



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

[3328]

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

PRESENT

**THE HONOURABLE SRI JUSTICE GANNAMANENI RAMAKRISHNA
PRASAD**

WRIT PETITION NO: 8912/2024

Between:

1.P. GOPAL, S/O. GANESH, HINDU, AGED ABOUT 45 YEARS, EX DRIVER, STAFF NO. E554742, ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION, SRIKALAHASTI DEPOT, R/O BAIRAJU KANDRIGA VILLAGE, K V B PURAM MANDAL, TIRUPATI DISTRICT.

...PETITIONER

AND

1.THE STATE OF ANDHRA PRADESH, REP BY ITS PRINCIPAL SECRETARY TRANSPORT DEPARTMENT SECRETARIAT BUILDINGS VELAGAPUDI AMARAVATI.

2.ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION, REP BY ITS MANAGING DIRECTOR,G J 58 PLUS M32 ARRIVAL BLOCK, PANDIT NEHRU BUS STOP,KRISHNA LANKA, VIJAYAWADA, NTR DISTRICT 520 013.

3.ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION, REP BY ITS DISTRICT PUBLIC TRANSPORT OFFICER, TIRUPATI REGIONAL, TIRUPATI, CHITTOOR DISTRICT.

4.ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION, SRIKALAHASTI, TIRUPATI DISTRICT. REP BY ITS DEPOT MANAGER, SRIKALAHASTI DEPOT.

...RESPONDENT(S):

Counsel for the Petitioner:

1. T C KRISHNAN

Counsel for the Respondent(S):

1. GP FOR SERVICES II (AP)

2. K VISWANATHAM (SC FOR APSRTC)

The Court made the following ORDER:

Heard Sri T.C. Krishnan, Learned Counsel for the Writ Petitioner and Sri K. Viswanatham, Learned Standing Counsel for APSRTC.

2. The prayer sought in this Writ Petition is as under:

“It is therefore prayed that this Hon’ble Court may be pleased to issue a Writ, order or direction more particularly one in the nature of nature of Writ of Mandamus to declare the proceedings of the 3rd respondent passed in No.L1/876(01)/2024 – RMT) dated 29.2.2024 wherein and where under rejecting the request of the petitioner for alternative employment as Sramik, Kalsai or in any other Class IV post under office side amounts to erroneous, arbitrary and violative of Articles 14, 21 & 311 of the Constitution of India besides being violative of principles of natural justice and consequently set aside the same by allowing the writ petition in the interest of justice and to pass necessary order or orders as this Hon’ble Court may deem fit.”

FACTS AS SUBMITTED BY LEARNED COUNSEL FOR THE WRIT PETITIONER:

3. Writ Petitioner was appointed as a Driver in the Respondent No.2 Corporation in the year 2009 at Srikalahasti Depot; that while travelling on a motorcycle as a pillion rider, the Writ Petitioner met with an accident on 14.05.2016 and had severe injuries to both the legs, including fractures; that a year later, i.e., on 04.05.2017, the District Medical Board, Chittoor Camp, which examined the Writ Petitioner, had given a finding that the Writ Petitioner is suffering from “Post Traumatic Left Lower and Right Upper Limb” and that the percentage of disability is about 59% and recommended that he can only perform any kind of work by manipulating with fingers and pulling and pushing works by sitting and works related to reading and writing (Ex.P.10); that the

Writ Petitioner was once again tested by the Corporation Hospital at Tarnaka, Hyderabad on 14.06.2017, where the Medical Board has certified that the Petitioner is unfit for driving due to knee meniscal tear, 'foot drop' and 'tracial phloor injury' (this Certificate is filed along with the Counter Affidavit); that the Corporation has fixed Rs.4,00,000/- as Additional Monetary Benefit in lieu of 'alternative employment' and had paid Rs.50,000/- on 18.06.2017; that the balance of amounts were also paid periodically on several dates; that on 26.07.2017 (Ex.P.7), the Chief Medical Officer at APSRTC Hospital, Vijayawada, had issued Proceedings to the Depot Manager, APSRTC, Srikalahasti, basing on the observations of the Medical Board that met on 25th and 26th July, 2017, that the Petitioner is not only unfit to be a Driver, but, he is also unfit for all other 'alternate categories' as per medical standards; that based on the Proceedings issued by the Chief Medical Officer, Vijayawada dated 26.07.2017 (Ex.P.7), the Respondent No.2 Corporation has passed the Final Order on 21.08.2017, by holding that the Petitioner is not only unfit to be Driver but also for all other categories as per Medical Standards (Ex.P.6); that the disability of the Writ Petitioner, in fact, has got reduced considerably and his condition has significantly improved; therefore, the Petitioner has made several oral Representations to the Respondent No.2 Corporation, stating that the Additional Monetary Benefit that was received by the Writ Petitioner in lieu of alternate employment was not voluntary, inasmuch as the Respondents have taken signatures on forms/papers and therefore same may be rolled-back and provide him alternate employment because the Additional Monetary Benefit given, is not the same as alternate employment; that the Petitioner is willing to do any ground job; that one Written Representation was also given by the Writ Petitioner on 25.02.2023 (Ex.P.4) where he had stated that he had made several Representations and approached the Respondent authorities; that he had stated in the said Representation that he is fit for any ground job as he had recovered very well although he may not be able to perform the driving job; that on the oral advice of the Respondents, the Petitioner had approached the Medical Officer of the Community Health Centre, Karveti

