

APHC010342112005



**IN THE HIGH COURT OF ANDHRA
PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3365]

WEDNESDAY ,THE NINETEENTH DAY OF JUNE
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE JUSTICE DR V R K KRUPA SAGAR

WRIT PETITION NO: 18106/2005

Between:

K.A.H.D.V. Prasad S/o K. Kanaka Ratna Samba ...**PETITIONER**
Siva Rao

AND

Andhra Pradesh State Road Transport ...**RESPONDENT(S)**
Corporation and Others

Counsel for the Petitioner:

1.V PADMANABHA RAO

Counsel for the Respondent(S):

1.GP FOR SERVICES II (AP)

2.SOLOMON RAJU MANCHALAFOR (APSRTC)

SUBMITTED FOR APPROVAL:

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

- | | |
|--|--------|
| 1. Whether Reporters of Local Newspapers
may be allowed to see the Order? | Yes/No |
| 2. Whether the copy of Order may be
marked to Law Reporters/Journals? | Yes/No |
| 3. Whether His Lordship wish to
see the fair copy of the Order? | Yes/No |

Dr. V.R.K.KRUPA SAGAR, J

*** HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR**

+ WRIT PETITION NO: 18106/2005

% 19.06.2024

Between:

K.A.H.D.V.Prasad

...PETITIONER(S)

AND

Andhra Pradesh State Road Transport
Corporation and Others

...RESPONDENT(S)

! Counsel for the Petitioner(s) : Sri V.Padmanabha Rao

^ Counsel for Respondent(S): Sri M.Solomon Raju,

**Learned Standing Counsel
for APSRTC**

< Gist:

> Head Note:

? Cases referred:

1. (2018) 12 SCC 704
2. 2003 LawSuit(SC) 172
3. 2022 (6) ALT 269 (AP)

The Court made the following:

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR
WRIT PETITION No.18106 of 2005

ORDER:

If health fails an employee in service whether the law fails him from service itself? The writ petitioner joined as a Casual Driver in Andhra Pradesh State Road Transport Corporation (APSRTC) during the year 1990. His services were regularized from 01.08.1991. His services were confirmed from 01.08.1996. During October, 2003 he experienced difficulty in his vision. Then onwards he underwent medical examinations at APSRTC Dispensary, Vidyadarapuram, Vijayawada and at Sarojini Devi Eye Hospital, Hyderabad and he was diagnosed "RE Pseudophakic RD". There was surgical intervention on 16.03.2004. He was examined and treated at Tarnaka Hospital. On multiple occasions he was examined by Medical Board. The Medical Board found him unfit for A-1 category duties on 19.07.2005 because of his defective distant vision (right loss of one eye). Consequently, on 27.07.2005 the APSRTC vide proceedings No.E1/468(5)/05/VDP dated 27.07.2005 applying Regulation No.6A(4) of APSRTC Employees (Service) Regulations, 1964 retired him from service of Corporation on medical grounds with effect from 19.07.2005.

2. Since 07.06.2004 the writ petitioner has been making representations seeking for alternative employment and his representations to Regional Manager, APSRTC, Managing

Director, APSRTC, Transport Minister, Vice Chairman, APSRTC did not yield any result. Finally, he was retired from service as stated earlier. Explaining the difficulties he had undergone and the large family he must maintain and the agony added by his retirement he has filed this writ petition under Article 226 of the Constitution of India with a prayer in the following terms:

“For the reasons stated in the accompanying affidavit, it is prayed that this Hon’ble Court may be pleased to issue an order, direction or Writ more particularly one in the nature of Writ of Mandamus or any other appropriate writ (i) declaring the Proceedings E1/468(5)/05/VDP, dated 27.7.2005 issued by the Depot Manager, Vidyadarapuram Depot, Vijayawada that the petitioner is unfit for A-1 Category is illegal and arbitrary; (ii) declaring the action of the respondents in not paying the salary from August, 2004 to till the date of retirement i.e., 19.7.2005 is illegal and arbitrary; (iii) declare the action of the respondents in dispensing with the services of the petitioner without following Section 47 of Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995 is illegal; and (iv) consequently direct the respondents to provide alternate employment to the petitioner in the same scale of pay with all consequential benefits and pass such other order or orders as this Hon’ble Court may deem fit and proper in the interest of justice.”

