



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 17TH DAY OF JANUARY, 2023

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 31943 OF 2014 (S-KSRTC)

BETWEEN:

M.B.JAYADEVAIAH

...PETITIONER

(BY SRI. V S NAIK., ADVOCATE)

AND:

1. THE MANAGING DIRECTOR
BMTc, CENTRAL OFFICES,
K.H ROAD,
BANGALORE-560027
2. THE CHIEF PERSONNEL MANAGER
BMTc, CENTRAL OFFICES,
K.H ROAD,
BANGALORE 560027

...RESPONDENTS

(BY SMT. H R RENUKA., ADVOCATE)

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by POORNIMA
SHIVANNA
Location:
HIGH COURT
OF
KARNATAKA

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT OR DIRECTION QUASHING THE GENERAL ESTABLISHMENT ORDER NO.533/2002 VIDE REFERENCE NO.ಬೆಂಮಸಾಸಂ:ಕೇಕೆ:ಸಿಬ್ಬಂದಿ:3151:2002 DATED



04.09.2002, THE TRUE COPY OF WHICH IS PRODUCED AND MARKED AS ANNEXURE-A AND THE OFFICE ORDER BEARING REFERENCE NO. ಬೆಂಮಸಾ/ಕೇಕೆ/ಸಿಬ್ಬಂದಿ/ಇ-1/4617/2013-14 DATED 15-03-2014 ISSUED BY THE SECOND RESPONDENT, THE ORIGINAL OF WHICH IS PRODUCED AND MARKED AS ANNEXURE-'M' TO THE EXTENT THE PETITIONER IS AGGRIEVED AND ETC.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioner is before this Court seeking for the following reliefs:

- a. *Issue Writ of Certiorari or any other appropriate writ or direction quashing the general establishment Order No.533/2002 vide Reference No. ಬೆಂಮಸಾಸಂ:ಕೇಕೆ:ಸಿಬ್ಬಂದಿ:3151:2002 dated 04.09.2022, the true copy of which is produced and marked as Annexure-A and the office Order bearing Reference No.ಬೆಂಮಸಾ/ಕೇಕೆ/ಸಿಬ್ಬಂದಿ/ಇ-1/4617/2013-14 dated 15.03.2014 issued by the Second Respondent the, original of which is produced and marked as Annexure-'M' to the extent the Petitioner is aggrieved.*
- b. *Issue a Writ of Mandamus or any other appropriate writ or direction directing the respondents to restore the pay of the petitioner applicable to the post of driver which the petitioner was drawing as on 04.09.2002 and to pay the arrears of salary and extend all other consequential benefits, such as annual increments, revision of pay scales, grant of selection grade, promotion as Senior Driver, etc. to meet the ends of justice.*
- c. *Pass such other order or orders as this Hon'ble Court may deem fit in the interest of justice.*



2. The petitioner was appointed as a driver in the then BTS Division, KSRTC, during the year 1984. Upon formation of new Corporation-BMTC, the services of the petitioner stood assigned to the BMTC i.e., respondent herein. While the petitioner was discharging his duties as a driver, on 04.07.1999, the vehicle met with an accident wherein the petitioner sustained severe injuries viz., fracture of right transverse process of T6, T7 and T8, fracture of posterior part of right T7 Rib, fracture of middle column of T6 and anterior wedge compression fracture of T8 vertebra. The petitioner was admitted to St.John's Medical College Hospital where he underwent major surgery and was absent from duty for a period of 11 months on account of hospitalization.
3. In view of the petitioner not being in a position to discharge his duties in the Road Transport



Corporation as a driver, the petitioner sought for awardal of light work. In pursuance thereto, in July 2002, the case of the petitioner was referred to the Bangalore Medical College and Victoria Hospital for detailed medical examination and report.