Nagaram, Chitoor District where a team of three Doctors have examined the Writ Petitioner, whereas, one of the Doctors in the team (Dr. P. Lakshmiathy, CAS Orthopedics) is an Orthopedician and they have rendered an opinion that the Petitioner is healthy and fit for desk-work (Ex.P.5); that the Petitioner has made another Representation on 14.09.2023 (Ex.P.3) to the Respondent No.2 by enclosing the Medical Certificate issued by a team of Doctors from Community Health Centre, Karveti Nagaram, Chitoor District; that as the said Representation dated 14.09.2023 (Ex.P.3) was not being considered by the Respondents, the Writ Petitioner has filed W.P.No.31053 of 2023; that by Order dated 04.12.2023 (Ex.P.2), a Learned Single Judge of this Hon'ble Court, after having considered the case of the Writ Petitioner, had disposed of the same, with a direction to the Respondents to consider the Representation dated 14.09.2023 (Ex.P.3) along with the Medical Certificate dated 24.08.2023 issued by the Medical Board; that in compliance with the Final Order dated 04.12.2023 in W.P.No.31053 of 2023, the District Public Transport Officer, Tirupati, had considered the Representation of the Writ Petitioner dated 14.09.2023 and rejected it by stating that the Proceedings of the Medical Board of the Respondent Hospital had declared him not only unfit to be driver but also unfit for any other alternate post (Ex.P.1)(impugned herein); that it is also stated in Ex.P.1 that the Judgment rendered by the Hon'ble Supreme Court in Civil Appeal No.3529 of 2017 and batch, dated 23.02.2017 would also apply against the Writ Petitioner as per the Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. This Order passed by the Respondent Corporation dated 29.02.2024 bearing No.L1/876(01)/2024-RM(T) (Ex.P.1) is assailed by the Writ Petitioner in the present Writ Petition.

4. Learned Counsel for the Writ Petitioner had also submitted as follows:
 - i) Acceptance of Additional Monetary Benefit in view of the alternate employment is not a voluntary act on the part of the Writ Petitioner;

- ii) The opinion given by the Medical Board of the Respondent Corporation as regards the unfitness of the Writ Petitioner for alternate employment may, at best, be construed as regards the condition of the Writ Petitioner at that point of time;
- iii) Over a period of time, the Writ Petitioner has fully recovered and therefore, the disability of the unfitness of the Writ Petitioner cannot be of a permanent nature; and that the Judgment of the Hon'ble Supreme Court in Civil Appeal No.3529 of 2017 and batch, was rendered under the old Act namely the Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, whereas, the Petitioner was declared unfit on 26.07.2017, that is only after the new enactment namely the Rights of Persons with Disabilities Act, 2016 has come into force; and
- iv) That the Writ Petitioner is completely fit for any alternate employment and that he is unable to meet with the expenses of the family with Additional Monetary Benefit and therefore, he is willing to return the Additional Monetary Benefit with reasonable interest since the same was not accepted voluntarily but was rather imposed upon the Writ Petitioner by stating that the Writ Petitioner is unfit for ever for any alternate employment.

5. In support of the above submissions, Learned Counsel for the Writ Petitioner has stated that the party is physically present in the Court and this Court itself may see the ability and fitness of the person and form an opinion. The Writ Petitioner, who was physically present in the Court was called upon by this Court. On observation by the Court, the Writ Petitioner seems to be in fit condition for alternative employment. He is able to walk with a 'limp' but without any support. The motor movements of the Writ Petitioner appear to be absolutely fine. He is now aged about 45 years, as per the details given in the Affidavit dated 23.04.2024.

