

(2007) 01 AP CK 0030
In the Andhra Pradesh High Court
Case No : Writ Petition No. 16061 of 2006

S.K. Fareed

APPELLANT

Vs

Managing Director, APSRTC and Others

RESPONDENT

Date of Decision : 05-01-2007

Acts Referred:

Andhra Pradesh State Road Transport Corporation Employees (Service) Regulations, 1964 — Regulation 6A(5)
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 47

Citation : (2007) 3 ALD 232 : (2007) 4 ALT 118

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : V. Narasimha Goud, for the Appellant; V.T.M. Prasad, SC, for the Respondent

Final Decision : Allowed

Judgement

N.V. Ramana, J.—The petitioner joined the service of the respondents-Corporation as Driver in 1974. While working as such, he sustained defective vision on 7-10-2003. Therefore, he applied for retirement on medical grounds on 21.10.2003. The respondents accepting his request, retired him from service on medical grounds on 27-10-2003. A day after he sustained defective vision and much before the date he was retired from service on medical grounds, the respondents issued notification in P.D. No. 14/2003, dated 8.10.2003, informing that the Board vide Resolution No. 128/2003, dated 28.7.2003, has accorded their approval to amend Regulation 6A(5)(b) of the APSRTC Employees (Service) Regulations, 1964 (hereinafter referred to as "the Regulations"), and notified the amendment, which provided for payment of better benefits to Drivers who are retired on medical grounds. The petitioner states that he having taken retirement, in terms of the amended Regulation 6A(5)(b) of the Regulations, applied for grant of additional monetary benefits in lieu of alternative employment u/s 47 of the Persons with Disabilities Act, 1995, but the

respondents rejected his request for payment of additional monetary benefits. The petitioner states that the respondents after obtaining approval of the Government, have issued another Circular in PD No. 40/2005, dated 26.8.2005, reiterating the benefits payable under Circular in PD No. 14/2003, dated 8.10.2003. While so, the Personnel Officer, working in the office of the 2nd respondent, namely the Regional Manager, on the clarification sought by the 2nd respondent, namely the Depot Manager, whether additional monetary benefits can be paid to the petitioner, vide his proceedings dated 10.7.2006, informed that the petitioner cannot be paid the additional monetary benefits as he was found medically unfit on 7.10.2003 i.e. a day before the amended Regulation 6A(5)(b) of the Regulations, came into force. Assailing the said proceedings, the petitioner filed this writ petition.

2. Heard the learned Counsel for the petitioner and the learned Standing Counsel for the respondents-APSRTC.

3. The learned Counsel for the petitioner submitted that though the petitioner was medically invalidated on 7.10.2003, he having been retired from service w.e.f. 27.10.2003, long after the amended Regulation 6A(5)(b) of the Regulations came into force, which came into force from 8.10.2003, is entitled to grant of additional monetary benefits, and the action of the respondents in rejecting his request for grant of additional monetary benefits on the ground that he was found medically unfit on 7.10.2003 i.e. a day before the amended Regulation 6A(5)(b) of the Regulations came into force, is illegal and arbitrary, and more so when the amended Regulation 6A(5)(b) of the Regulations, which provided for grant of additional monetary benefits, to Drivers who are retired on medical grounds, came to be approved by the Government with effect from 8.10.2003. He, thus prayed that the impugned order be set aside and the writ petition be allowed.

4. The respondents filed counter. The learned Standing Counsel for the respondents-APSRTC reiterating the stand taken by the respondents in their counter submitted the amended Regulation 6A(5)(b) of the Regulations came into force from 8.10.2003. Though the petitioner was retired from service on 27.10.2003, i.e. twenty days after notifying the amendment, the fact remains, he was found medically unfit on 7.10.2003, and having regard to the fact that the amendment came into effect from 8.10.2003, i.e. a day after the petitioner was found medically unfit, he was not given the benefit, and no exception can be taken to the impugned proceedings issued by the office of the 2nd respondent, informing the 3rd respondent that the petitioner is not entitled to the additional monetary benefits.

