

(2000) 06 AP CK 0037
In the Andhra Pradesh High Court
Case No : Writ Petition No. 2610 of 1999

Sulochana

APPELLANT

Vs

APSRTC, Hyd. and another

RESPONDENT

Date of Decision : 06-06-2000

Acts Referred:

Andhra Pradesh State Road Transport Corporation Employees (Recruitment) Regulations, 1966 — Regulation 7
Evidence Act, 1872 — Section 45, 46

Citation : (2000) 4 ALD 278 : (2000) 3 ALT 634 : (2000) 86 FLR 834

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Mr. A.K. Jaya Prakash, for the Appellant; Mrs. Nanda R. Rao, SC for APSRTC, for the Respondent

Judgement

1. As a forward step the State of Andhra Pradesh and State Road Transport Corporation (RTC) recruited Women Bus Conductors. The post of Conductor of a bus till now was considered to be a male job, but the progressive step by the State and its RTC enabled many women like the petitioner to get appointed to the post of Conductor.

2. The petitioner was appointed on 16-7-1996. As a pre-appointment condition she underwent medical examination. She was found to be medically fit. She worked for about an year when she was terminated by an order-dated 28-4-1997 while she was working under the control of the Depot Manager, Barkatpura. She filed an appeal before the 2nd respondent who by an order dated 4-6-1997 set aside the order of removal and ordered reinstatement as Conductor Grade III on daily wage basis.

3. After the orders of the 2nd respondent the petitioner was sent for medical examination. She appeared for medical examination on 12-6-1997 and she was declared unfit for the post of Conductor alleging that she is suffering from Diabetes. The petitioner alleged that two different Doctors examined her at

Government Gandhi Hospital, Secunderabad and Osmania General Hospital, Hyderabad on 23-9-1997, it is stated, one Dr. A". Sudhakar Rao of Gandhi Hospital gave a certificate to the petitioner stating that as per clinical and bio-clinical evaluation, the petitioner cannot be said to be suffering from Diabetes. The petitioner, therefore, made a representation to the respondents herein. The respondent-Board on 12-8-1997 declared the petitioner as unfit for the post of Conductor due to Diabetes Mellitus. The petitioner also got examined by Dr. P. Shyamsundar of Osmania General Hospital on 9-5-1998 who opined that the petitioner is not diabetic and fit to be appointed. Therefore, she made a representation to the 2nd respondent on 27-6-1998. As the petitioner's representation is not disposed of by the 2nd respondent, she approached this Court praying for a declaration (that the action of the respondents in declaring the petitioner as unfit on the ground of Diabetes is illegal and contrary to law.

4. This Court, while admitting the writ petition on 1-2-1999, granted interim direction to the respondents to permit the petitioner to discharge the duties as Conductor.

5. The respondents filed an application being WMP No.699 of 2000 on 8-3-2000 praying this Court to vacate the interim order dated 11-2-1999. When the application to vacate the interim order is listed before me, both the learned Counsel requested that the matter be disposed of finally at the interlocutory stage itself. Hence, the matter is heard and the writ petition is being disposed of by this order.

6. The counter-affidavit filed by the Law Officer of R"TC states that the petitioner was removed by an order-dated 28-4-1997 as a result of disciplinary enquiry, that on her appeal being allowed she was posted as casual Conductor Grade III on daily-wage basis on condition that she should undergo medical examination, that when she underwent medical examination she was declared unfit for the job due to Diabetes as her post-lunch glucose blood sugar and corresponding urine sugar are recorded at 197% and 0.5% respectively, which according to the Doctors indicate Diabetes. As the petitioner submitted Photostat copies of the test reports of Osmania General Hospital and Government Hospital, Golconda, the petitioner was examined by a Physician of RTC Hospital, Tarnaka on 12-6-1997 and she was found unfit due to diabetes. Again Dr. G. Ateka, Senior Physician and another eye-specialist of the RTC Hospital considered the appeal of the petitioner who also found petitioner unfit. The petitioner was also re-examined by a Medical Board on 12-8-1997 and she was found as having Diabetes through pathological reports. As the medical condition of Diabetes is a disqualification for all the posts in RTC, the petitioner was declared unfit.

7. The learned Counsel for the petitioner, Sri A.K.. Jayaprakash Rao, submits that as per the medical certificates issued by Dr. N. Sudhakar Rao, Endocrinologist and Diabetic Specialist working as Professor and Head of the Department, Gandhi Medical College and Hospital, Secunderabad and Dr. P. Shyamsundar, Professor and Head of the Department of Endocrinology, Osmania Medical College and

Hospital, Hyderabad, the petitioner is not diabetic. Therefore, the order passed by the 2nd respondent is grossly arbitrary and illegal. In any event, as per the APSRTC Employees" (Recruitment) Regulations, 1966, (the Regulations, for brevity) as well as the guidelines for medical examination. Diabetes Mellites is not a disqualification for holding Category A2 job in the Corporation. He submits that when the petitioner was in family way, she was reported to have marginally higher sugar levels, which is common in all pregnant ladies and that itself cannot be conclusive to say that the petitioner is a diabetic. According to the learned Counsel for the petitioner, the respondents and the Doctors of the RTC Hospital have not considered this aspect.