SUBMISSIONS OF LEARNED COUNSEL FOR THE RESPONDENTS:

6. Sri K. Viswanatham, Learned Standing Counsel appearing for the Respondent Corporation, has drawn the attention of this Court to the Counter Affidavit and the documents filed along with the Counter Affidavit dated 24.04.2024, opposing the submission of the Learned Counsel for the Writ Petitioner as regards the acceptance of Additional Monetary Benefit in lieu of alternate employment was not voluntary. Learned Counsel has also drawn the attention of this Court to Page No.26 of the Counter Affidavit which is the Letter of request made by the Writ Petitioner for seeking additional monetary benefit in lieu of alternate employment.

7. **ISSUES:** -

(i) Whether the Writ Petitioner voluntarily accepted additional monetary benefit, in lieu of alternate employment?

(ii) Whether the old Act viz., The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 or whether the Rights of Persons with Disabilities Act, 2016 is applicable to the facts of the present case? and, what is the effect on the impugned action?

(iii) Whether the Writ Petitioner is entitled for alternate employment by making fresh evaluation?

8. **ISSUE No.(i):**

Whether the Writ Petitioner voluntarily accepted additional monetary benefit, in lieu of alternate employment?

This Court has sifted through the Letter which is claimed by the Respondents to have been submitted by the Writ Petitioner on 08.06.2017. The Letter is written in Telugu vernacular while the signature of the Writ Petitioner is in English. On comparison of the hand writing with regard to the contents of the Letter, it appears to the Court that the contents of the Letter and the signature do not match. The style of writing would clearly indicate that

there is a clear mismatch between the contents of the Letter dated 08.06.2017 and the signature of the Writ Petitioner, although the signature is in English whereas the contents of the Letter is in Telugu vernacular. Learned Counsel for the Writ Petitioner has also stated that he does not know what is in the said Letter and that for the first time, he had seen this Letter only when it is filed along with the Counter Affidavit.

9. It is noticed from the documents filed along with the Writ Petition, that the Writ Petitioner has studied up to 7th Class in Telugu Medium and therefore, he is able to read and write Telugu Language. Despite this fact, the Letter dated 08.06.2017 is not in his hand writing. Therefore, the Court would safely conclude that the request made by the Writ Petitioner for Additional Monetary Benefit in lieu of alternate employment is not voluntary in nature inasmuch as the signature may have been obtained on a blank paper and its contents were later filled-in. The preponderance of probability is very high to this effect that the signature of the Writ Petitioner may have been taken on a blank paper.

10. Having considered the above submissions, this Court is of the view that the assumption made by the Corporation Hospital dated 04.05.2017 and 26.07.2017 that the Writ Petitioner is unfit for alternate employment may have had some relevance at that point of time but not for all times to come. This apart, this Court has already pointed out that opting for Additional Monetary Benefit was not voluntary in nature as per the discussion made hereinabove. This apart, at that point of time, the Writ Petitioner might not have had any other alternative in view of the categorical finding given by the Medical Board that the Writ Petitioner is unfit for alternate employment as well. This may be one of those cases where the Writ Petitioner had defied the medical prescription of permanent unfitness as observed by this Court after observing his physical movements in the open Court.

11. The Writ Petitioner has clearly stated in the Affidavit filed in support of the Writ Petition that the Officials of the Respondents have obtained

signatures on printed proformas and thereafter, passed an Order of retirement of the Writ Petitioner on medical grounds. Para No.6 of the Affidavit filed in support of this Writ Petition is usefully extracted hereunder:

“6. I submit that soon after receipt of medical report from the Medical Board at Vijayawada, the 4th respondent i.e, Depot Manager, Srikalahasti obtained my signatures on printed proformas and passed an order of retirement from service on Medical Grounds observed that “as per the letter of Medical Board and in accordance with Circular No.PD-40/2016 Dt. 26.8.2005 Vide Proceedings No. E2/469(1)/2017 SKHT Dt. 21.8.2017.”

12. In this view of the matter, this Court is of the opinion that acceptance of additional monetary benefit by the Writ Petitioner is not voluntarily inasmuch as the circumstances discussed above, would indicate that the Writ Petitioner, through various medical reports, was made to believe that the Disability is permanent and that he is not suitable for any alternate employment and also, the so called letter dated 08-06-2017 is not written by the Writ Petitioner in his own handwriting.

