers exclusively for a better or favorable treatment enabling them to receive additional ex gratia amount, whereas the same was not extended in case of rest of the employees. In cases of rest of the employees, the employer's contribution to provident fund and payment of gratuity will be regulated as if the employee had put in five more years of service or the reminder of service up to the date of normal superannuation, whichever is less. They will also be paid wages for the reminder period of left over service up to the normal date of retirement adopting the different formulae, depending upon the length of reminder of service. We are not so much concerned with those formulae. Thus, Resolution No. 128 of 2003 of the Board clearly made a distinction between the employees other than the drivers and the drivers. As is required by Section 45 of the Road Transport Corporation Act, 1950, every resolution passed by the Board of Directors of the Corporation was to be approved by the State Government. Accordingly, proposals have been sent up by the Corporation to the State Government and the State Government, through their communication, dated 24.06.2005, of the Principal Secretary to the Government, Transport, Roads and Buildings Department, Government of Andhra Pradesh, conveyed their approval for Board Resolution No. 128 of 2003. Hence, Circular No. PD-40/2005, dated 26.08.2005 has been issued by the Corporation advising all its pay disbursing/terminal benefits disbursing authorities to compute additional monetary benefits in accord with Clause (5) of Regulation 6A of the Regulations of the Corporation. Hence, Circular No. PD-40/2005, dated 26.08.2005 has not created any additional benefits than those contemplated and

approved by the Board of the Corporation through their Resolution No. 128 of 2003.

7. As was already noticed supra, through Resolution No. 128 of 2003, an attempt has been made by the Corporation to divide, for the purpose of payment of additional monetary benefits to such of those employees, who have been retired on medical invalidation grounds, into two segments, one segment exclusively comprising drivers and the other segment dealing with rest of the employees than the drivers. Since the writ Petitioner is a conductor, he is clearly not entitled to the additional monetary benefits sought to be conferred on drivers as ex gratia. The monetary benefit, which he is entitled to be conferred, has got to be calculated in terms of Sub-clause (a) of Clause (5) of Regulation 6A only. If the writ Petitioner has not been paid the said benefits so far, by the Corporation, the Corporation would do so immediately and settle the same in favour of the writ Petitioner within a maximum period of 60 days from the date of receipt of a copy of this order, duly calculating the benefits and furnishing such a calculation sheet to the writ Petitioner. However, if the benefits have already been paid to the Petitioner, and if the writ Petitioner seeks any clarification in that regard, the Corporation would do so by furnishing him a detailed calculation sheet as to how the monetary benefits payable to him in terms of Sub-clause (a) of Clause (5) of Regulation 6A have been worked out. But for the above, the principal claim made by the writ Petitioner for payment of ex gratia benefit to him, at par with the case of drivers, is not sustainable.

8. With this, the Writ Petition stands disposed of, but however, without costs.