

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P.No.37602 OF 2014

Between:

B.V.S.R.Murthy

... **Petitioner**

And

The A.P. State Road Transport Corporation & others

... **Respondents**

JUDGMENT PRONOUNCED ON: 03.06.2024

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

MRS. JUSTICE SUREPALLI NANDA

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P.No.37602 OF 2014****% 03.06.2024****Between:**

B.V.S.R.Murthy

... Petitioner**And**

\$ The A.P. State Road Transport Corporation & others

... Respondents

< Gist:

> Head Note:

! Counsel for the Petitioner : Mr.J.Sudheer**^ Counsel for Respondents** : Mr.B.Mayur Reddy

? Cases Referred:

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THE HON'BLE MRS. JUSTICE SUREPALLI NANDA**W.P. No.37602 OF 2014****ORDER:**

Heard Sri J.Sudheer, the learned counsel appearing on behalf of petitioner, and the learned Senior Designate Counsel Sri B.Mayur Reddy, appearing on behalf of the respondents.

PRAYER:

2. **The Petitioner approached the Court seeking prayer as under :**

"...to issue a Writ, Order or Direction(s) more particularly, one in the nature of Writ of Mandamus: ,

a) Call for the records pertaining to impugned proceedings No. E1/1(57)/2014-KMM, dated 10-10-2014 issued by the 4th Respondent and set aside the same as bad, illegal, arbitrary, discriminatory, irrational and unconstitutional and violative of the principles of natural justice and consequently direct the Respondents to reinstate the Petitioner into the service by providing lighter job, if necessary by sending the Petitioner to an independent Medical Officer for check up to determine the health of the Petitioner;

b) To grant consequential benefits by treating the period of alleged absence caused due to treating him unfit and giving him heavy duties contrary to direction of this Hon'ble Court in WP. Nos. 22369/2011, dated 23-01-2012 and 33825/2012, dated 25-03-2013 and also the health condition of the Petitioner, as on duty for which the Petitioner is entitled and to pass such other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case..."

3. PERUSED THE RECORD.

A. The Order of this Court dated 23.01.2012 in W.P.No.22369 of 2011, reads as under:

"The petitioner is seeking a direction more particularly one in the nature of writ of Mandamus declaring the proceedings No.E1/693/(1)11- KHM, dated 29-06-2011 issued by the third respondent herein i.e. the Depot Manager of A.P.S.R.T.C. Khammam Depot as illegal, arbitrary and to set aside the same and to reinstate him into service with all consequential benefits.

Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the Respondents- A.P.S.R.T.C:

As seen from the impugned order, it is alleged that the petitioner was reporting frequently sick and submitting

sickness certificates from private Doctors, then he was directed to A.P.S.R.T.C. Tarnaka Hospital, Hyderabad for medical examination, wherein, he was examined and a certificate has been issued holding that he is unfit for A-2 category vide medical certificate No.121912, dated 23-06-2011. Basing upon the same, the impugned order was passed directing him to retire from service on medical grounds with effect from 29-06-2011 in terms of Regulation 6-A (4) of the A.P.S.R.T.C. Employees (Service) Regulations, 1964.

As seen from the said order, admittedly, no notice was issued to the petitioner before passing the impugned order and no opportunity was given to him. Even otherwise, 6-A of the A.P.S.R.T.C. Employees (Service) Regulations, 1964 is as follows:

"If in the opinion of the Medical Officer, the employee is unfit to discharge the duties of the posts held by him, he shall, forthwith be retired from service on medical grounds subject to condition that if he has held any post previously and he opts for reversion, he shall be reverted forthwith subject to the medical fitness."

Thus, it is clear that the respondents have not followed the regulation referred to above. The respondents ought to have examined whether the petitioner is fit for any other

alternative job when he is found to be unfit for A-2 category. Since the respondents have not explored that opportunity and failed to give reasonable opportunity to the petitioner before passing the impugned order, the impugned order dated 29-06-2011 is liable to be set aside. **The petitioner shall be deemed to be in service from the date of passing of the impugned order dated 29-06-2011. However, the respondents are hereby directed to issue orders providing the petitioner any other suitable job to which he is physically fit, if necessary, they may also obtain the opinion of the Medical Board. This exercise should be completed within a period of ninety (90) days from the date of receipt of a copy of this order.**

Accordingly, the writ petition is disposed of. No order as to costs."