13. **ISSUE No.(ii):**

Whether the old Act viz., The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 or whether the Rights of Persons with Disabilities Act, 2016 is applicable to the facts of the present case? and, what is the effect on the impugned action?

This Court is in agreement with the submissions made by the Learned Counsel for the Writ Petitioner that the new Act viz., the Rights of Persons with Disabilities Act, 2016 is applicable since the Writ Petitioner was declared unfit on 26.07.2017, whereas, the new Act has come into force from 19.04.2017 vide S.O.1215 (E).

14. This Court has perused the Judgment rendered by the Hon'ble Supreme Court in Civil Appeal No.3529 of 2017 and batch, dated 23.02.2017. *Prima facie*, this Court finds that the said Judgment is rendered in the light of

provisions contained in the earlier Act being the Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 whereas the Writ Petitioner is governed under the new Act namely the Rights of Persons with Disabilities Act, 2016. Since the case of the Writ Petitioner is governed under new Act, the Respondents Authorities have the statutory obligation to follow the mandate of the new Act viz., the Rights of Persons with Disabilities Act, 2016. In the present case, the Respondent Authorities have not followed the mandate prescribed under sub-Section (4) of Section 20 of the Act, 2016 besides various other provisions of the said Act. Therefore, this Court does not hesitate to hold that the medical evaluations made by the Respondent Corporation do not conform to the statutory mandate under Act, 2016.

15. **ISSUE No.(iii):** -

Whether the Writ Petitioner is entitled for alternate employment by making fresh evaluation?

This Court has physically seen the Writ Petitioner and he appears to be quite normal except with a limp and that he is able to walk freely without any support. In this view of the matter, this Court is of the opinion that the Writ Petitioner 'may' be fit and suitable for alternate employment. However, the opinion formed by the Court only on physical appearance of the Writ Petitioner may not be the correct inference. The correct position can be ascertained only after a proper medical examination is done by a team of experts. Since the ability of the Writ Petitioner to drive a bus is completely ruled out and that the Court is only examining whether he can be given an alternate employment in the Respondent Corporation in compliance with the provisions of the Rights of Persons with Disabilities Act, 2016, this Court is of the opinion that there is no requirement of the Corporation Hospital to examine the Writ Petitioner for the purpose of evaluating for alternate employment.

16. This apart, on the direction of this Court dated 22.04.2024, the Writ Petitioner has filed an Affidavit on 23.04.2024 stating that if the alternate

employment is offered by Respondent Corporation, he is willing to return the sum of Rs.4,00,000/- together with interest at the rate of 6% per annum within two months. In the said Affidavit dated 22.04.2024 filed on 23.04.2024, Writ Petitioner had stated that he will be able to perform duties as Assistant Mechanic or Sramik or Painter Assistant or Electric Assistant or Oil Top-Up Assistant or Office Boy or Attender, or Store Attender or Coffee & Tea Maker or Supplier or Vessels Cleaner, or Lab Attender, or any other suitable post. Para No.3 of the Affidavit filed by the Writ Petitioner is extracted hereunder:

“3. I submit that at the time of my termination i.e, on 21.08.2017, I was paid by the Corporation the additional minatory benefits. I submit that now I hereby undertake to reimburse/remit the same to the Corporation together with interest @ 6% per annum within a period of 2 months in the event the respondent corporation accommodated me to the alternative post such as Asst. Mechanic or Sramik, Painter Assistant or Electric Assistant or Oil Top up Assistant, Office Boy or Attender, or Store Attender or Coffee & Tea Maker or Supplier or Vessels Cleaner, Lab Attender, or in any other suitable post.”

17. The Rights of Persons with Disabilities Act, 2016: Discussion on Provisions.

The Rights of Persons with Disabilities Act, 2016, though was published in the Gazette of India on 28.12.2016, had come into force on 19.04.2017 as notified by the Central Government. Although the salient features of the Act need not be discussed exhaustively, suffice it to state that the salient features and provisions which are necessary for the present case will be discussed hereunder:

17(i). As per Section 2(b)(ii), the Respondent Corporation would fall under the definition of Appropriate Government. Section 2 (r) deals with “persons with benchmark disabilities” and Section 2(s) deals with “persons with disability”. Section 3 castes a duty on the Appropriate Government to ensure that persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity on par with others. Section 3(2) of the Act particularly lays an obligation on the Appropriate Government to take steps to utilise the capacity of “persons with disabilities” by providing appropriate environment. Section 7(1)(a) of the Act mandates the

Appropriate Government to take measures to protect the “persons with disabilities” from all forms of abuse, violence and exploitation, for which, the Appropriate Government shall take cognizance of incidents of abuse, violence and exploitation and provide legal remedies available against such incidents. Section 12 casts a mandate on the Appropriate Government to ensure that “persons with disabilities” are able to exercise the right to access any Court, Tribunal, Authority, Commission or any other body having judicial or quasi-judicial or investigative powers without discrimination on the basis of disability.