4. In pursuance of the notice received from the Medical Board, the petitioner appeared before the Board. The Board examined the petitioner and a report was given to the respondent - Road Transport Corporation declaring that the petitioner is unfit to discharge his duties as a driver and recommended for light work.
5. In furtherance of the same, the Board exercising powers under Regulation 20 (3) of the KSRTC (Cadre and Recruitment) Regulations, 1982 (for short, 'Regulations') referred the request of the petitioner to the Committee. The Committee recommended the case of the petitioner for light work and by way of its



report dated 13.08.2002 directed for change of cadre of the petitioner from driver to that of office attender.

6. This report was accepted and the competent authority, in terms of order dated 04.09.2002, the cadre of the petitioner was changed from driver to that of the office attender and assigned duties in a depot. The said order was passed in terms of the Circular No.681 dated 09.09.1987 and pursuant thereto, the petitioner's pay was ordered to be re-fixed in the pay scale applicable to the office attender and the difference if any in the basic pay was directed to be treated as personal pay.

7. Disciplinary proceedings having been initiated as regards the accident, an enquiry being held, the Enquiry Officer reported that there was no negligence on the part of the petitioner and absolved him of any negligence.



8. The change of cadre of the petitioner having been done in terms of the Regulation 20 (3) of Regulations, the basic pay of the petitioner was reduced retrospectively and it is aggrieved by the same that the petitioner submitted a representation on 22.01.2013, which was not considered. As such, the petitioner filed a W.P.No.31161/2013 when the counsel for the respondent agreed to consider the representation of the petitioner in accordance with law.

9. The petitioner submitted one more detailed representation on 30.07.2013. Since the same was not considered, contempt proceedings in CCC No.2615/2013 were initiated. During the pendency of the said contempt proceedings, the respondent directed the petitioner to be examined by the Medical Board in terms of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full



Participation) Act, 1995 (for short, 'Disabilities Act') and submitted a medical certificate vide endorsement dated 04.12.2013.

10. The petitioner also received a letter dated 16.11.2013 addressed to the Chief Medical Officer, BMTC Hospital, Bangalore requesting for the examination of the petitioner. In furtherance of the same, the petitioner appeared before the Medical Board, who inturn submitted a report. In view thereof, the contempt proceedings came to be dropped on the understanding that medical certificate would be considered. The medical certificate was accepted on 15.03.2014. But however the representation was not positively answered by the respondent and the same came to be rejected. It is aggrieved by the same, the petitioner is before this Court.



11. Sri.V.S.Naik, learned counsel for the petitioner would submit that

11.1.It is during the course and scope of employment that an accident had occurred, which resulted in disability being caused to the petitioner.

11.2.The employer accepting the disability, downgraded the petitioner's cadre from that of a driver to the cadre of an office assistant and the petitioner has been discharging duties therein.

11.3.It is on account of the retrospective application of downgrading order that the representation was submitted which has not been properly considered by the authorities.

11.4.The pay of the petitioner was required to be protected from being downgraded. Regulation 20 (3) does not in any manner speak of downgrading or any effect on the pay and as



such, Section 47 of the Disabilities Act which would be applicable requiring the pay of the persons like the petitioner suffering from disability to be protected. This not having been done, rejection of the representation is improper and is required to be set aside and the pay of the petitioner as a driver be required to be granted with due increments and all other consequential benefits subsequent to the downgrading of the cadre as also before since the order at Annexure-A had made the fixation of pay and cadre retrospective in nature.

12. Ms. H.R.Renuka, learned counsel for the respondent – Road Transport Corporation would submit that

12.1. It is in terms of the Circular bearing No.681 that the case of the petitioner has been considered and in terms of the said Circular, on downgrading of the cadre, the pay of the



workman would have to be fixed as per the downgraded post and therefore, no fault can be found with the Road Transport Corporation.

12.2. The pay having been fixed in the year 2002 and the representation having been made in the year 2013, the petitioner not having challenged the same, could not have challenged after a period of nearly 11 years.