B. The interim order of this Court dated 11.12.2014 passed in WPMP No.47050 and 47051 of 2014, reads as under :

"Heard on either side.

In view of the nature of the charge leveled against the petitioner and its contents, more particularly, in view of the fact that the period of absenteeism alleged against the petitioner also included the period which the learned single Judge in WP No.22369/2011 treated as duty, there shall be

interim suspension of the proceedings dated 10.10.2014 issued by the 4th respondent.

The petitioner is directed to appear before the concerned Authority of the Corporation and thereafter, the concerned authority is directed to send the petitioner for medical examination in the hospital of the Corporation and take other action in relation to providing alternative employment basing on the medical certificate issued by the Doctor of the Corporation Hospital."

4. The case of the Petitioner, in brief, as per the averments made in the affidavit filed by the Petitioner in support of the present writ petition, is as under :

(i) It is the case of the Petitioner that the petitioner joined A.P. State Road Transport Corporation (APSRTC) as Conductor in the year 1998. The Petitioner had Cardio problem and as he was ill he sought leave and while he was on sick leave the Petitioner was sent for medical examination and he was treated as unfit by proceedings dated 29.6.2011 issued by the 4th Respondent. The same was challenged before this Court in WP. No. 22369/2011 and the Court having noticed the legal position vide its order dated 23.01.2012 held that the said proceedings issued by the RTC in

treating the Petitioner as unfit is incorrect and held that the petitioner shall be treated as deemed to be in service from the date of passing of impugned order dated 29.06.2011.

(ii) Further, this Court directed the respondents to give suitable job to the Petitioner for which the Petitioner is physically fit, if necessary, by taking opinion from the Medical Board and further directed that the whole exercise to be done within 90 days from the date of the receipt of the said order. **The court also held that the alternative job needs to be provided by the Respondents to the Petitioner by April 2012.** However, this was not done though the Petitioner made representations to provide him alternative job and strangely, vide proceedings dated 16-10-2012 the 2nd Respondent once again reinstated the Petitioner as Conductor without considering the judgment of this Court, vide order dated 23.01.2012.

(iii) Subsequently, the proceedings dated 16.10.2012 passed by the 2nd respondent reinstating the Petitioner as Conductor was once again challenged by the Petitioner in WP. No. 33825/2012 and this Court vide its order dated 25-3-2013 disposed off the writ Petition in view of the consensus that the Petitioner be

allotted the duties of Conductor for "Ramdharshini" services which are operated between Khammam and Bhadrachalam.

(iv) The Respondents immediately allotted the said work/duties and the Petitioner thereafter realized that the said duties have increased from the earlier duties and therefore, requested to provide some lighter job by filing an application before this Court seeking for reconsideration of the matter and this court was pleased to recall its earlier order dated 25-3-2013 vide its order dated 9-10-2013.

(v) However, in the mean time, the Petitioner's condition got deteriorated and therefore, the Petitioner was not in a position to attend the duties. The Petitioner was submitting leave applications along with concerned medical certificates from the dispensary of RTC, situated in Khammam and the RTC hospital situated in Hyderabad and also from private Doctors. The leave applications of the Petitioner were not rejected nor there was any communication to join the duties.

(vi) Subsequently, the Petitioner filed OS. No. 96/2013 against official's of APSRTC, for damages and compensation. While

matters stood thus, the 4th Respondent issued charge memo dated 26-6-2014 by framing two charges alleging that the petitioner was unauthorizedly absent from 31-10-2012 without prior permission or sanction of leave.

(vii) Thereafter, the petitioner submitted his explanation stating about his physical condition and that he has been repeatedly submitting medical certificate and leave certificates etc., and therefore requested for dropping of the disciplinary proceedings. Later, Enquiry Officer was appointed and directed the Petitioner to be present on 25-7-2014 for a detailed enquiry. The Petitioner was examined vide questionnaire and the Assistant Traffic Manager (ATM) by name Sri Mahesh Kumar was also examined and the report dated 30-7- 2014 was submitted by him and the same was communicated to the Petitioner on 31-7-2014 by the 4th Respondent.

(viii) The 4th Respondent issued show cause notice on 13.8.2014 as to why the Petitioner could not be removed from service for which the Petitioner submitted his explanation on 4.10.2014 and 11.10.2014. However through proceedings No.E1/1(57)/2014-KMM dated 10.10.2014 the

Petitioner was removed from service. Aggrieved by the said proceedings dated 10.10.2014, the present writ petition is filed.

