

Sk. Sardar Vs. the Apsrtc and Another

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Court : Andhra Pradesh

Decided On : Feb-24-2012

Judge : B.Chandra Kumar

Appellant : Sk. Sardar

Respondent : The Apsrtc and Another

Advocate for Def. : Sri. Bokka Satyanarayana Counsel

Judgement :

THE HONOURABLE SRI JUSTICE B.CHANDRA KUMAR WRIT PETITION
No.22767 o

24. 02.2012 Sk.

Sardar The APSRTC and another Counsel for the petitioner:Sri Bokka Satyanarayana Counsel for the Respondent:Sri K.Satyanarayana Murthy, Standing Counsel for APSRTC ORDER: The petitioner, in this writ petition, seeks a Writ of Mandamus declaring the proceedings of the second respondent Vide Proceedings not L1/876(39)/05-RN(G) dated 04.09.2008 as illegal and arbitrary and consequently to direct the respondents to provide alternative employment to him as contemplated under Section 47 of the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995.

The brief facts of the case are that the petitioner was appointed as a Driver in the APSRTC in the year 1989.

Even as seen from the counter filed by the respondents not even a single memo was issued to him during his service.

Thus, it appears that the contention of the petitioner that he worked to the utmost satisfaction of his superiors has to be accepted.

The petitioner was directed to undergo medical examination.

He was found unfit for the post of driver, vide MC No.17618, dated 09.10.2002, due to defective distant vision.

According to the respondents, the petitioner was retired from service on medical grounds with effect from 09.10.2002 under regulation 6-A(4) of the APSRTC Employees (Service) Regulations 1964.

The further case of the respondents is that the petitioner filed Writ Petition before this Court being W.P.No.17404 of 2005 and the same was disposed of by this Court by order dated 23.06.2008 with a direction to the petitioner to file a fresh representation to the second respondent within a period of two weeks from then and the second respondent therein shall consider the same in accordance with law and pass appropriate orders within a period of two months thereafter.

Subsequently, the petitioner submitted representation dated 17.07.2008 to the second respondent to provide alternative employment to him which was duly rejected by the second respondent by order dated 04.09.2008, which is being impugned by the petitioner in this writ petition.

The main contention of the respondent Corporation is that the petitioner opted to retire from service by availing additional monetary benefit of Rs.86,688/- which was paid duly paid to him and that the alternative employment will be provided to those employees who retire from service on medical grounds and do not avail additional monetary benefit in lieu of employment.

Regulation 6A(4) of the APSRTC Employees Service Regulations 1964 is as follows:- "If in the opinion of the Medical Officer, the employee is unfit to discharge the duties of the post held by him, he shall, forthwith be retired from service on medical grounds subject to condition that if he has held any post previously and he opts for reversion, he shall be reverted forthwith subject to the medical fitness." Admittedly, the petitioner was retired on medical grounds on 09.10.2002 and he was not offered any alternative post on the date of ordering him to retire on medical grounds.

The above said regulation makes it clear that if an employee is found unfit to discharge the duties of the post held by him, he shall be retired from service on medical grounds, but if he opts for reversion, he shall be reverted forthwith subject to the medical fitness.

This means, if the employee opts for reversion and gives his willing to work in any other post, he should be given the post previously held by him.

It is clear that as on the date of ordering the petitioner to retire on medical grounds i.e., on 09.10.2002, the Corporation has not followed Regulation 6A(4) of the APSRTC Employees Service Regulations.

As far as Section 47 of the Persons with Disabilities (Equal opportunities, protection of rights and full participation) Act, 1995 (for short 'the Act') is concerned, it is clear that no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service.

The said Section is as follows.

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." A reading of the above section makes it clear 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.

It further envisages 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.

Sub-section (2) of Section 47 makes it clear that no promotion shall be denied to a person merely on the ground of his disability.

The authorities should understand the letter and spirit of Section 47 of the Act and the object of the said legislation.

The said Act was made since India became a signatory to the proclamation made in the meeting to Launch the Asian and Pacific Decade of Disabled Persons 1993-2002 convened by the Economic and Social Commission for Asia and Pacific held at Beijing on 1st to 5th December, 1992.

So, under the provisions of the above referred Section 47 and under the regulations 6A(4) it becomes obligatory for an employer to provide alternative employment protecting the pay scale and service benefits of a disabled person.

Now coming to the aspect of accepting monetary benefit in lieu of employment is concerned, even as seen from the counter filed by the respondents, the regulations do not provide such a claim.

There is no such alternative remedy which an employer can offer under the provisions of the above referred Act.

Therefore, neither under the regulations nor under the provisions of the above referred Act an employer can offer monetary benefit in lieu of employment.

Therefore, even if any circular is there, as referred in the impugned order i.e., circular not PD-16/2008 dated 25.02.2008, said circulars cannot be said to be in conformity with the regulations or the above referred Section of the Act.

There cannot be any circular or executive directions or memos contrary to an Act made by the Parliament or defeating the earlier regulations made by the Corporation itself.

Therefore, the impugned order is liable to be set aside.

But, however, the fact remains that the petitioner seems to have accepted the amount of Rs.86,688/- in lieu of alternative employment on 19.06.2003.

Even if the petitioner has opted for payment of additional monetary benefit in lieu of employment in terms of certain circulars said to have been issued by the Corporation, such procedure, since has not been contemplated under the regulations nor under the provisions of the said Act, has to be declared as null and void.

Accordingly, the writ petition is allowed and the impugned order is set aside.

The respondents are directed to issue appointment orders appointing the petitioner to any other suitable post under Section 47 of the Act within a period of four weeks from the date of receipt of a copy of this order.

Since this Court has passed orders on 12.10.2007 in WPMP No.22144 of 2005 in W.P.

No.17404 of 2005 and the respondents have not followed the said orders and issued the impugned proceedings on 04.09.2008, the said appointment order shall be deemed to have been issued with effect from 04.09.2008 and the petitioner shall be entitled to all monetary benefits from 04.09.2008 i.e., back wages from such date.

It is also made clear that the petitioner shall be entitled to continuity of service, but no other attendant benefits or back wages except to the extent indicated above shall be given.

As far as the amount already received by the petitioner is concerned, the same shall be adjusted towards the arrears of back wages to be paid to the petitioner to be calculated with effect from 04.09.2008 and if any excess amount is to be recovered from the petitioner, the same shall be recovered in easy monthly instalments from the salary of the petitioner.

There shall be no order as to costs.

As a sequel to disposal of the main writ petition itself, WPMP No.3651 of 2009 is dismissed as infructuous.

_____ Justice B.Chandra Kumar Date:

24. 02.2012

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