

(2001) 03 AP CK 0015
Andhra Pradesh High Court
Case No: WA No. 1061 of 2000

N. Siva Kumar

APPELLANT

Vs

APSRTC, Musheerabad,
Hyderabad and Others

RESPONDENT

Date of Decision: March 12, 2001

Acts Referred:

- Constitution of India, 1950 - Article 14, 16
- Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 - Section 47

Citation: (2001) 3 ALD 166 : (2001) 3 ALT 312

Hon'ble Judges: S.B. Sinha, C.J; S.R. Nayak, J

Bench: Division Bench

Advocate: Mr. M. Surender Rao, for the Appellant; Mr. Nanda R. Rao and Mr. Ravi Kumar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.B. Sinha, CJ

1. This appeal is directed against an order dated 1-8-2000 passed by a learned single Judge of this Court in WP No.35030 of 1998 whereby and whereunder the writ petition filed by the appellant herein was disposed of with certain directions. The said writ petition was filed by the petitioner herein praying for the following reliefs:

".....to issue a writ order or directions especially one in the nature of writ of mandamus declaring that the action of the respondents in issuing proceedings in RC No.P2/145(15)/98SNG dated 15-7-1998 as illegal, arbitrary and discriminatory, violative of Articles 14 and 16 of the Constitution of India and further declare that petitioner is entitled to be given an alternative appointment and pass such other order or further orders as this Hon'ble Court may deem fit and proper in the

circumstances of the case.

Direct the respondents to provide an alternative employment to the petitioner pending disposal of the writ petition and pass such other order or further orders as this Hon"ble Court may deem fit and proper in the circumstances of the case."

2. The learned single Judge, having regard to the aforementioned prayer, directed:

"Under these circumstances, the writ petition is disposed of with a direction to the respondents that the case of the petitioner either for appointment to the post of cleaner or for appointment to the post of conductor shall be considered in accordance with the existing rules and guidelines issued by the respondents-Corporation."

3. Mr. Surender Rao, the learned Counsel appearing on behalf of the appellant herein has drawn our attention to the proceedings bearing APSRTC No.P1/462(1/A)/97-SNG dated 27-1-1998 issued by the Divisional Manager, Sanathnagar Division, Hyderabad, and submitted that from a perusal thereof it would appear that the appellant was compelled to drive a jeep, which was otherwise condemned. The learned Counsel would submit that on the face of the findings arrived at in the said proceedings no blame could have been laid on the appellant.

4. Our attention has also been drawn to the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (hereinafter referred to as "the said Act" for the sake of brevity) which reads:

"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 can subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

and a submission was made that the respondents should be directed to consider the matter from that angle.

5. It appears that the appellant herein had not raised the said question before the learned single Judge. However, having regard to the fact that a beneficent legislation has been enacted for a person who has become disabled, we are of the opinion that the case of the appellant may be considered by the appropriate authority and the respondents-Corporation, having regard to the aforementioned provision, as also a decision of this Court, in which one of us i.e., Justice S.R. Nayak was a member, in [Syed Sha Musebulla Alvi Vs. Secretary, General Administrative Department, Secretariat, Hyderabad and others](#), . Yet, again in [Sulochana Vs. APSRTC, Hyd. and another](#), , a learned single Judge of this Court has held that such a benevolent provision has to be read keeping in view the protecting rights of the disabled to lead a normal life, The learned Judge at paragraph 19 of the said judgment observed thus:

"19. There are number of congenital diseases and diseases with constitutional disorders which disable a person to lead a normal life. That non-disabled do not understand the disabled in a thing of past. Progressive ideas about human development, rapid advances in technology and rejuvenated pursuit of human rights have resulted in a "new understanding" of the rights of the disabled. There are even International Covenants and Charters protecting the rights of the disabled. In discharge of its International treaty obligations, India has enacted the above Act. After coming into force of the said Act, it would be a retrograde step to disqualify a woman who suffered from gestatioiial diabetes from working as a bus Conductor in the RTC. It would be irrational as there are number of diabetic persons working in more onerous jobs and contributing to the community welfare."

6. Mrs. Nanda R. Rao, the learned Standing Counsel appearing on behalf of the respondents-Corporation has very fairly stated that in terms of the provisions of the said Act, the Road Transport Corporation has already adopted a policy decision.

7. Having regard to the fact that a right has been conferred upon the appellant herein under a statute, although the question raised herein has not been raised before the learned single Judge, we, in modification of the order passed by the learned single Judge, direct the appellant herein to file a representation, if not already filed, before the appropriate authority seeking the relief prayed for in this appeal, and on receipt of such a representation, the appropriate authority may consider the case of the appellant in the light of the aforementioned provisions and the in the light of the aforementioned provisions and the decisions referred to hereinbefore, and pass an appropriate order at an early date, preferably within a period of four (4) weeks from the date of communication of this order.

8. With the aforementioned observations and directions, the writ appeal is disposed of. No order as to costs.