

(2013) 10 KL CK 0040
In the High Court Of Kerala
Case No : WP (C) No. 24976 of 2013 (V)

V.K. kuttan

APPELLANT

Vs

Kerala State Road Transport Corporation

RESPONDENT

Date of Decision : 11-10-2013

Acts Referred:

Citation : (2013) 10 KL CK 0040

Hon'ble Judges : C.K. Abdul Rehim, J

Bench : Single Bench

Advocate : T.P. Pradeep and Sri. P.K. Sathees Kumar, for the Appellant; Babu Joseph Kuruvathazha for R1 to R4, SC, KSRTC, for the Respondent

Final Decision : Disposed Off

Judgement

C.K. Abdul Rehim, J.—While working as Driver in the 1st respondent Corporation the petitioner acquired permanent disability by virtue of serious injuries sustained in a motor vehicle accident which occurred on 22-01-2008. On completion of his treatment, the petitioner was allowed to continue in light duty vide memos issued from time to time, extending the period upto 15-07-2011. Thereafter when the respondents have not considered his request for extending the period of light duty, the petitioner had approached this court in W.P. (c) No. 23186/2011. This court directed the 2nd respondent to consider petitioner's request for continuance in the light duty. But in Ext. P7 order passed by the 2nd respondent, the request was rejected observing that the petitioner should apply for change of category to the post of "Pump Operator" in the prescribed format. However his light duty posting was allowed to be continued till 30-11-2011. Aggrieved by Ext. P7 the petitioner again approached this court in W.P. (c) No. 31674/2011. When the said writ petition came up for consideration, standing counsel appearing for the respondent Corporation submitted that the petitioner will be allowed to continue in the same post (in the light duty) for a further period of one year. Recording the above submission the writ petition was disposed of with direction to regularise him in the ML-Section, if any suitable post

is available. Now the petitioner was served with Ext. P9 memo stating that the period of light duty had expired and hence he is relieved back to his original post of Driver, with immediate effect. It is aggrieved by Ext. P9 this writ petition is filed. The petitioner had produced Ext. P3 disability certificate issued by the District Medical Board, Wayanad. The Medical Board had assessed the extent of permanent disability as 42%. Contention of the petitioner is that he is permanently incapacitated to perform the duties of Driver since permanent partial disability is mainly on his lower limb and on the right wrist.

2. Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 provides that, no establishment shall dispense with or reduce in rank an employee who acquires disability during service. It mandates shifting of such employee to some other post with same pay scale and service benefits. It further provided that, if it is not possible to adjust the employee against any post, he should be kept on supernumerary post until suitable post is available. Sub section 2 of Section 47 further provides that, no promotion shall be denied to a person merely on the ground of disability. There is no case for the respondent that the 1st respondent is exempted from the above provisions contained in the Persons with Disabilities Act, by virtue of any notification issued by the Government. Therefore I am of the considered opinion that, it is for the respondents 1 and 2 to consider the case of the petitioner in accordance with the provisions contained in Section 47. It is noticed that the petitioner had acquired disability as early as in the year 2008. It is in clear dereliction of the obligation on the part of the respondents that the petitioner was allowed to continue in light duty for quite long time, based on periodical interim arrangements made. Therefore this court is of the opinion that the matter has to be dealt with by the appropriate authority, u/s 47 of the Persons with Disabilities Act.

3. Hence the writ petition is disposed of directing the 2nd respondent to consider the case of the petitioner for providing him appropriate posting in accordance with the provisions contained in Section 47 of the Persons With Disabilities Act, in case it is found that the petitioner had acquired disability to continue in the post of Driver, and to take an appropriate decision after affording an opportunity of personal hearing to the petitioner, at the earliest possible, at any rate within a period of 2 months from the date of receipt of a copy of this judgment. Until such decision is taken the petitioner should be permitted to continue at the ML-Section, from where he was ordered to be relieved as per Ext. P9.