17(ii). Chapter-IV of the Act requires special emphasis. It deals with Skill Development and Employment. Section 19 mandates the appropriate Government to formulate the schemes and programmes including provision of loans at concessional rates to facilitate and support employment of persons with disabilities especially for their vocational training and self-employment. Exclusive skill training programmes for persons with disabilities is also mandated. Section 20 of the Act deals with non-discrimination of an employee. In other words, the Appropriate Government cannot discriminate any person with disability in any manner relating to employment. Section 20(4) clearly mandates that no Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service. Section 21 mandates every establishment which includes Government establishment and private establishment to notify equal opportunity policy by detailing measures proposed to be taken by it in pursuance of the provisions of the statute and the establishment shall register a copy of said policy with the Chief Commissioner or the State Commissioner, as the case may be.

17(iii). Very importantly, Section 22 of the Act imposes a mandate on every establishment to maintain records of the persons with disabilities in relation to the matter of employment, facilities provided and other necessary information. As per Section 23 of the Act, every Government establishment shall appoint a Grievance Redressal Officer for the purpose

of Section 19 that imposes mandate to formulate schemes and programmes.

17 (iv). **The Rights of persons with Disabilities Rules, 2017:** The Rights of Persons with Disabilities Rules, 2017 (the Rules) came into force from 15.06.2017. Under Chapter-IV of the Rules, 2017 dealing with employment, Sub-Rule 3 of Rule 8 mandates every establishment to formulate equal opportunity policy by listing of posts identified suitable for persons with disability in the establishment and the establishments shall also maintain records to this effect. Chapter VII of the Rules, 2017, deals with issuance of "Certificate of Disability" under Form-IV.

18. **Precedents as noticed by this Court:**

In ***Vikas S/o Khanderao Keng Vs State of Maharashtra and Ors : 2020 SCC Online Bom 801***, a Division Bench of the Hon'ble High Court of Bombay, while dealing with various provisions of the present Act (Act 49 of 2016), and the earlier Act (Act 1 of 1996), had elaborately dealt with the statutory obligations of the employer under the statute. The relevant portions of the Judgment (Paras 17 to 24) rendered by the Division Bench of the Hon'ble High Court of Bombay, are usefully extracted hereunder:

"17. Further, this arbitrary imposition under Clause 11 is in the teeth of the provisos to Sub section (4) of section 20 of the 2016 Act which read as under:

"Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall 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."

18. The above provisos mandate that the petitioners ought to be shifted to an alternative post with MSRTC with the same pay scale and service benefits and if it is not possible for MSRTC to adjust the petitioners against any post immediately, they have to be kept on supernumerary posts until suitable posts are available or they attain the age of superannuation, whichever is earlier. This is a mandate under the 2016 Act and a statutory right granted to the petitioners. This right cannot be violated by Clause 11 of the Impugned Circular. MSRTC has no right and is in fact prohibited from treating the intervening period between the medical examination and a decision thereon as leave without pay. The

very idea of restoring an employee to a position with the same pay scale and service benefits which he or she held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the action of termination taken by the employer.

19. The financial, emotional and mental injuries suffered by the bus drivers before us today cannot simply be measured in terms of money. As a result of the discontinuance of their services by MSRTC, the petitioners lost their source of income with immediate effect. As a result, not only have the petitioners suffered economically but so have their respective families, who have been deprived of their source of sustenance. This would include deprivation of nutritious food, education as also general advancement in life. These sufferings will continue till the date MSRTC provides the petitioners with alternative positions. In our opinion, the petitioners' reinstatement by MSRTC entitles the petitioners to claim backwages in their entirety. The denial of backwages to the petitioners who have suffered due to their disability would amount to indirectly punishing the petitioners concerned and rewarding MSRTC by relieving them of their obligation to pay backwages. This would be wholly inequitable and unjust. This would be in contravention of the 2016 Act, as also in contravention of the Constitution of India. As a result, we are of the considered opinion that Clause 11 of the Impugned Circular is ultra vires the 2016 Act, as also violative of Article 14 of the Constitution of India. Therefore, we hereby quash and set-aside Clause 11 of the Impugned Circular.

