

(2014) 09 AP CK 0039

Andhra Pradesh High Court

Case No: Writ Appeal No. 1384 of 2014

A.P.S.R.T.C.

APPELLANT

Vs

K. Naaeswar Rao

RESPONDENT

Date of Decision: Sept. 26, 2014

Citation: (2015) 2 ALD 156

Hon'ble Judges: L.N. Reddy, J; Challa Kodanda Ram, J

Bench: Division Bench

Advocate: K. Satyanarayana Murthy, SC, Advocate for the Appellant; V. Narasimha Goud, Advocate for the Respondent

Judgement

L. Narasimha Reddy, J.

This writ appeal is filed against the order, dated 25.09.2013 passed by the learned Single Judge in W.P. No. 20890 of 2010. The writ petition was filed by the sole respondent herein challenging the order, dated 22.02.2010, through which he was retired from service of the Corporation with effect from 26.05.2009. Learned Single Judge-allowed the writ petition. The facts in brief are as under:

2. The respondent joined the service of the Corporation as a Security Guard in the year 1988. In the year 2009, he was working in the Jangareddygudem Depot of the Corporation. From 01.05.2009 onwards, he did not attend the duties on account of his serious illness. On 12.05.2009, he reported to the Head Security Guard. On finding that his health condition was deteriorating, the Depot Manager referred him to the Hospital at Eluru. The Doctor is said to have advised the respondent to get specialized treatment in the Headquarters Hospital of the Corporation at Hyderabad.

3. The respondent approached the 3rd appellant on 21.05.2009 to enable him to travel to Hyderabad and to get treatment at that place. The 3rd appellant is said to have declined the pass. On the same day, the respondent is stated to have submitted a letter stating that since the medical facilities are not being extended

and that he is suffering serious ill-health, he intends to retire from service. Stated to be on the basis of the said representation, the Vigilance and Security Officer, 2nd respondent herein issued proceedings dated 26.05.2009 retiring the respondent from service.

4. The respondent filed the writ petition challenging the said order. He pleaded that he did not seek voluntary retirement and a statement made almost in frustration on account of non-extension of medical facilities to him was treated as basis. It was also urged that though the 3rd appellant addressed a letter dated 24.08.2009 to the 2nd appellant for compliance with various steps on the part of the respondent, as a condition precedent for extending the benefit of voluntary retirement, no steps were taken and still the order impugned in the writ petition was passed. Other grounds were also urged.

5. The appellants filed a counter affidavit opposing the writ petition. According to them, the order, dated 22.02.2010 was passed only on the basis of the application submitted by the respondent and the certification made by the medical officer. Learned Single Judge allowed the writ petition and directed reinstatement of the respondent with continuity of service and backwages. Hence, this appeal.

6. Heard Sri K. Satyanarayana Murthy, learned counsel for the appellants and Sri V. Narasimha Goud, learned counsel for the respondent.

7. There is no denial of the fact that the respondent fell ill in the first week of May 2009 and he attended the Depot on 12.05.2009. On a reference made to the Hospital at Eluru, he was examined and the Doctor opined that specialized treatment is necessary. The respondent approached the 3rd appellant with a prayer to arrange for issuance of pass, so that he can avail the treatment at the Headquarters Hospital. However, the pass was not arranged. Learned counsel for the appellants has made available to us the entire record. On 12.05.2009 itself, the Head Security Guard of the 3rd appellant Depot addressed a letter to the 2nd appellant. He stated that the 3rd appellant denied the pass to the respondent and even when he approached in this context, there was no change in the matter. The relevant portion reads:

"On 12.05.2009, the Security Guard Sri K. Nageswara Rao, E.251738 brought a letter from the Medical Officer R.T.C. Clinic addressed to the Superintendent, APSRTC Hospital, Tarnaka Hyderabad for specialized treatment and attended the office of the Depot Manager Jangareddygudem for giving necessary directions letter, but the DM/JRG has not accepted to do so. Then, I also approached the DM/JRG showed him a letter which contained endorsement of your good offices forwarded to DM/JRG with a request to direct the above named SG for Tarnaka Hospital for better treatment for kidney and the above named SG'S representation, but the DM/JRG has not accepted."

8. This would virtually reveal the circumstances, under which the respondent had made a request to permit him to retire almost under frustration. The letter said to have been submitted by the respondent was treated as a prelude for medical invalidation and obviously for that reason, he was referred to the Headquarters Hospital. In case, the prescribed procedure was followed, before the order, dated 22.02.2010 was passed, it would have been difficult to accept any contention to the contrary made on behalf of the respondent.

9. On 24.08.2009, the 3rd appellant addressed a letter to the 2nd appellant indicating the steps to be taken in the matter of extending the benefit of medical retirement to the respondent. The letter reads-

"Vide ref. 4th cited, the medical certificate of Tarnaka Hospital was forwarded to this Officer for issuing necessary orders for medical retirement of Sri K.N. Rao, E.251738, Security Guard of JRG depot.

In this connection, it is necessary to obtain an undertaking from the party to the effect that-

(a) He will not seek his job back again in future.

(b) He will not prefer a re-medical examination.

(c) He will not appeal for alternate job in the Corporation.

(d) He will not seek any job/monetary benefit for his children/dependants in future."

Hence, you are requested to arrange to obtain the above undertaking from the employee and forward the same to this office for taking further action on the matter."

10. It is obvious that unless the steps indicated in the letter, dated 24.08.2009 are taken, there would not be any occasion to retire the respondent either on voluntary basis or on medical invalidation. Curiously enough, there is not even a reference to the letter, dated 24.08.2009 in the proceedings, dated 22.02.2010. It is not in dispute that none of the undertakings referred to in the letter dated 24.08.2009 are obtained from the respondent. The whole exercise smacked of arbitrariness.

11. Assuming that there existed an occasion to accept the application for voluntary retirement, the appellants were under obligation to inform the respondent about his rights under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. No such efforts were made. The learned Single Judge took note of these and other violations and granted the relief. We are not inclined to interfere with the same however, one thing that impresses us is the quantum of backwages. The respondent was out of service in 2010. The Corporation did not have the benefit of his service ever since then and there is nothing on record to disclose that the respondent was otherwise gainfully employed. Taking the totality of circumstances into account, we direct that the backwages shall be

restricted to 50%.

12. Hence, we partly allow the appeal confirming the order of the learned Single Judge in all respects but restricting the backwages to 50%.

13. The miscellaneous petition filed in this appeal shall also stand disposed of. There shall be no order as to costs.