8. The learned Standing Counsel for APSRTC Ms. Nanda submits that the Senior Physician and other Doctors of the RTC Hospital have conducted clinical and bio-clinical tests and found that she was having diabetes. Again she tiled an appeal when the medical board examined her on 12-8-1997 and found that she was unfit for the post of Conductor in A2 category as per medical standards of RTC due to Diabetes Melliles.

9. The respondents have prescribed medical standards for various jobs presumably for the purpose of Regulation 7 of the Regulations. Regulation 7 postulates that no person shall be eligible for appointment to any post in the service by direct recruitment unless he/she satisfies the Corporation that he/she is of sound health and possesses active habits and is free from any bodily defect or infirmity. The medical standards relied on by the learned Standing Counsel are filed before me. As per this, conditions commonly predisposing to invalidity of seriously enhancing the candidate's liability to occupational risk are as follows:

"(i) Hernia and well maraked hydrocelc, varicocelc, varicost veins or piles, provided that such condition having been satisfactorily treated by operation, the evidence of their previous existence shall not disqualify;

(ii) malposition of the testicle in the groin, provided that evidence of such prior condition and the successful surgical treatment thereof, shall not disqualify;

(iii) Plat-foot or knock-knee except in sedentary occupations;

(iv) Epilepsy

(v) Asthma

(vi) Otorrhea

(c) Conditions rendering the association of the candidate with others objectionable e.g.

(i) Repulsive inveterate skin disease (ii) Ozoena

(iii) Foetor associated or otherwise with phyorrhca alveolaris.

(d) Constitutional disorders commonly deemed progressive and chronic disorders liable to recurrent exacerbation of a disabling kind.

(e) Inadequate protection against smallpox.

(f) Severe degrees of deafness (except in boiler maker and riveter candidates).

(g) Pronounced speech defects."

10. After giving a list of medical conditions which result in occupational risks, the medical standards also state that Diabetes is a constitutional disorder and affects almost all the organs of the body from hair to toe, that there is no cure and has to be controlled throughout the life with costly medicines and, therefore. Diabetes at the time of recruitment is considered as a disqualification since the RTC has to have employees of productive nature rather than liability nature. The learned Standing Counsel relies on this presumptive statement and submits that the order of the respondents declaring the petitioner as medically unfit is legal and does not suffer from any arbitrariness.

11. This ease presents some difficulty as to recording a finding whether the petitioner actually suffers from Diabetes Mellites or not. The Court lacks expertise and, therefore, a reasonable inference has to be drawn based on the expert evidence produced before the Court. More often than not, expert evidence also differs. In the field of Science, "certainly" and "conclusively" are missing and findings keep changing.

12. Sections 45 and 46 of the Evidence Act deal with opinions of experts. When the Court has to form an opinion upon a point of Science, the opinions upon that point of such persons especially skilled in such Science are relevant facts. When two physicians differ as to the existence of a medical condition i.e., Diabetes Mellites in a person, which opinion is to form the basis for a finding before the Court of law? The senior medical officer who examined the petitioner on 12-5-1997 and Dr. Aleka, Senior Medical Officer (Physician) and Dr. Mamta Narain, Medical Officer (Oph.,) who examined the petitioner on 26-6-1997 are admittedly not Endocrinologists and they are not Diabetic specialists. No material is placed before me to show that the Doctors constituting the Medical Board of RTC who examined the petitioner on 12-8-1997 (Dr. N. Appa Rao, Senior Medical Officer (Physician), Dr. Y. Narahari, Medical Officer (Oph.) have any expertise in Endocrinology or Diabetology, The Doctors referred to hereinabove gave an opinion that the petitioner suffers from Diabetes Mellites. The petitioner was examined by these Doctors in May, June and August, 1997 when they opined that the petitioner is unfit for the post of Conductor A2 category as per the standards of RTC,

13. As against the medical certificates produced by the RTC, we have two certificates given by two Endocrinologists and Diabetic specialists. These two Doctors are Professors and Heads of Departments of two largest Government General Hospitals in the State. Dr. N. Sudhakar Rao, Endocrinologist and Diabetic Specialist and Professor and Head of Department of Gandhi Medical College and Hospital, examined the petitioner on 19-9-1997. He gave a certificate on 23-9-1997 and it is relevant to extract the same :

"This is to certify" that Smt. Sulochana w/o Sri Gopal has attended Diabetics OP vide Op NO.E/1629/97, dated 19-9-1997. She has undergone GIT Test, which is Normal. She is not a Diabetic as per the clinical and Bio-clinical evaluation in this hospital."