3. When this writ petition was filed in the year 2005, it was only against respondent Nos.1 to 3. However, since 01.01.2020

as the APSRTC as well as its employees have been absorbed into Government service, writ petitioner sought impleadment of the State of Andhra Pradesh as respondent No.4 and in that regard filed I.A.No.1 of 2023 and after due hearing the same was allowed and accordingly respondent No.4 came on record.

4, On 17.08.2005 in W.P.M.P.No.23046 of 2005, this Court passed the following interim order:

“Interim suspension of the impugned order with a direction to the respondents to continue the petitioner in any other alternative post to which he is eligible without affecting monetary benefit.”

5. Sri V.Padmanabha Rao, the learned counsel for writ petitioner and Sri M.Solomon Raju, the learned Standing Counsel for APSRTC submitted arguments.

6. All the facts mentioned in the writ petition are not in dispute. The fact that writ petitioner was a driver and as he suffered right eye blindness, the employer retired him from service are all matters of fact that are not in dispute.

7. The only question that falls for consideration is:

“Whether this disability that befell on the writ petitioner should cost him his employment?”

8. Answer lies in Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, ‘the Act, 1995’). It is to be noticed that

subsequent to this enactment with the experience gained and the knowledge acquired in handling the matters concerning disabled the Parliament had passed the Rights of Persons with Disabilities Act, 2016. Section 102 of the same repealed the Act, 1995 and while doing so it provided a savings clause for the acts done under the Act, 1995. The cause of concern involved in this writ petition is governed by the legislation that was in force at that time and that being the Act, 1995 the same has to be considered.

9. Section 47 of the Act, 1995 reads as below:

“47. Non-discrimination in Government employment:-

(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.”

10. From the above provision, one could see that an establishment shall not dispense with an employee who acquires a disability during his service. In the case at hand, writ petitioner is an employee of APSRTC. He acquired disability during his service. The mandate of the law is that his services shall not be dispensed with on the ground that he acquired disability during his service. The impugned order which retired him from service is in straight violation of this principle.

11. Section 47 of the Act, 1995 referred above shows the legislative mandate that if the employee after acquiring such disability is found not suitable for the post he was holding he could be shifted to some other post with the same pay scale and service benefits. The writ petitioner herein was earlier driving buses for respondent-Corporation and by losing his vision for the right eye he acquired such disability that he could not be permitted to drive buses. Therefore, he should be shifted to some other post where he should be given work that is now suitable and his pay scales and service benefits shall be protected. It is for this reason, the writ petitioner has made several representations to all the superior authorities. No material is placed before this Court by the respondents as to what had happened to those representations. Thus, there was total

inaction on part of the respondents for the representations that were validly given under the statutory provisions.

12. Section 2(k) of the Act, 1995 defines the “establishment” which reads as below:

“2(k): "establishment" means a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) and includes Departments of a Government.”

13. It is undisputed before this Court that APSRTC is an establishment falling within the above definition. The proviso appended to Section 47 of the Act, 1995 is to the effect that appropriate Government can by notification exempt any establishment from the provisions of Section 47 of the Act, 1995. Learned Standing Counsel for respondent Nos.1 to 3 did not bring it to the notice of this Court that respondent-Corporation was so exempted by any notification published by the Government of Andhra Pradesh. Thus, it is clear that Section 47 of the Act, 1995 by full force apply to APSRTC and its employees.