20. Keeping in line with the mandate of section 20 of the 2016 Act, we order and direct MSRTC to provide each one of the petitioners with alternative posts having the same pay scale and service benefits as their earlier position. This exercise must be completed within a period of 4 weeks from the date of this Order.

21. As a result of the aforesaid decision, we order and direct MSRTC to pay backwages to each of the petitioners from the date that their respective services were discontinued until the date that they have been provided with an alternative position in compliance with section 20 of the 2016 Act. These wages must be credited to the petitioners' accounts within a period of 6 weeks from the date of pronouncement and uploading of this Order. However, whilst computing the amount of backwages to be paid to the petitioners, we grant liberty to MSRTC to ascertain whether or not any of the petitioners were otherwise employed during this intervening period and if so, MSRTC would be at liberty to deduct the amount of wages that the petitioners may have earned from their alternative employment whilst paying out the backwages. In the event MSRTC wishes to undertake this exercise, such exercise should be completed within a period of 4 weeks from the date of pronouncement and uploading of this order.

22. The Writ Petitions are disposed of accordingly. We appreciate the assistance rendered by Dr. Sathe as Amicus Curiae in the matter.

23. Whilst parting, we anticipate that the Impugned Circular albeit in the absence of Clause 11 which we have struck down hereinabove, may still give rise to grievances suffered by various other persons employed by

MSRTC who may be diagnosed with disabilities in the future. In order to prevent their suffering, we propose the following measures which could be taken into consideration when MSRTC implements the Impugned Circular:

- i. Upon an employee acquiring a disability, the medical examination and disability certification ought to be completed within a period of 4 weeks of such disability coming to the notice of MSRTC;
- ii. Within 4 weeks from the aforesaid medical examination and disability certification, the employee shall be provided with an alternative position with MSRTC in accordance with section 20 of the 2016 Act;
- iii. The time elapsed in conducting the medical examination, certifying the disability and providing an alternative position shall be treated as part of the persons' employment and the employee shall be paid backwages for this entire period expeditiously;
- iv. MSRTC will be at liberty to test the veracity or otherwise of disability certificates that may be furnished. However, this exercise of ascertaining the truthfulness of these disability certificates must in any event be completed within a period of 2 weeks from the date of submission of such disability certificates. In the event that MSRTC fails to find any fault with the said disability certificates, the principles enumerated hereinabove ought to apply.

24. MSRTC will have to implement these guidelines in their entirety, keeping in mind the intent, objective and spirit of the 2016 Act.”
(emphasis supplied)

19. The Division Bench of the Hon'ble High Court of Bombay had considered another identical situation as in the present case. In ***Luis Fernandes Vs. Goa State Schedule Castes and Other Backward Classes Finance and Development Corporation Limited, through its Managing Director and Ors : 2023 SCC OnLine Bom 1963***, at Para No.19 of the Judgment, the Division Bench of the Hon'ble High Court of Bombay, had categorically held that a voluntary retirement cannot be forced upon the Petitioner. The relevant portions of the Judgment are usefully extracted hereunder:

“19. It is surprising that the earlier resolution no. 03/22, recorded in the 158th meeting dated 29.06.2022, was not overruled, but it was resolved that the Petitioner be granted voluntary retirement on medical grounds. Such a resolution clearly goes to show that

Respondent No. 1/Board observed/resolved that the Petitioner be granted voluntary retirement on medical grounds. Even if such a resolution is accepted, it clearly goes to show that in case the Petitioner apply for voluntary retirement on medical grounds, he could be considered as retired voluntarily as unfit to work as a Driver. The condition must be implied in it that such voluntary retirement could be granted only on an Application filed by the Petitioner. A "voluntary" retirement cannot be forced upon the Petitioner. Else, it ceases to be "voluntary". Even a compulsory retirement must abide by the Rules and be informed with fairness and sensitivity, particularly in a fact situation like the present one.

20. By order dated 12.12.2022, thereby informed the Petitioner that the Board has decided to retire him on medical grounds. By this order dated 12.12.2022, the Petitioner was given a notice of 30 days with regard to his premature retirement on medical grounds. Vide order dated 09.01.2023, the Petitioner was relieved from duties w.e.f. 11.01.2023.

