

**(2007) 09 KAR CK 0030**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 41449 of 2003**

Sri. Belliyappa Gowda

APPELLANT

Vs

The K.S.R.T.C. and Another

RESPONDENT

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**Date of Decision :** 10-09-2007

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 10 (4A)  
Road Transport Corporations Act, 1950 — Section 45

**Citation :** (2007) ILR (Kar) 5325 : (2007) 4 KCCR 2822

**Hon'ble Judges :** H.V.G. Ramesh, J

**Bench :** Single Bench

**Advocate :** Subba Rao and Company, for the Appellant; L. Govindraj, for the Respondent

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## Judgement

H.V.G. Ramesh, J.—The petitioner, assailing the order dated 25-1 -2003 passed by the Labour Court, Mangalore, dismissing the I.D. No. 55/1999, has filed this writ petition praying for the following reliefs:

(a) Issue a writ of certiorari or any other appropriate writ or order quashing the Award-dated 25-1-2003 passed by the Labour Court, Mangalore, in ID. Application (LCM) Bi, 55/1999, a certified copy of which has been produced as Annexure-J as the said Award suffers from errors which are apparent on the face of the records;

(b) Issue a writ of mandamus or any other appropriate writ or order directing the respondents to reinstate him in service with full back wages, continuity of service, seniority, promotion and all other consequential benefits which he would have got as if he has not been compulsorily retired from service; and

(c) Issue a writ of mandamus or any other appropriate writ or order directing the respondents to allot him the duties attached to the post of Traffic Controller as he was entitled to be promoted to the post of Traffic Controller on the basis of seniority or allot him duties of any other suitable post.

2. It is the case of the petitioner that he joined service as a Conductor in the respondent-Corporation, initially at Hassan Division w.e.f. 4-4-1976. Later on, his services were transferred from Hassan Division to Mangalore Division and therefrom to Puttur Depot in the year 1985. It is further submitted by the petitioner that on 2-2-1992 during the course of his employment, he met with an accident and sustained injuries by way of fracture to knee joint and right thigh and he was also hospitalised in the City Hospital Research & Diagnostic Centre and underwent an operation on 7-2-1992. Thus, the injury sustained by him was stated to be "tibia Condyle Posterior Medical Capsular" and as such, he was an in-patient in the said hospital till 18-2-1992 on which date he was discharged from the hospital. After his discharge from the hospital, he took treatment elsewhere and also in the Government Hospital. On account of the injuries sustained by him, he became a handicap and was not in a position to perform his duties as a Conductor. Later, petitioner submitted representation dated 28-9-1992 to the Divisional Controller, Mangalore Division, along with the Medical Certificates. The representation of the petitioner was considered by the authorities sympathetically and he was allotted alternative and sedentary jobs where he was not required to make frequent movements and he was given job like issue of passes to the students, window booking clerk and Stand Duty Conductor and also posted to work at control points. In addition to this, the petitioner was also asked to do the work of collection of tickets. The District Surgeon and the Superintendent of the Wenlock District Hospital, Mangalore, issued a certificate stating that the petitioner suffered 40% of permanent physical disability. According to the petitioner, he was also due for promotion as a Traffic Controller under the Karnataka State Road Transport Corporation (Cadre & Recruitment) Regulations, 1982, having regard to his seniority and other relevant factors. As the same was not considered by the authorities, he continued to work as a Stand Duty Conductor to do various jobs. Subsequently, during 12-11-1997 the petitioner was issued with a memo stating that he was required to work as a Line Duty Conductor, for which, he submitted representation stating that having regard to the injuries sustained by him and also due to the permanent disablement, he was unable to perform the duties of a Line Duty Conductor. As such, he sought to work as a stand Duty Conductor. Later, petitioner filed Writ Petition No. 19963/1998 praying for issue of a writ of mandamus directing the respondents to allot him duties of working at Control Points and other duties like issuing passes etc. The said Writ Petition was disposed of on 11-8-1998 vide Annexure-A wherein referring to Regulation framed by the K.S.R.T.C. u/s 45 of the Road Transport Corporation Act, 1950, which provides for framing Regulations by the Corporation and specifically referring to Regulation 20(3) read with 9 of the Regulations, this Court had formed opinion that above Regulation provides for providing alternative job befitting physical conditions for an employee incapacitated during the discharge of his duties and directed the authorities to consider the case of the petitioner for allotment of alternative jobs on the basis of the Regulations. Stating that the authorities have not considered his case, he also filed Contempt Proceedings in No. CCC 100/1999 wherein a

direction was issued to the Corporation to file an affidavit as to non-compliance of the order of the Court. Pursuant to the same, the petitioner was directed by the District Surgeon, District Hospital, Madikeri, to be present himself for medical examination at 11.00 A.M. on 7-6-1999. According to the petitioner, he did not receive any intimation. However, he was again directed to appear before the Medical Board on 15-6-1999, for which the petitioner appeared and was issued with a certificate stating that he is unable to work as Conductor. Even according to the petitioner, he was also threatened by the Security Officials of the Corporation without considering the request of the petitioner for allotment of alternative job, he was harassed and compulsorily retired him from the services w.e.f. 29-6-1999. Against which, claimant raised dispute u/s 10(4-A) of the Industrial Disputes Act, 1947. The Labour Court, Mangalore, dismissed the petition after inquiry. Hence, this petition.