14. Learned Standing Counsel for respondent Nos.1 to 3 prays this Court that the facts on record are governed by the ratio laid down by the Hon'ble Supreme Court of India in ***Andhra Pradesh State Road Transport Corporation represented by its***

Managing Director v. B.S. Reddy¹. Section 2(i) of the Act, 1995 defines “disability”. Section 47 of the Act, 1995 employs the word “disability”. Whether “disability” referred in Section 47 of the Act, 1995 covers a field different from a “disability” covered by Section 2(i) of the Act, 1995 was the matter for consideration in that case before their Lordships. Having noticed the divergent views in this regard on part of High Court of Delhi and High Court of Madras, their Lordships concluded holding that “disability” in Section 47 of the Act, 1995 should be understood only by applying the definition of “disability” given in Section 2(i) of the Act, 1995. Since that case pertains to APSRTC and their Lordships having considered that there is a scheme for the purpose of disabled available with Andhra Pradesh and Telangana Transport Corporations, their Lordships were pleased to hold that even if a particular disability is not covered by Section 2(i) of the Act, 1995, if such a case is covered by what is provided in the scheme the same can be applied. In other words, if the particular disability is not covered by Section 2(i) of the Act, 1995, Section 47 of the Act, 1995 could not be applied, however, if that particular disability is covered by a provision in the scheme of the Corporation, the Corporation is to apply the said benefit to its employees.

15. In the case at hand, the above cited ruling has no purposeful reference. It is so for the following reasons:

Section 2(i) of the Act, 1995 says “disability” means:-

¹(2018) 12 SCC 704

- (i) blindness;
- (ii) low vision;
- (iii) leprosy-cured;
- (iv) hearing impairment;
- (v) locomotor disability;
- (vi) mental retardation;
- (vii) mental illness

Section 2(b) of the Act, 1995 reads as below:-

"blindness" refers to a condition where a person suffers from any of the following conditions, namely:-

- (i) total absence of sight; or
- (ii) visual acuity not exceeding 6/60 or 20/200 (snellen) in the better eye with correcting lenses; or
- (iii) limitation of the field of vision subtending an angle of 20 degree or worse.

16. In the case at hand, the impugned order of retirement itself mentions loss of one eye and thus, it is a clear case of blindness. Thus, it is a disability falling within Section 2(i) of the Act, 1995 and thereby inviting the application of Section 47 of the Act, 1995. Therefore, the principle laid down in the ruling cited above stands satisfied to the case at hand. That the principles contained in Section 47 of the Act, 1995 require their application and the need for scrupulous compliance have been matters of decision of Constitutional Courts. Sri V.Padmanabha Rao, the learned

counsel for petitioner rightly cited ***Kunal Singh v. Union of India***² and ***Ch.S.Rajeswara Rao v. Government of A.P.rep. by Principal Secretary, Transports Department***³.

17. What is mentioned above makes it clear that the blindness suffered by writ petitioner cannot cost him his employment and respondent-Corporation was bound to employ him and its order of retirement is against the law and must be set aside.

18. The affidavit of the petitioner mentions certain details and they remain undisputed. It is clearly seen that from August 2004 to 19.07.2005 (date of retirement on medical grounds) the writ petitioner was not paid his salary. Since he could not be retired from service at all, his employer was bound to pay salary to him during that period. In fact that has been the principle laid down by this Court in the above referred ***Ch.S.Rajeswara Rao***'s case (supra 3). Hence, the point is answered accordingly.

19. In the result, this Writ Petition is allowed. Respondents are directed to pay full salary for the petitioner for the period with effect from August, 2004 to 19.07.2005 in the time scale of pay in which he was there by then. The arrears shall be paid within a period of two (2) months from the date of production of a copy of this order before the respondents. Retirement of the writ petitioner made by the respondents vide Proceedings No.E1/468(5)/05/PDP, dated 27.07.2005 is set aside. Consequently, respondents are directed to provide alternate employment to the

²2003 LawSuit(SC) 172

writ petitioner with protection of his scale of pay and all consequential benefits. He shall be reinstated into service forthwith on production of a copy of this order, if not already done. There shall be no order as to costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Dr. V.R.K.KRUPA SAGAR, J

Date: 19.06.2024

Note: LR Copy to be marked
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THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

WRIT PETITION No.18106 of 2005

Date: 19.06.2024

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