

IN THE HIGH COURT OF KARNATAKA

CIRCUIT BENCH AT DHARWAD

DATED THIS THE 25TH DAY OF MAY, 2009

BEFORE

THE HON'BLE MR. JUSTICE ASHOK.B. HINCHIGERI

WRIT PETITION NO.46175/2002(S-RES)

BETWEEN:

K AJITH KUMAR S/O LATE G BOMMAPPA
AGE; 42 YRS,
NOW WORKING AS OFFICE ASST. GRADE-II,
DIVISIIONAL MECHANICAL ENGINEERING
OFFICE, NORTH WEST KARNATAKA ROAD
TRANSPORT CORPORATION,
BELGAUM DIVISION, BELGAUM. : PETITIONER

(BY SRI S. V. SHASTRI & SRI RAVI HEGDE, ADVS.)

AND

1. THE DIVISIONAL CONTROLLER NWKRTC
BELGAUM DIVISION,
BELGAUM.
2. THE MANAGING DIRECTOR
CENTRAL OFFICE,
KSRTC, K.H.ROAD,
BANGALORE - 27. : RESPONDENTS

(BY SRI MADAN MOHAN M.KHANNUR, ADV.)

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ENDORSEMENT DT. 5.4.2002 VIDE ANN-G ISSUED BY THE RESPONDENT CORPORATION; CONSEQUENTLY ASSIGN THE PETITIONER JOB EQUIVALENT TO THE POST OF CONDUCTOR ETC. ETC.

THIS PETITION COMING ON FOR HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner's grievance is that he is placed on a lower pay-scale as a result of his being shifted from the post of conductor to the post of the office-assistant which itself came to be necessitated on account of the accident, which the petitioner has undergone in the course of employment. The facts of the case in brief are that the petitioner joined the services of the respondent as a Conductor in 1985. While on duty in the bus plying from Belgaum to Gulbarga, he fell down from the bus. He sustained multiple injuries of grievous nature. He had to undergo a major surgery. As he has acquired physical disability, it is not possible for him to work as a conductor. He requested the respondent KSRTC to assign some light job to him. Acceding to his request, the petitioner was posted to computerised line

A.B.H.

reservation. However, he was again asked to discharge the duties of a conductor. Aggrieved by the same, he approached this Court by filing W.P. No.20347/1998, which came to be disposed of with a direction to the respondent KSRTC to consider the grievance of the petitioner. As the respondent KSRTC did not comply with the order passed in the said writ petition, the petitioner was constrained to file Contempt of Court Case No.154/1999. In the contempt proceedings, the respondent KSRTC filed a statement that the petitioner has been asked to work as an Office Assistant by order dated 27.9.1999. Recording the same, the contempt proceedings came to be dropped.

2. As an Office Assistant, the petitioner was being given a basic pay of Rs.1445/-, though he was drawing the basic pay of Rs.1525/- as a Conductor. Eversince 1999, he was drawing the salary lesser than what he would have drawn if he were to continue as a conductor. Sri Ravi Hegde, the learned counsel for the petitioner submits that the placing of the petitioner on a lower pay is absolutely unjust. He has relied on the order dated 10.10.2000 passed by this Court in W.P. Nos.25121 & 23258 of

ABH

2000 wherein it is held that the KSRTC may place the workman on a lower scale but with a payscale attached to the post of Conductor. The learned counsel has also relied on the judgment of the Apex Court in the case of NARENDRA KUMAR CHANDLA Vs. STATE OF HARYANA AND OTHERS reported in (1994) 4 SCC 460, wherein it is held that an employee physically incapacitated by disease absorbed in a lower post, is entitled to protection of the pay scale of his original post.

3. Per contra, Sri Madan Mohan M. Kannur, the learned counsel for the respondents submits that the petitioner is being given the pay attached to the post of Office Assistant. According to Sri Kannur, when the petitioner is discharging the duties of an Office Assistant, he is not entitled to the salary of a Conductor.

4. It is also profitable to refer to the statement of objects and reasons of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. One of the objects of the said Statute is to counteract any situation of the abuse and the exploitation of persons with disabilities. Section 47 of the said Act reads as follows:

ABH.

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

5. The issue is no more res integra. It is covered by a Division Bench judgment of this Court passed in NORTH EAST KARNATAKA ROAD TRANSPORT CORPORATION, GULBARGA
ABH.

DIVISION, GULBARGA Vs. VASANTHRAO reported in 2007(5) KAR.L.J. 131. The relevant portion of the said judgment is extracted hereinbelow:

" 9. The said Act is modern legislation, which has some beneficial object behind it. In the case of social benefit-oriented legislation, its provisions are to be construed liberally to achieve the purpose of the enactment. Equitable considerations have to find an important place in the construction of beneficent provisions. The inhibition against retrospective construction has to be applied with less insistence in the case of welfare legislation and remedial statutes. Just because a part of the cause of action is drawn from the time antecedent to the passing of the Act, the respondent-workman cannot be deprived of the protection granted by the Act. We have no hesitation in holding that a prospective benefit under a statutory provision may accrue from the antecedent facts. In this regard, it is profitable to refer to the latest decision of the Apex Court in the case of VIJAY V. STATE OF MAHARASHTRA AND OTHERS ((2006) 6 SCC 289). The relevant portion is extracted hereinbelow.-

A.B.H.

" 12..... When a law is enacted for the benefit of the community as a whole, even in the absence of a provision, the statute may be held to be retrospective in nature."

10. We are not impressed of the submission that the respondent is not entitled to any benefit because the said Act had not come into force as on the material date of making the application for the change of cadre, for another reason too. The appellant is an instrumentality of State within the meaning of Article 12 of the Constitution of India. It is expected of the appellant to be a model employer. Propriety and fairness require that the respondent, who has acquired the incapacity to drive the bus, should be given the same salary, etc., attached to the cadre of a Senior Driver. "

6. In view of commencement of the said Act, the law laid down by the Hon'ble Supreme Court in the case of NARENDRA KUMAR (supra), the decision of this Court in WP Nos.25121 & 23258 of 2000 and the Division Bench's judgment of this Court in the case of N.E.K.R.T.C. Vs. VASANTHRAO (supra), I have no hesitation in holding that the petitioner is
ABH.

required to be rehabilitated fully i.e., without suffering any prejudice or loss on account of his acquiring the disability. Just because the petitioner has met with a road accident and consequently posted to work as an Office Assistant, his salary cannot be varied to his disadvantage. I therefore deem it just to allow this petition with a direction to the respondents to put him on the payscale of the Conductor. It is made clear that the petitioner is also entitled to all the arrears of the differential amounts (the Conductor's basic pay of Rs.1525 minus the Office Assistant's basic pay of Rs.1,445). Whenever the revision in the payscale of Conductor has taken place, the same benefit has to be extended to the petitioner also. The respondent shall revise and refix the basic pay of the petitioner as is applicable to the post of a Conductor. The differential amounts shall be paid to the petitioner within three months from the date of the issuance of the certified copy of this order.

7. The petition is accordingly allowed. No order as to costs.

Sd/-
JUDGE

sac*