21. The learned Additional Government Advocate appearing for the Corporation claimed that though the Corporation is not having its own Rules, the Government Rules with regard to the employment and service conditions apply. However, he failed to produce any documents or resolution from the Corporation stating that the Government Rules regarding service conditions have been adopted. He also failed to justify the termination by reference to any such Rules or Regulations. The absence of Rules cannot be used as a charter for arbitrary action.

22. Admittedly, Respondent No. 1 is a Corporation, and though it is a Government of Goa undertaking, it cannot be considered a Government Department. However, Respondent No. 1 is definitely a "State" under Article 12 of the Constitution. There was no dispute raised about the Respondents status as a "State" under Article 12 of the Constitution. Only there was no clarity about the status of the Rules and Regulations applicable. Assuming or even accepting that the Government Rules have been adopted, not even an attempt was made to show how the insensitive termination of the Petitioner's services was consistent with any Government Rules or procedures.

23. In the case of Delhi Transport Corporation v. D.T.C. Mazdoor Congress, 1991 Supp (1) SCC 600, the Constitutional Bench, while dealing with service law and termination, observed fairness and fair treatment by affording the principles of natural justice are an integral part of Article-14, which included the right to fair treatment. The court held that the services of a permanent employee cannot be terminated arbitrarily or unfairly. The compliance with the principles of natural justice is a facet of the fairness and non-arbitrariness that Article 14 of the Constitution guarantees. Here, even the issue of the protection guaranteed by Article 21 is involved.

24. The Petitioner has rendered 22 years of meritorious service. He was afflicted with a paralytic stroke. He frankly expressed difficulties about long-distance driving more out of consideration for the safety of the commuters. He requested for some reasonable accommodation.

This was initially agreed upon after consultation with the Petitioner in the 158th Board meeting dated 29.06.2022. In the following Board meeting, only for the confirmation of the minutes of the previous minutes, it was decided to force the Petitioner to retire. There was no consultation with the Petitioner as in the case of the previous meeting. There was no compliance with the principles of natural justice or even fair play. No rules are shown in support of this insensitive action. Even the discussion in this Board meeting does not align with the ultimate decision taken. Simply, a permanent employee who had put in service for 22 years was eased out because he expressed difficulties with long-distance driving due to the paralytic stroke suffered by him from which he recovered, but not full enough to undertake long-distance driving. Such a termination infringes the guarantees in Articles 14 and 21 of the Constitution.

25. In the case of Anand Bihari (supra), the question of termination of services of Drivers of the State Road Transport Corporation came up wherein the Supreme Court observed that the Drivers were serving the Corporation for years together and due to weakness of their eyesight, they could not have been terminated from the services as it would be unjust, inequitable and discriminatory.

26. In the case of Kunal Singh (supra), the Apex Court, while dealing with persons with disabilities and, more particularly, Section 47 of the Act of 1995, observed that when an employee acquires a disability during service needs to be protected under Section 47 of the said Act. If such protection is not given, he would not only suffer himself, but possibly, all those who depend on him would also suffer.

27. The matter in hand clearly goes to show that first of all, the resolution dated 29.06.2022 was to consider the employment of the Petitioner as a Multi Tasking Staff, thereby accommodating him for other works due to his physical condition. This resolution was not set aside or rejected in the meeting held on 06.10.2022, and in fact, no specific decision was taken except that the Petitioner be voluntarily retired on medical grounds. As already observed, such resolution depends only on the Application filed by the Petitioner for voluntary retirement and would not permit the Corporation to consider and pass an order to retire the Petitioner on medical grounds and that too without giving any opportunity to the Petitioner. Resolution no. 13/22 dated 06.10.2022 is contrary to the orders passed whereby the Petitioner was compulsorily retired from service and that too by giving one month's notice.

28. We consider that the action taken by Respondent No. 1/Board was insensitive, high handed and without application of the mind. Such an action cannot be sustained, inter alia, for the simple reason that no Application was filed by the Petitioner for voluntary retirement. That the earlier resolution dated 29.06.2022 was to accommodate the Petitioner as Multi Tasking Staff by giving him other work. The contention raised by Respondent No. 1 that there is no post available, has no substance at all. Thus, the action of Respondent No. 1 vide the impugned order dated 12.12.2022 and the order dated 09.01.2023 are wholly illegal and need to be quashed and set aside.”