12.3. Section 47 of the Disabilities Act would require an application of Section 2(i) read with Section 2(t) of the Disabilities Act and it is the only disabilities which have been enumerated in Section 2(i) of the Disabilities Act, which can be taken into consideration for application of Section 47 of the Disabilities Act subject to however the percentage of disability as has been fixed under Section 2(t) of the Disabilities Act viz., 40%.



12.4. This disability is required to be ascertained as on the date of downgrading the cadre which happened in the year 2002. There being no particular certificate which has been placed on record to indicate the disability of the petitioner in the year 2002 being 40% or more, Section 2(t) of the Disabilities Act would not be applicable. Therefore, Section 47 of the Disabilities Act would not be applicable and it is only the Circular bearing No.681 which would be applicable. The downgrading to the attendant post was sought for by the petitioner himself, even though he had an option to drive a light motor vehicle, as per the recommendation of the medical board and the petitioner having chosen office assistant cadre knowing fully well the pay scale thereof, no representation could have been submitted for



making a pay scale of a driver applicable to the petitioner.

12.5. On these grounds, she submits that there is no infirmity in the order of rejection passed by the respondent and the present Writ Petition is required to be dismissed.

13. Heard Sri.V.S.Naik, learned counsel for the petitioner and Ms.H.R.Renuka, learned counsel for the respondent and perused papers.

14. It is not in dispute that the petitioner has suffered an accident during the course and scope of his employment. It is also not in dispute that various injuries were caused to the petitioner and that he suffered from locomotor disability. Locomotor disability is a disability in terms of Section 2 (i) (v) of the Disabilities Act. The contention of the respondent is that it is not only disability but the percentage of disability in terms of Section 2(t) of



the Disabilities Act which would be required to make Section 47 of the Disabilities Act applicable.

15. Section 47 of the Disabilities Act reads as under:-

47. Non-discrimination of 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 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.

16. Section 2 (t) of the Disabilities Act reads as under:-

2(t) *"person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority;*



17. Section 2 (t) of the Disabilities Act defines a person with disability to mean a person suffering from not less than 40% of any disability. This definition is relating to a person with reference to disability in terms of Section 2(i) of the Disabilities Act.
18. Section 47 of the Act deals with non-discrimination in government employments and further mandates that no establishment shall dispense with or reduce in rank an employee who acquires a disability during his service.
19. The first proviso to the said Section makes it clear that if an employee were to acquire disability and is not suitable for the post that he was holding, he could be shifted to some other post with the same pay scale and service benefits.
20. The second proviso makes it clear that if it is not possible to adjust the employee against any post, a



supernumerary post would be created till he attains the age of superannuation or a suitable post is available, whichever is earlier. Thus, Section 47 of the Disabilities Act categorically mandates that merely because a person suffers from disability, he/she shall not be reduced in rank but can only be shifted to another post subject to the pay-scale and the service benefit that he/she was entitled to as on that date being protected.

21. Section 47 does not make any reference to Section 2 (t) or to a person with disability requiring the ascertainment of percentage of disability to be 40%.
22. What Section 47 only speaks of is that no person shall be discriminated on account of disability and/or service not be dispensed with. In the event of that person being shifted to some other post, the same pay-scale and service benefits as are being drawn are made available.



23. The Disabilities Act having come into force on 07.02.1996, the said Act would be applicable to the present case since the accident occurred in the year 1999 and the order of downgrading the cadre of the petitioner was passed in the year 2002 and the concerned endorsement which is under challenge was issued in the year 2013.

24. Once the Disabilities Act came into force, the question of Road Transport Corporation referring to and relying upon a Circular issued by Road Transport Corporation in Circular No.681 to contend that in terms of the said Circular, the Corporation was entitled to downgrade the cadre as also to fix the pay-scale as per downgraded cadre, in my considered opinion would stand foul of Section 47 of the Act and once the Act had come into force, the Road Transport Corporation could not have relied upon the Circular for that purpose.