### 3. Heard the learned Counsel for the respective parties.

The submission of the learned Counsel appearing for the petitioner is that, while the petitioner was in service, he sustained disability which disabled him to perform the duty as a Conductor. Therefore, the Corporation has allowed the petitioner to work as Stand Duty Conductor for sometime. He further submitted that this Court had passed some order in the writ petition filed by the petitioner by Sri GC. Bharuka, J. the then, in Writ Petition No. 19963/1998 dated 11-8-1998. But the said order is perverse as against the principles laid down by the Apex Court in the case of Kunal Singh Vs. Union of India (UOI) and Another, . Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, clearly indicate its mandatory nature. It further provides that if an employee after acquiring disability is not suitable for the post he was holding, he 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 super annuation whichever is earlier.

4. Per Contra, learned Counsel appearing for the respondents-Management submitted that there is no violation on the part of the Corporation in regard to the directions issued by the learned Single Judge in Writ Petition No. 19963/1998 dated 11-8-1998 holding that in the event if the claimant suffered injury during the course of employment, the Corporation may consider the advisability of changing his cadre/ post befitting his physical conditions. In case, it is found that, he has not sustained any incapacity or disability in discharging his duties, the corporation may direct such persons to discharge their duties for which they are appointed. Further keeping in view the said disability if he is unable to discharge his duties for which he has been appointed, then the provisions contained in the retirement Regulations may be invoked. He further submitted that there is no illegality in the action taken by the Corporation and the disability suffered is also prior to the Act came into force.

### 5. The Apex Court in the case of Kunal Singh v. Union of India and Anr. (supra)

has held as under:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act (1995), Sections 47, 2(t) -Applicability- Person acquiring disability during service-Entitled to be protected u/s 47 of Act provisions of Section 47 granting protection are mandatory.

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. It 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 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. The plea that benefit of Section 47 is not available to the appellant as he has suffered permanent invalidity cannot be accepted. Because, the appellant was an employee, who has acquired "disability" within the meaning of Section 2(i) of the Act and not a person with disability.

Further merely because under Rule 38 of CCS Pension Rules, 1972 the appellant got invalidity pension is no ground to deny protection, mandatorily made available to the appellant u/s 47 of the Act. Once it is held that the appellant has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay-scale and service benefits if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of super annuation, whichever is earlier.

6. Relying upon the said judgment, a Division Bench of Kerala High Court in the case of Fertilisers and Chemicals Travancore Ltd. v. A. Gopinatha Panicker 2004(4) L.L.N. 608 at paragraph-6 has held as under:

It is not the requirement of Section 47 that the accident resulted in the disability should have arisen out of or in the course of his employment. It is enough if an employee acquires disability "during his service". The words "during his service" would obviously mean after he has joined the service and before the same is terminated. It is also not necessary that the accident should have taken place within the premises of the Company.

7. In the instant case, of course, the petitioner had sustained injury outside the course of employment, might be in some quarrel and that a complaint also came to be lodged in this regard, ultimately, even as per the case of the Corporation, the petitioner suffered disability during the year 1992 much before the Act came

into force and his case was not considered. The Corporation, having considered the representation of the petitioner, has accommodated alternative job without reducing any rank at the first instance. Later, by whimsical decision taken subsequently, he was once again asked to discharge the duty as Line Duty Conductor although he pleaded disability without considering his request to continue in the suitable alternative post. By action sought to be taken after commencement of the Act of 1995 i.e. during the year 1999 claimant was compulsorily retired. At that time, the Act was very much in force. It was for the respondents-authorities to act properly having understood the provisions of the above Act. The very Act is enacted with a view to protect and encourage the persons who are physically disabled that too on the basis of the comprehensive legislation for safeguarding the rights of persons with disabilities and enabling them to enjoy equal opportunities and to help them to fully participate in the process of discharging duty. To realize objective the people with disabilities should have equal opportunities and keeping their hopes and aspirations alive, a meeting held which is called "Meeting to Launch the Asian and Pacific Decades of Disabled Persons 1993 to 2002" was held in Beijing in the first week of December 1992, by the Asian and Pacific Countries to ensure "full participation and equality of people with disabilities in the Asian and Pacific Regions".

8. Under the circumstances, Regulation 20(3) read with 9 of the Regulations, which provides to accommodate for alternative job for such person who suffered disability during the course of employment alone is ultra vires the Act. Some order has been passed based on the above Regulation, which only provides accommodation for alternative appointment of such persons who suffered disability during the course of employment and not for other persons although they have suffered disability, which is bad in law. Such a judgment does not stand to the reason as the very concept of 1995 Act provides that "such an employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer and the very frame and contents of Section 47 clearly indicate its mandatory in nature. When the judgment was rendered by this Court on 11-8-1998 by Sri GC. Bharuka J., the then, the Act was very much in force. Hence, the said judgment is per-in-curium and the Regulation framed by the Corporation contrary to above Act restricting to consider to accommodate persons with disabilities suffered only during course of employment and not otherwise. Hence, such a Regulation is ultra vires the above Act. At the most it appears even out of ignorance, petitioner also could not take it in Appeal for appropriate orders. Under the circumstances, petitioner is shown to have suffered injustice.

9. Further, it is clear from the decision of Kerala High Court referred to supra that acquisition of disability whether during the course of employment or otherwise would also enable for alternative post. Hence, harsh decision taken by the Corporation whimsically is to be quashed.

10. For the foregoing reasons, the impugned award dated 25-1-2003 passed by

the Labour Court, Mangalore, in I.D. Application (LCM) No. 55/1999 vide Annexure-J dismissing the petitioner is hereby quashed. The respondents-Corporation is directed to reinstate the petitioner with 50% backwages, with continuity of service to the alternative suitable post and also to consider his entitlement for promotional opportunity within four weeks from the date of receipt of a copy of this order.