

K.Moses Vs. Apsrtc, Reptd. by Its Managing Director

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Court : Andhra Pradesh

Decided On : Nov-02-2010

Judge : Sanjay Kumar, J.

Acts : Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act, 1995 - Sections 47, 2

Appeal No. : Writ Petition No.3031 of 2008

Appellant : K.Moses

Respondent : Apsrtc, Reptd. by Its Managing Director

Advocate for Def. : C.Sunil Kumar Reddy , Adv.

Advocate for Pet/Ap. : V.Narasimha Goud, Adv.

Judgement :

ORDER:

Denial of alternate employment by the Andhra Pradesh State Road Transport Corporation in terms of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is called in question.

The petitioner, a Driver in the Andhra Pradesh State Road Transport Corporation (APSRTC), met with an accident while returning home from duty on 03.01.2006.

He was declared unfit to continue in the post of a Driver owing to the injuries and the disability which resulted from the accident. It is his case that he sought alternate employment in accordance with Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for brevity, 'the Act of 1995'), as he had no other source of income and had to provide for his family including three school going daughters. He got issued legal notice dated 13.08.2007 to the APSRTC in this regard. While so, he received the APSRTC's letter dated 09.08.2007 on 29.08.2007 stating to the effect that his settlement amounts were ready for payment and calling upon him to attend the office and receive the same. He replied vide letter dated 31.08.2007 reiterating his request for alternate employment while disclaiming interest in receiving monetary benefits in lieu thereof.

Aggrieved by the continued inaction of the APSRTC in this regard, he filed Writ Petition No.20058 of 2007 before this Court. By interim order dated 12.10.2007 passed therein, this Court directed the APSRTC to consider the petitioner's case as per Section 47 of the Act of 1995. Thereupon, the order dated 14.12.2007 was passed by the APSRTC. The APSRTC stated therein that the petitioner had willingly opted for retirement on medical grounds in the prescribed proforma in view of his health condition and that he was retired from service with effect from 27.10.2006 under proceedings dated 13.11.2006. In that view of the matter, the APSRTC decried the petitioner's eligibility for alternate employment under Section 47 of the Act of 1995. The petitioner was asked to approach the Depot Manager, Nizamabad Depot of the APSRTC for payment of additional monetary benefits.

In his response dated 13.01.2008, the petitioner again repeated that he was not interested in monetary benefits and was keen on being provided alternate employment. He disclaimed knowledge of the application dated 13.11.2006 said to have been submitted by him waiving his right to alternate employment in favour of additional monetary benefits. He specifically stated that the same was done keeping him in the dark and that he was never informed of the same. He again reiterated that he had no other source of income and had to provide for his family including three school going children.

Challenging the proceedings dated 13.11.2006 retiring him from service with effect from 27.10.2006 and the order dated 14.12.2007 rejecting his request for alternate employment, the petitioner filed the present case.

In its counter, the APSRTC stated that the petitioner's accident did not occur during the course of his employment but thereafter, he was found unfit to continue in service as a Driver. Reference was made to the APSRTC's Circular dated 26.08.2005 whereby a Driver could opt for retirement on medical grounds in view of ill-health. The APSRTC stated that the petitioner submitted his option in Annexure-A on 20.07.2006 seeking to retire on medical grounds and accepting the offer of additional monetary benefits. It contended that as the petitioner voluntarily submitted his option for retirement on medical grounds choosing payment of admissible additional monetary benefits, he could not seek alternate employment as per Section 47 of the Act of 1995. The APSRTC therefore sought to support its order dated 14.12.2007.

In his reply, the petitioner reaffirmed that he never submitted a letter seeking voluntary retirement and that he was not explained anything while obtaining his signatures. He pointed out that he made many representations but nothing had been informed to him and that, in any event, he had not received any additional monetary benefits. He therefore assailed the action of the APSRTC in denying him alternate employment stating that the same was arbitrary and in violation of the statutory and constitutional protections afforded to him. Heard Sri V.Narsimha Goud, learned counsel for the petitioner, and Sri C.Sunil Kumar Reddy, learned standing counsel for the APSRTC. The issue that falls for consideration is whether the APSRTC's action in denying alternate employment to the petitioner is valid and lawful in the light of Section 47 of the Act of 1995. Section 47 of the Act of 1995, to the extent relevant, reads as under: "47. Non-discrimination in Government employments:- (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 benefit:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until suitable post is available or he attains the age of superannuation, whichever is earlier."