20. Learned Counsel for the Writ Petitioner has placed reliance on a Judgment rendered by the Division Bench of this Hon'ble Court in ***K. Moses Vs. APSRTC and Ors. (W.P.No.3031 of 2008, decided on 02.11.2010): MANU/AP/0763/2010***. Learned Counsel for the Writ Petitioner has drawn the attention of this Court to certain portions of the Judgment to state that a 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 legal requirements to validate such waiver. The level of literacy of the employees in the APSRTC itself being open to the 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 (Para No.23). The other relevant portions in the said Judgment are extracted hereunder:

“27. The order dated 13.11.2006 retiring the Petitioner from service suffers from yet illegality another. 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.

28. 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 Cooperative Store Ltd. 1991 LLR 320, 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 Harika MANU/SC/0314/1996 : AIR 1966 SC 1313. 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.

29. 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 posts. 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 possible to adjust him against any existing post. This indicates that such an employee is not to be subjected to 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.”

21. In **Bhagwan Dass and Anr Vs. Punjab State Electricity Board : (2008) 1 Supreme Court Cases 579**, the Apex Court held as under:

“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.”

22. In view of the above discussion, this Court is of the opinion that the Writ Petitioner is entitled for alternate appointment by making a fresh evaluation.

23. **DIRECTIONS:**

Under these circumstances, this Court would deem it appropriate to allow this Writ Petition and refer the Writ Petitioner to the **Sri Venkateswara Ramnarayan Ruia Government General Hospital, Tirupathi (Ruia Hospital, Tirupathi)** for fresh evaluation. The Superintendent of the Hospital, having administrative superintendence, is directed to constitute a Medical Board within two weeks from the date of receipt of this Order, to examine

whether the Writ Petitioner is suitable for any alternate employment in the Respondent Corporation. After such examination, the opinion of the Medical Board shall be communicated to the Writ Petitioner and also to the Respondent Nos. 2 to 4 within two (02) weeks by the Superintendent of Sri Venkateswara Ramnarayan Ruia Government General Hospital, Tirupathi (Ruia Hospital, Tirupathi). If the Medical Board finds the Writ Petitioner fit for any alternate employment, the Respondent Corporation shall consider the case of the Writ Petitioner in terms of the opinion given by the Medical Board by providing suitable employment and consequently accept the return of Rs.4,00,000/- with 6% simple interest per annum from the Writ Petitioner within two (02) months from the date of his appointment; or, in the alternative, the Respondent Corporation may also deduct reasonable amounts from the future salary of the Writ Petitioner as Equated Monthly Instalments (EMIs). Such alternate employment shall be provided by the Respondent Nos.2 to 4 within four (04) weeks from the date of receipt of the Medical opinion from the Superintendent of Sri Venkateswara Ramnarayan Ruia Government General Hospital, Tirupathi (Ruia Hospital, Tirupathi).

24. In the above premise, this Writ Petition stands allowed in terms of the observations and directions rendered hereinabove. No order as to costs.

25. Interlocutory Applications, if any, stand closed in terms of this order.

26. On the query made by this Court to Sri K. Viswanadham, Learned Standing Counsel for the APSRTC whether the APSRTC has complied with the requirements of Chapter-IV of the new Act viz., The Rights of Persons with Disabilities Act, 2016, the learned Standing Counsel for the APSRTC has answered in the negative that the Respondent Corporation (APSRTC) has not complied with the provisions under Chapter-IV of the new Act, 2016.

27. Under these circumstances, before parting with this case, this Court deems it extremely necessary, as it is a statutory mandate, that the Respondent Corporation must be directed to comply with the scheme of the

Act, particularly in respect of various provisions under Chapter-IV (from sections 19 to 23). Therefore, the Respondent No.2 is directed to comply with the statutory requirements under Chapter-IV of the Act within a period of two months from the date of uploading of this Order on the website of this Court; and report compliance by filing an Affidavit before this Court.

28. List this Writ Petition on 02-09-2024 for compliance. For the purpose of listing, Registry is directed to obtain necessary directions from the Hon'ble Chief Justice.

GANNAMANENI RAMAKRISHNA PRASAD, J

Dt: 19.06.2024
Vns/Mnr

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HON'BLE SRI JUSTICE GANNAMANENI RAMAKRISHNA PRASAD

WRIT PETITION No. 8912 OF 2024

Dt:19.06.2024.

VNS/MNR