
(2014) 07 AP CK 0003
In the Andhra Pradesh High Court
Case No : W.A(SR). No. 96347 of 2014

The APSRTC

APPELLANT

Vs

B. Sailoo

RESPONDENT

Date of Decision : 25-07-2014

Acts Referred:

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

Citation : (2014) 6 ALD 112 : (2015) 1 ALT 379 : (2015) 145 FLR 276

Hon'ble Judges : L.N. Reddy, J; Challa Kodanda Ram, J

Bench : Division Bench

Advocate : H. Venugopal (SC for APSRTC), Advocate for the Appellant; M.V. Raja Raam, Advocate for the Respondent

Judgement

Challa Kodanda Ram, J.—The Andhra Pradesh State Road Transport Corporation, Hyderabad (in short "the Corporation") is in appeal against the order of the learned Single Judge in W.P. No. 7408 of 2007.

2. The respondent-writ petitioner was appointed as a driver on 25.04.1983 and was confirmed as Driver Grade-II with effect from 12.02.1990. The respondent on reaching the age of 45 years was referred to medical board and was declared to be unfit for AI category due to defective vision. On medical examination the Medical Board had found him fit for X category i.e., the post of Cleaner and accordingly a certificate was issued on 12.01.1996. The respondent was kept on long leave from 12.06.1995 to 13.10.1995 and he was kept in waiting list to be appointed as Cleaner. As there was inordinate delay in considering his case, the respondent approached this Court by filing W.P. No. 21137 of 1998, seeking a direction to the Corporation to provide alternative employment. In view of the statutory provision given under Section 47 of Persons with Disabilities (Equal Opportunities & Full Participation) Act, 1995 (in short "the Act"), the above Writ Petition came to be allowed on 19.12.2003 and in pursuant to the direction given in the Writ Petition, on 11.06.2004 he was directed to undergo medical

examination and the Medical Board found him fit for X2 category and accordingly issued a certificate on 19.06.2004. Eventually, he was given appointment as Shramik on 19.06.2004. On reaching the age of superannuation, the respondent was also retired on 31.03.2006. He approached this Court aggrieved by the denial by the appellant, of the emoluments, as per his entitlement for the period between 12.01.1996 and 19.06.2004. The Writ Petition came to be allowed, against which the Corporation is in appeal.

3. The learned counsel for the appellant would submit that the respondent was kept in long leave from 13.10.1995 and his name was registered in regional seniority list of medically unfit drivers so as to provide alternative employment as and when vacancies of cleaners would arise and accordingly in 2004 he was employed as Shramik. According to the regulations of the Corporation, the respondent would not be entitled for salary or for any other benefits during the period when he was on leave on medical grounds. He would submit that the order of the learned Single Judge is erroneous and accordingly seeks to dismiss the Writ Petition by allowing the Writ Appeal.

4. On the other hand the learned counsel for the respondent Sri M.V. Raja Ram would submit that under Section 47 of the Act, it is the bounden duty of the Corporation to provide alternative employment and further Section 47 of the Act also mandates the Corporation to pay, pay & allowances as he was drawing on the day as he being declared as medically unfit. He would pray for dismissal of the Writ Appeal.

5. Having considered the rival submissions, we noticed, the facts are not in dispute. Respondent was referred to Medical Board on 12.10.1995 and was not allowed to work thereafter as driver and on 12.01.1996 respondent was sent for medical examination once again and he was found to be suitable for X category post i.e., the post of Cleaner. Instead of providing the said post, immediately the respondent was directed to go on leave and ultimately only after the intervention of the Court in W.P. No. 21137 of 1990 he was given appointment as Shramik on 19.06.2004 and thereafter he came to be retired on 31.03.2006. Section 47 of the Act reads as under:

"Section 47: Non-discrimination in Government employments.--

(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his

disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

6. The above provisions leave no manner of doubt that it was the duty cast on the Corporation by statute as well as the regulations to prove alternative employment with suitable pay protection with a reasonable time. By no stretch of imagination the period of 8 years can be said to be reasonable. In this connection, we may also notice the judgment of the Supreme Court in Kunal Singh Vs. Union of India (UOI) and Another, , whereunder the application of the employer under Section 47 of the Act has been succinctly dealt with. This judgment has been followed by a Division Bench of this Court in W.A. No. 1153 of 2010.

7. In that view of the matter, we do not find any reason to interfere with the judgment of the learned single Judge who had merely given a direction to the appellant to treat that the respondent was in employment with effect from 13.01.1996 either as Shramik or as "X" category till the date of his retirement and pay the salary in scale of driver together with incidental emoluments and other allowances. It is only on account of the inaction on the part of the Corporation, the respondent's services were not taken during the period 1996 to 2004, and as such granting of backwages also cannot be found fault with, especially in the absence of any material to the effect that the respondent was gainfully employed during the said period.

8. Accordingly, we have no reasons to interfere with the order of the learned Single Judge and hence the writ appeal is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ appeal shall also stand dismissed.