There is no dispute that the APSRTC is covered by the Act of 1995 being an establishment as defined in Section 2(k) thereof [SYED MUSEBULLA ALI v. SECRETARY, GENERAL ADMINISTRATIVE DEPARTMENT, SECRETARIAT, HYDERABAD AND OTHERS¹ and MD.JANI MIYA v. APSRTC²].

The import of Section 47 of the Act of 1995 was considered by the Supreme Court in KUNAL SINGH v. UNION OF INDIA³. The observations of the Supreme Court in this regard are apposite:

"9. Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that a person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer.

The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of the section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The section further provides 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; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident

from sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service."

Thus, the clear language of Section 47(1) and the interpretation thereof by the Supreme Court as reflected supra leave no room for doubt that the APSRTC is under a statutory obligation not to dispense with an employee who acquires a disability during his service.

Sri C.Sunil Kumar Reddy, learned standing counsel, argued that as the accident due to which the petitioner sustained disability was not in the course of his employment, the Act of 1995 would have no application. This argument does not hold water. The perspicuous wording of Section 47 indicates that any disability acquired by an employee 'during his service' would bring him within the protective umbrella of the said provision and it is not necessary that the disability should be a direct consequence of or be connected to his employment. In any event, this issue is no longer res integra. In SK. MOULANA v. DEPOT MANAGER, APSRTC, BANSWADA DEPOT, NIZAMABAD DISTRICT⁴, a learned Judge of this Court while dealing with a similar contention observed:

"8. The above provision of law is an enabling provision to provide alternate employment in the event of an employee acquiring some disability during the course of service. The words "during his service" in my considered view shall not be interpreted in a narrow compass that at the relevant point of time the employee shall be in actual service. It is sufficient if the employee is on the rolls of the organization when he met with an accident at the relevant point of time. The organization has a duty to create alternate employment as per Section 47 of the Act. In fact, Section 47 of the Act makes it clear 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." Again in M.V.RAMANA RAO v. APSRTC⁵, a learned Judge of this Court dealing with a similar contention observed: "..... the words 'disability during the course of service' as mentioned in Section 47 of the said Act has to be construed meaningfully keeping the objectives of the Act in mind and the nature of the disability suffered by employee. As such, I hold that the disability suffered by the petitioner has to be construed as suffered during his service only and therefore, he is entitled to the benefits of the said Act."

It is therefore not open to the APSRTC to contend that the Act of 1995 is not applicable to the case of the petitioner as his accident did not occur in connection with or out of his employment.

The sheet anchor of the APSRTC's defence against the petitioner's claim for alternate employment in terms of Section 47(1) of the Act of 1995 is his alleged voluntary exercise of option for retirement on medical grounds accepting admissible additional monetary benefits in lieu of alternate employment. Sri C.Sunil Kumar Reddy, learned standing counsel, placed reliance on the APSRTC's Circular No.PD-44/2004 dated 23.11.2004 and Circular No.PD-40/2005 dated 26.08.2005 in this regard. Copies of the said Circulars are placed before me and reflect that instructions were issued thereunder as to the procedure to be followed for retirement of employees on grounds of ill-health and inability to perform duties. Relevant to note, no mention is made in the said Circulars of the mandatory social welfare benefit posited by Section 47 of the Act of 1995. Under the Circular dated 26.08.2005, the APSRTC advised implementation of the amended regulations with regard to payment of additional monetary benefits. The Circular, to the extent relevant for the purpose of this case, is extracted:

a) If a Driver is found unfit in periodical medical examination by the Medical Officer, he should not be retired on medical grounds straightaway. He shall be directed to the Superintendent & Chief Medical Officer, APSRTC Hospital, Tarnaka with MTD 430, for assessing his suitability for the post of Driver. In case, the Driver is found fit he shall be taken back on duty. If the Driver is found unfit, he

shall then be retired on medical grounds, and the Addl. Monetary Benefit in lieu of employment as envisaged in Reg.6A(5)(b) of "APSRTC Employees' (Service) Regulations, 1964" that are notified through the reference 2nd cited shall be extended, if he opts for the same in the prescribed proforma (Annexure- A).