5. In the background of the pleadings of the respective parties, the short question that arises for consideration in this writ petition is which of the two dates - whether the date on which the Driver sustained disability or the date on which the Driver was retired from service on medical grounds, should be taken for extending the benefit of the amended Regulation 6A(5)(b) of the Regulations,

which provided for grant of additional monetary benefits, to Drivers who are to be retired on being found medically unfit ?

6. The petitioner, admittedly, was found medically unfit on 7.10.2003. A day after the petitioner was found medically unfit, the 1st respondent issued notification in PD No. 14/2003, dated 8.10.2003, notifying that the Board vide its Resolution No. 128/2003, dated 28.7.2003, has accorded approval for implementation of the amended Regulation 6A(5)(b) of the Regulations, with immediate effect, pending sanction of the Government. The Government through its Principal Secretary in the TR & B Department, vide Letter No. 11073/Tr.II(2)/2003-4, dated 24.6.2005, have accorded approval for the amended Regulation 6A(5)(b) of the Regulations w.e.f. 8.10.2003. The respondents also vide Circular issued in PD No. 40/2005, dated 26.8.2005, reiterated that the Government have approved the amendment to Regulation 6A(5)(b) of the Regulations w.e.f. 8.10.2003.

7. The amended Regulation 6A(5)(b) of the Regulations, which came into force from 8-10-2003 introduced the following:

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 months 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.

Service of more than six months shall be treated as one year.

8. The amendment, which came into force from 8-10-2003, merely speaks of the nature of benefits that are extendable to a Driver who is retired on medical grounds, but it does not speak of as to from which date, the benefits provided thereunder are extendable - whether from the date of sustaining of medical disability or from the date on which the Driver is retired on medical grounds. However, going by the language used in the amendment, namely in the case of retirement of a Driver on medical grounds, he may be extended all terminal benefits apart from ex-gratia, it can safely be said that the date on which the Driver is retired from service on medical grounds, has to be taken for the purpose of extending the benefit of the amended Regulation 6A(5)(b) of the Regulations and not the date on which the Driver sustained medical disability.

9. Even though the petitioner sustained medical disability on 7-10-2003, i.e. a day before the issuance of the notification in P.D. No. 14/2003, dated 8-10-2003, the fact remains, the respondents retired him from service on medical grounds on 27-10-2003 i.e., 20 days after its issuance. In matters relating to settlement of terminal benefits, the law is well settled and the respondents also cannot dispute the fact that the employee concerned, is entitled to claim all the benefits, which he is entitled to under the different circulars, which were or are in force as on the date of his retirement. Inasmuch as on 27-10-2003, the date on which

the petitioner was retired from service on medical grounds, the Notification in PD No. 14/2003, dated 8-10-2003, providing for additional monetary benefit to the Drivers who are retired on medical grounds was in force, the respondents cannot be allowed to contend that the petitioner is not entitled to the benefit of the said Notification. In that view of the matter, the impugned proceedings dated 10-7-2006, issued by the Personnel Officer working in the office of the 2nd respondent, informing the 3rd respondent that the petitioner is not entitled to grant of additional monetary benefits in terms of amended Regulation 6A(5)(b) of the Regulations, cannot be sustained, and more so when the Government in their letter dated 24-6-2005, accorded their approval w.e.f. 8-10-2003, the date on which the 1st respondent notified the amendment made to Regulation 6A(5) (b) of the Regulations, which provided for payment of better benefits to Drivers who are retired on medical grounds.

10. Accordingly, the writ petition is allowed. The impugned orders passed by the Personnel Officer in the office of the 2nd respondent are set aside, and the respondents, in terms of Regulation 6A(5)(b) of the Regulations are directed to pay the additional monetary benefits to the petitioner in lieu of alternative employment, as mandated u/s 47 of the Persons with Disabilities Act, 1995, within a period of one month from the date of receipt of a copy of this order. No costs.