25. It was but required for the Road Transport Corporation to make Section 47 of the Act applicable and once an employee's cadre is downgraded and/or he is shifted to some other post, the pay-scale and service benefits as mandated under first proviso to Section 47 be protected.

26. The second contention raised by Ms.H.R.Renuka, learned counsel for Road Transport Corporation is that the disability has to be ascertained as on the date of the order that is the year 2002. In the present case, when the petitioner was referred to the medical board, there was no such condition, which had been imposed by Road Transport Corporation or instructions given to the Medical Board in the letter issued by the Road Transport Corporation to the Medical Board to give a certificate as on the year 2002.



27. When no demand specifying the date was made by the Road Transport Corporation, the Medical Board issued the certificate as on the date on which the examination was made. At this length of time, it is not permissible for the Road Transport Corporation to contend that the certificate was to be of the year 2002 when no such demand or condition had been imposed in the reference made by the Road Transport Corporation itself of the petitioner to the Medical Board. Thus, this contention is also rejected.

28. The last contention of Ms.H.R.Renuka, learned counsel for the respondent - Road Transport Corporation is that it is only on humanitarian ground without looking into the percentage of disability that the Road Transport Corporation has downgraded the cadre of the petitioner from that of the driver to the office assistant and in terms of Regulation 23 of the Regulations that the cadre of the petitioner has been



downgraded from that of a driver to office assistant more so since there was a request made by the petitioner to that effect.

29. I am of the considered view that once the Disabilities Act come into force Circular No.681 would not be applicable, the powers under regulation 20(3) of the Regulation can only be exercised in the event of the requirement under Section 2(t) of the Disabilities Act being fulfilled that is to say that the disability has to be 40% or more. In the event of the employee suffering from disability of 40% or more as a matter of right such an employee would be entitled for the benefit of Section 47 and for downgrading of the cadre without any adverse impact on the pay and the benefits. Needless to say in the event of the disability being less than 40% then Section 2 (t) of the Disabilities Act not being applicable, such a person not being a person with disability, Regulation



20 (3) cannot be brought into force to downgrade the cadre of such an employee.

30. In the light of peculiar facts of this case, it is also required to make a mention that whenever a request is made under Regulation 20(3), necessary instructions would have to be issued by the Road Transport Corporation to the Medical Board as also to the concerned employee that the certification of disability has to be obtained as on the date on which the request for downgrading of the cadre is made and if no such information is conveyed to the Medical Board or to the employee and the Road Transport Corporation were to act on it, then subsequent thereto, the Road Transport Corporation cannot be heard to contend that the certificate of the Medical Board has to be on the date on which the application for downgrading has to be made.



31. In view of the above discussions, it is clear that the impugned endorsement issued by the respondent in the present case is not in accordance with law and falls foul of Section 47 of the Disabilities Act. Hence, I pass the following:

ORDER

- i) The Writ Petition is allowed.
- ii) A certiorari is issued. The General Establishment Order No.533/2002 dated 04.09.2002 at Annexure-A and Office Order dated 15.03.2014 at Annexure-M are hereby quashed.
- iii) A mandamus is issued, the respondents are directed to restore the pay of the petitioner as applicable to the post of driver which the petitioner was drawing as on the date of downgrading cadre i.e., 04.09.2002 prior to and subsequent thereto and make payment of all arrears of salary and consequential benefits from the time of his appointment within a period of three months from the date of receipt



of copy of this order from the date of downgrading of the post.

- iv) Respondents to act on a printout of the uploaded copy of this order on the website of this Court, if so furnished by the petitioner, without waiting for certified copy thereof. If respondents have any doubt about the order, respondents may verify the contents of the order from the website of this Court and/or from the learned panel advocate appearing in the matter. The QR code on this order could also be scanned to view the website of the High Court to verify the order.

**Sd/-
JUDGE**

PRS
List No.: 1 Sl No.: 15