b) If the Driver willingly opts for retirement on medical grounds in the prescribed proforma (Annexure-A), in view of his health conditions, he shall be directed with MTD 430 to APSRTC Hospital, Tarnaka before the Chairman of the Chairman of the Committee constituted with the following Members, to examine his case. On the report of the above Committee, he shall be retired on medical grounds, if found unfit, and the Addl. Monetary Benefit in lieu of employment as per the amended Reg.6A(5)(b) of "APSRTC Employees' (Service) Regulations" shall be extended on medical retirement."

It is pursuant to the above Circular that the petitioner is said to have voluntarily opted for payment of monetary benefits in lieu of employment. Significantly, though the Circular itself does not speak of Section 47 of the Act of 1995, Annexure-A appended thereto states as follows: "I accept the Additional Monetary Benefit offered to me in lieu of alternative appointment under the provisions of Sec.47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 OR under any other Law/Agreement in force. On my retirement on medical grounds as stated above, I cease to be an employee of the Corporation and I have no right to claim alternative appointment under the said Act or any other Law/Agreement in force."

A copy of the duly filled in printed format contained in Annexure-A submitted by the petitioner on 13.11.2006 is also placed before me. Being a printed format, all that was required to be done was the filling in of the name and details of the petitioner and the affixation of his signature. The signatures of the witnesses along with their details are found thereunder. This document is said to embody the voluntary waiver of his statutory right by the petitioner. This practice on the part of the APSRTC, in providing a printed format to nullify the mandatory benefit conferred by a social welfare legislation, to say the very least, is not only shockingly retrogressive but is a blasphemy against the beneficial objectives

underlying Section 47 of the Act of 1995. In the light of the mandatory obligation placed on the APSRTC to protect employees acquiring disability while in its service, the procedure adopted by it to do away with such employees by offering monetary benefits and printing a 'prescribed format' in this regard is nothing short of doing violence to the statutory obligatory duty cast upon it. Waiver of the right vested in an employee under Section 47 of the Act of 1995, if at all, could only be in exceptional circumstances and must necessarily be demonstrated by an informed and fully conscious expression of such waiver by the said employee. A mere printed format baldly stating to the effect that the employee was accepting monetary benefits in lieu of alternate employment under Section 47 of the Act of 1995 falls far short of the requirements to validate such waiver. The level of literacy of the employees in the APSRTC itself being open to question, mere affixation of their signatures in such printed formats would neither demonstrate nor amount to an informed decision on their part to waive their statutory right. The attitude of the APSRTC in resorting to such a practice therefore requires to be deprecated in the strongest terms.

Except for this so-called waiver of his right to alternate employment under Section 47 of the Act of 1995, it is not demonstrated on facts that the petitioner chose to settle for financial benefits in lieu of alternate employment. All through, his consistent endeavour as reflected in the many missives addressed by him to the APSRTC was to secure alternate employment. There is also no evidence on record that the petitioner ever accepted the additional monetary benefits offered to him by the APSRTC in pursuance of his so-called option. That being so, this Court is of the considered opinion that the APSRTC cannot bank upon the dubious and self-serving 'Annexure-A' option obtained by it from the petitioner to deny him the statutory benefit under Section 47 of the Act of 1995.

