

P.Pand Vs. Apsrtc and Othe

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Court : Andhra Pradesh

Decided On : Oct-07-2014

Judge : The Hon'Ble Sri Justice L.Narasimha Reddy and the Hon'Ble Sr

Appellant : P.Pand

Respondent : Apsrtc and Othe

Judgement :

THE HONBLE Sr.JUSTICE L.NARASIMHA REDDY AND THE HONBLE Sr.JUSTICE CHALLA KODANDA RAM W.A.No.1221 of 2014 07-10-2014 P.Pandaiah.Appellant APSRTC and others.Respondents Counsel for the appellant: Sr.V.Narsimha Goud Counsel for respondents : Sr.N.Vasudeva Reddy & Sr.Jogam Tejovat HEAD NOTE: ?.Cases referred: THE HONBLE Sr.JUSTICE L.NARASIMHA REDDY AND THE HONBLE Sr.JUSTICE CHALLA KODANDA RAM W.A.No.1221 of 2014

JUDGMENT

: (Per LNR,J.The unsuccessful petitioner in W.P.No.17252 of 2013 is the appellant.

He joined the service of the APSRTC on 07.12.1979 as a Driver.

In the year 2010, he was working in the Devarakonda Depot.

On 29.01.2010, he was subjected to periodical medical test at the Medical Office attached to APSRTC.

The Medical Officer found him to be unfit to discharge the functions of Driver due to defective vision.

Taking the same into account, the appellant submitted a representation, dated 08.02.2010, to enable him to retire from service on medical grounds.

The Depot Manager i.e., 2nd respondent herein referred the appellant to the Headquarters Hospital at Hyderabad through covering letter, dated 09.02.2010.

On the next day itself i.e., 10.02.2010, the Headquarters Hospital confirmed the report given by the Medical Officer at Nalgonda.

Complaining that despite the specific finding about his medical unfitness to continue in the post of Driver, he was not being permitted to retire from service, the appellant filed W.P.No.32023 of 2011.

The writ petition was disposed of on 27.12.2011, directing the 2nd respondent to take appropriate decision at the earliest.

Since nothing was forthcoming, the appellant got issued a notice, dated 22.09.2012.

Ultimately, on 15.12.2012, the 2nd respondent passed an order retiring the appellant from service with effect from 10.02.2011.

The appellant felt aggrieved by the order, dated 15.12.2012 in which his date of retirement is stipulated as 10.02.2011.

According to him, he would be denied the emoluments almost for a period of 12 months under Regulation 6A(5)(b) of the Andhra Pradesh State Road Transport Corporation Employees (Service) Regulations, 1964 (for short the Regulations).Hence, he filed W.P.No.17252 of 2013.

The respondents opposed the writ petition by filing a counter affidavit.

Learned Single Judge dismissed the writ petition through order, dated 03.02.2014.

Hence, this writ appeal.

Heard learned counsel for the appellant and learned counsel for the respondents.

That the appellant became unfit to hold the post of Driver, is beyond any pale of doubt, as is evident from the certification by the Medical Officer at Nalgonda and confirmation of the same by the Headquarters Hospital, Hyderabad.

It was on 08.02.2010 that the appellant submitted his representation with a request to permit him to retire from service.

It needs to be noted that the appellant was entitled to the protection under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

However, he was tempted to give up that benefit, since he would get a lumpsum amount in terms of Regulation 6A(5)(b) of the Regulations on being retired on medical grounds.

Regulation 6A(5)(b) of the Regulations reads: In case of retirement of a Driver on medical grounds he may be extended all terminal benefits apart from an Ex-gratia payment equivalent to One and Half months emoluments (Pay+DA) last drawn, for each completed year of service or the monthly emoluments at the time of retirement on medical grounds multiplied by the balance months of service left before normal date of retirement whichever is less.

Service of more than 6 months shall be treated as one year.

From a perusal of this, it becomes clear that an employee, who intends to retire on medical grounds would be entitled to be paid the amount calculated at 1 months salary for each completed year of service or regular emoluments for the left over service, whichever is less.

The tag whichever is less plays an important role in this regard.

The appellant had put in 31 years of service by 2010.

Therefore, under the fiRs part of Clause 5(b), he would be entitled to be paid the amount representing the salary for 45 months.

By February 2010, the appellant had the left over service of about 36 months.

Since that happens to be less than the former, he would have been paid only that amount.

The 2nd respondent passed the order on 15.12.2012 and retired the appellant with effect from 10.02.2011.

In that view of the matter, the left over service is slashed almost by one year.

Thereby, the appellant was deprived of the amount representing the emoluments for 12 months.

The only basis pleaded by the respondents for the delay in accepting the plea of the appellant for retirement was that the confirmation from the Headquarters Hospital came only on 10.02.2011.

The plea of the appellant that soon after his being declared unfit by the Local Medical Officer, he was referred to the Headquarters Hospital on 10.02.2010 and there also, the same view was expressed was not at all controverted.

The respondents cannot have the luxury of sitting over the matter even in the context of acceding to the request of retirement in terms of Regulations.

It is not as if any disciplinary proceedings are pending or any complicated test was conducted upon the appellant.

At the most, the process should not have taken more than one month from the date of submission of the application.

It must not be forgotten that the appellant did not apply for retirement just like that.

It is only on his being declared as unfit that too when he was referred to periodical check, that he has chosen to retire from service.

We are of the view that the date of retirement for the petitioner can be fixed at 31.03.2010.

Hence, the writ appeal is allowed and the order under appeal is set aside.

Consequently, the writ petition is partly allowed, modifying the order, dated 15.12.2012 to the effect that the date of retirement mentioned therein i.e., 10.02.2011 shall be substituted by the date 31.03.2010.

The miscellaneous petition filed in this writ appeal shall also stand disposed of.

There shall be no order as to costs.

_____ L.NARASIMHA REDDY, J _____
CHALLA KODANDA RAM, J Date: 07.10.2014

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