14. The petitioner also produced the medical certificate dated 9-5-1998 issued by Dr. P. Shyamsundar, Endocrinologist and Diabetic Specialist and Head of Department, Endocrinology, Osmania Medical College and Hospital, Hyderabad, who is also Member of National Academy of Medical Science (Endocrinology) and Member of American Diabetes Association and Examiner for National Board. The certificate-dated 9-5-1998 is as follows:

"This is to certify that Mrs. Sulochana w/o Mr. Gopal, Conductor in APSRTC had gestational diabetes in the past. In more than 90% cases, this diabetes remits (disappears) after delivery. She was tested at Gandhi Hospital on 23-9-1997, found to have no diabetes. Today I have tested her. her BS are 66/106 mg/dl which are normal. She does not have diabetes and otherwise also she has no medical problem and she is fit to continue her job."

15. Dr. N. Sudhakar Rao and Dr. P. Shyamsundar are experts in Diabetes- Both of them hold D.M. (Doctor of Medicine) in Endocrinology. Both of them preside over the Department of Endocrinology in Gandhi Hospital and Osmania Medical College respectively. Dr. A. Sudhakar Rao relied on Glucose Tolerance Test (GIT) and came to the conclusion that test results are normal and, therefore, the petitioner is not diabetic as per clinical and bio-clinical evaluation. Dr. P. Shyamsundar has also dealt with the past medical history of the petitioner and came to a categorical conclusion after personally testing the petitioner's blood sugar levels that she is not diabetic. Indeed, Dr. P. Shyamsundar also recorded that in 90% of the cases pregnant ladies suffer from gestational diabetes which disappears after delivery and that the petitioner had gestational diabetes and when she was tested on 23-9-1997, she was found to have no diabetes.

16. After anxious consideration, this Court having regard to the provisions of Sections 45 and 46 of the Evidence Act has to accept the opinion given by not one expert but both the experts, namely, Dr. N. Sudhakar Rao and Dr. P. Shyamsundar, Diabetes Experts. When the petitioner was examined by the Doctors of RTC hospital in May, June and August 1997 it may be possible that at the petitioner's blood sugar levels were higher, but when both the experts tested the petitioner after delivery in September, 1997 and May, 1998, the petitioner was found to have no Diabetes. As stated and recorded by none other than the Professor of Endocrinology Dr. P. Shyam Sundar, the petitioner was having blood sugar levels of 66/106 mg/dl which are normal. Therefore, this Court feels compelled to accept the opinion of the two well known Diabetes Specialists and Endocrinologists and to reject the opinion of the Doctors of the RTC hospital. As the administrators of the RTC only relied on the opinion of the RTC Doctors and declared the petitioner as medically unfit for the post of Conductor in A2 category, the same has to be declared as illegal and arbitrary.

17. The alternative submission made by the learned Counsel for the petitioner also needs to be examined. He submits that the Regulations do not disqualify a person suffering with Diabetes. Regulation 7 of the Regulations only says that no person shall be eligible for appointment to any post in the Corporation unless he/she satisfies the Corporation that he/she is of sound health. The "satisfaction" referred to in Regulation 7 in my considered opinion means the "objective satisfaction" and not "subjective satisfaction". For that matter, when speaking about the health of a person suitable for appointment, it only means the medical condition of a person with reference to certain objective criteria. Hence, prima facie, Regulation 7 does not debar a Diabetic person from being recruited. However, for the purpose of Regulation 7(i), the Corporation has laid down certain medical standards and also decided that Diabetes is a constitutional disorder affecting all parts of (he body. All the same, even RTC medical standards say that "Diabetes at the time of recruitment is considered as disqualification".

18. In this case, admittedly the petitioner was found to have no Diabetes when she was appointed in July 1996. Later even according the certificate issued by Dr. P. Shyam Sundar, she suffered gestational diabetes during pregnancy. Therefore, a reasonable inference has to be drawn that the petitioner was not diabetic at the time of recruitment and that she only suffered gestational diabetes during the time of pregnancy in the light of this, even the medical standards prescribed do not bar a person who became diabetic after joining the service from continuing in the service. Though Regulation 7(i) does not specifically disqualify a diabetic person from being directly recruited, after such person becomes diabetic during his service such a person cannot be disqualified as per the standards prescribed by the Corporation. In my considered opinion, that would be a reasonable interpretation of Regulation 7(i) read with medical standards prescribed by the Corporation. In any event, as per the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 (the Act. for brevity), which is applicable to the RTC. even a person who becomes disabled during the service cannot be terminated from service. In such an event, the disabled person is required to be given alternative employment.

19. There are number of congenital diseases and diseases with constitutional disorders which disable a person to lead a normal life. That non-disabled do not understand the disabled is a thing of past. Progressive ideas about human development, rapid advances in technology and rejuvenated pursuit of human rights have resulted in a "new understanding" of the rights of the disabled. There are even International Covenants and Charters protecting the rights of the disabled. In discharge of its International treaty obligations, India has enacted the above Act. After coming into force of the said Act, it would be a retrograde step to disqualify a woman who suffered from gestational diabetes from working as a bus Conductor in the RTC. It would be irrational as there are number of diabetic persons working in more onerous jobs and contributing to the community welfare.

20. For all the above reasons, this writ petition should succeed. Accordingly, the writ petition is allowed and the respondents are directed to continue the petitioner as bus conductor in APSRTC with all attendant benefits. The respondents shall pay the petitioners costs set at Rs.2000/-.