Reference in this regard may also be made to the Judgment of the Supreme Court in BHAGWAN DASS v. PUNJAB STATE ELECTRICITY BOARD⁶. That was a case where an employee, having sought retirement owing to the physical disability acquired during his service, wished to withdraw the request and opt for alternate employment in terms of Section 47 of the Act of 1995. His request was turned down. Dealing with this factual scenario, the Supreme Court observed:

"17. From the materials brought before the court by none other than the respondent Board it is manifest that notwithstanding the clear and definite legislative mandate some officers of the Board took the view that it was not right to continue a blind, useless man on the Board's rolls and to pay him monthly salary in return of no service. They accordingly persuaded each other that the appellant had himself asked for retirement from service and, therefore, he was not entitled to the protection of the Act. The only material on the basis of which the officers of the Board took the stand that the appellant had himself made a request for retirement on medical grounds was his letter dated 17-7-1996. The letter was written when a charge-sheet was issued to him and in the letter he was trying to explain his absence from duty. In this letter he requested to be retired but at the same time asked that his wife should be given a suitable job in his place. In our view it is impossible to read that letter as a voluntary offer for retirement.

18. Appellant 1 was a Class IV employee, a lineman. He completely lost his vision. He was not aware of any protection that the law afforded him and apparently believed that the blindness would cause him to lose his job, the source of livelihood of his family. The enormous mental pressure under which he would have been at that time is not difficult to imagine. In those circumstances it was the duty of the superior officers to explain to him the correct legal position and to tell him about his legal rights. Instead of doing that they threw him out of service by picking up a sentence from his letter, completely out of context. The action of the officers concerned of the Board, to our mind, was deprecable."

The action of the APSRTC in the present case in seeking to rid itself of a disabled employee, the petitioner herein, being akin to that of the Board in the case before the Supreme Court, is equally deprecable and warrants condemnation. The order dated 13.11.2006 retiring the petitioner from service suffers from yet another illegality. Relevant to note, though in its counter the APSRTC stated that the petitioner had submitted his option in Annexure-A on 20.07.2006, what is placed before the Court is a duly filled in Annexure-A bearing the date 13.11.2006. There is no explanation as to what happened to the earlier option dated 20.07.2006 adverted to in the counter.

On the basis of the option said to have been submitted by the petitioner on 13.11.2006, the APSRTC retired him with retrospective effect from 27.10.2006. The order itself refers to the petitioner's application dated 13.11.2006 and no mention is made therein of any earlier option having been exercised. Reference may be made to the Judgment of the Delhi High Court in MRS.USHA KUMAR v. SUPER BAZAR CO-OPERATIVE STORE LTD.⁷, wherein it was held that dismissal from service could not be made effective retrospectively. Reliance was placed by the Delhi High Court on the Judgment of the Supreme Court in STATE OF PUNJAB v. AMAR SINGH HARIKA⁸. The Supreme Court was dealing with a dismissal order which had not been communicated for nearly two years. The Court held that upon the mere passing the order would not become effective unless it is communicated to the officer concerned. Therefore it could not take effect from the date on which it was actually passed and would come into force only on the date of its communication. The order dated 13.11.2006 retrospectively retiring the petitioner from service with effect from 27.10.2006 is therefore unsustainable in law on this count also.

The proceedings dated 13.11.2006 and the order dated 14.12.2007 are accordingly set aside. The APSRTC is directed to forthwith provide alternate employment to the petitioner in a suitable post with the same pay scale and service benefits enjoyed by him at the time of his retirement from service and if necessary, by creating a supernumerary post. It is relevant to note that under the second proviso to sub-section (1) of Section 47 of the Act of 1995, the employer is obligated to create a supernumerary post to accommodate the disabled employee in the event it is not possible to adjust him against any existing post. This indicates that such an employee is not to be subjected to a break in service for want of a suitable post being immediately available. The petitioner herein would therefore be entitled to claim continuity of service for all purposes from the date of his so-called retirement from service under the proceedings dated 13.11.2006. As he was deprived of a social welfare benefit statutorily vested in him under the Act of 1995, the APSRTC has no right to deny him the financial benefits for the period that he was deliberately and willfully kept out of its service. The petitioner would therefore be entitled to full back wages from the date of his retirement from service till his reinstatement in a suitable post. The Writ Petition is accordingly allowed with

costs, quantified at Rs.10,000/- (Rupees ten thousand).

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