

Md. Jani Miya Vs. Apsrtc and Another

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Court : Andhra Pradesh

Decided On : Apr-25-2000

Reported in : 2000(5)ALD166; 2000(6)ALT702

Judge : A. Gopal Reddy, J.

Acts : [Persons with Disabilities \(Equal Opportunities, Protection of Rights and Full Participation\) Act, 1995](#) - Sections 47; APSRTC Employees Services Regulations, 1964 - Regulation 6(A)

Appeal No. : WP No. 324 of 2000

Appellant : Md. Jani Miya

Respondent : Apsrtc and Another

Advocate for Def. : Mr. K. Harinath, SC for APSRTC

Advocate for Pet/Ap. : Mr. S.A.K. Mynoddin, Adv.

Judgement :

ORDER

1. Heard the learned Counsel for the petitioner and the learned Standing Counsel for the respondent-Corporation Sri K. Harinath, and at their request, the matter is taken up for final disposal.

2. Issue Rule Nisi.

3. The petitioner was removed from service as a disciplinary measure, after holding a departmental enquiry against him. On his appeal, the punishment of removal imposed by the Disciplinary Authority was reduced by the Appellate Authority directing reinstatement of the petitioner into service as Conductor imposing a penalty of deferment of annual increment for a period of one year without cumulative effect on his future increments and treating the period of his absence till he reported duty as 'not on duty'. In pursuance of the same, the petitioner reported to duty. At that stage, he was subjected to medical test to find out his suitability to the post. Initially, the Medical Officer, who examined the petitioner, found defect in his left eye and held that he is unfit for the post of Conductor in A2 Category. At the request of the petitioner, he was further subjected to Medical Examination by the Medical Board of the Corporation. The Executive Director (Medical Board) examined the petitioner and rejected the appeal and declared that he is unfit to the post of A2-Category Conductor. Therefore, the petitioner was retired from the service with effect from 27-10-1997 in terms of Regulation 6(A) of the APSRTC Employees Service Regulations, 1964. When the validity of the said order was questioned in WP No.1594 of 1998, this Court, while dismissing the writ petition by its order dated 4-8-1998, held that the petitioner is entitled to seek appointment to an alternative post under the prevailing regulations, and therefore, he was directed to make necessary application before the prescribed authorities and the authorities were directed to consider the same in terms of those regulations. Meanwhile, pursuant to the interim order dated 20-1-1998 granted by this Court in the said writ petition, the respondents by proceedings dated 18-6-1998, considered and rejected the case of the petitioner for alternate employment stating that he was directly appointed to the post of Conductor and did not hold any post previously and that there is no provision to consider his case for alternate employment as per the rules. Pursuant to the order dated 4-6-1998 passed in the said writ petition, the petitioner made another representation seeking alternate appointment and the respondents, by proceedings dated 24-12-1999, rejected the same holding that there is no provision for providing alternative employment to Conductors retired on medical grounds. The only provision applicable to Conductors is to revert the medically unfit Conductors to their former posts, if any, they held prior to appointment as

Conductors. The learned Counsel for the petitioner contends that the rejection on the above ground is per se illegal and arbitrary. Once the provisions of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short 'Act 1 of 1996') applies to the Corporation, the Corporation has to provide an alternative employment, and if no alternative employment is available, they have to create a supernumerary post until a suitable post is available or the employee attains the age of superannuation. Therefore, rejection of the petitioner's case is arbitrary and illegal. He, therefore, prays for allowing the present writ petition.

4. In opposition, the Corporation filed a counter-affidavit reiterating its stand mentioned in the impugned order. The ground stated for rejection in the counter-affidavit is that the petitioner did not hold any post prior to his appointment as Conductor. As per Regulation 6-A(4) of the APSRTC Employees (Service) Regulations, 1964 (for short 'the Regulations'), 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. As the petitioner cannot be reverted to any post previously held by him, he could not be provided any employment. It is also stated that Act 1 of 1996 applies to persons with disability of not less than 40% as certified by the Medical Authority. As the petitioner has not pleaded that he is suffering from not less than 40% disability, he is not entitled for the Protection of Act 1 of 1996.

5. It is needless to say that Act 1 of 1996 is applicable to the Corporation and Section 47 should be applied to the instant case. Section 47 of Act 1 of 1996 reads as follows:

'47. Non-discrimination in Government employment.--(1) No establishment shall dispense with or reduce in rank, an employee who acquires 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.'

This Court, in *Syed Sha Musebulla Alvi v. Secretary, General Administrative Department, Secretariat, Hyderabad and others*, : 1999(1)ALD632 , allowed the writ petition by quashing the order impugned therein with a direction to consider the claim of the petitioner therein in terms of Section 47 of Act 1 of 1996. As the facts therein are similar to the facts in the instant case, the reasons given by the respondent-Corporation for rejecting the petitioner's case for alternative employment cannot be upheld for the reasons that once Section 47 of Act 1 of 1996 applies to the Corporation, it has to consider the case of the petitioner in terms of the same.

6. Accordingly, the order passed by the 2nd respondent in proceedings dated 24-12-1999 is quashed and the matter is remitted to the 1st respondent with a direction to consider the claim of the petitioner de novo in the light of the provisions of Section 47 of Act 1 of 1996 and communicate the decision to the petitioner within a period of three months from the date of receipt of this order. This writ petition is accordingly allowed. No costs.

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