5. Para No.6 and Para No.23 of the counter affidavit read as under :

“6. It is respectfully submitted that the observation made in the interim order dated 11.12.2014 that the period of absenteeism alleged against the petitioner also included the period which the learned single Judge in WP No.22369 of 2011 treated as duty is incorrect and contrary to the record. It is submitted that as per the charges, the period of absenteeism is from 31.10.2012 whereas the above writ petition disposed much prior i.e., on 23.01.2012. In compliance with the interim order passed by this Hon’ble Court the petitioner was provided employment and he retired from service on 31.07.2015.

23. It is respectfully submitted that the settlements of all the retirement claims paid to the petitioner are furnished here under:

- i. PF paid an amount of Rs.98,099/- through Cheque No.936998, dated 25.08.2015.

- ii. Gratuity paid an amount of Rs.1,11,331/- through Cheque No. 809302, dated 22.08.2015.
- iii. SBT paid an amount of Rs.4,000/- through Cheque No.396933, dated 29.07.2015.
- iv. SRBS paid an amount of Rs.11,080/- through Cheque No. 467786, dated 08.10.2015.
- v. SSB and Terminal Encashment of Rs.13,850/- paid vide Cheque No. 809701, dated 31.12.2015.

Difference of SSB & Terminal Encashment Rs.4,574/- vide cheque No. 809797, dated 27.01.2016.

DISCUSSION AND CONCLUSION:

6. The Petitioner approached the Court seeking prayer as under :

to issue a Writ Order or Direction more particularly one in the nature of Writ of Mandamus

(a) Call for the records pertaining to impugned proceedings No. E1/1(57)/2014-KMM dated 10.10.2014 issued by the 4th Respondent and set aside the same as bad illegal arbitrary discriminatory irrational and

unconstitutional and violative of the principles of natural justice and consequently direct the Respondents to reinstate the Petitioner into the service by providing lighter job if necessary by sending the Petitioner to an independent Medical Officer for check up to determine the health of the Petitioner.

In so far as the above prayer sought for by the Petitioner in the present writ petition is concerned the same cannot be granted taking into consideration the specific averments made at para No. 6 of the counter affidavit filed on behalf of the Respondents. Para No. 6 of the counter affidavit is extracted hereunder :

Para 6 : It is respectfully submitted that the observation made in the interim order dated 11.12.2014 that the period of absenteeism alleged against the petitioner also included the period which the learned single judge in W.P.No.22369/2011 treated as duty is incorrect and contrary to the record. It is submitted that as per the charges, the period of absenteeism is from 31.10.2012 whereas the above writ petition is disposed much prior i.e., on 23.01.2012. In compliance with the interim order passed by

this Hon'ble Court the petitioner was provided employment and petitioner retired from service on 31.07.2015.

In view of the fact as borne on record that in pursuance to the orders of this Court dt. 11.12.2014 passed in WPMP No.47050 and 47051 of 2014 referred to and extracted above the petitioner was provided employment and the petitioner retired from service on 31.07.2015. Hence the prayer sought by the Petitioner i.e., (a) referred to and extracted above cannot be granted to the Petitioner.

(b) To grant consequential benefits by treating the period of alleged absence caused due to treating him unfit and giving him heavy duties contrary to direction of this Hon'ble Court in W.P Nos 22369 of 2011 dated 23.01.2012 and 33825 of 2012 dated 25.03.2013 and also the health condition of the Petitioner as on duty for which the Petitioner is entitled

In so far as above prayer (b)

sought for by the Petitioner is concerned, in view of the fact that no writ appeal has been preferred against the order

dated 23.01.2012 passed in W.P.No.22369 of 2011 by the Respondents herein and since the same attained finality the Petitioner is deemed to be in service from the date of passing of the impugned order dated 29.06.2011 and therefore the petitioner is entitled for grant of consequential benefits by treating the period of alleged absence caused due to treating petitioner unfit.

2) The relevant portion of the order of this Court dated 23.01.2012 passed in W.P.No.22369 of 2011 is extracted hereunder :

Thus, it is clear that the respondents have not followed the regulation referred to above. The respondents ought to have examined whether the petitioner is fit for any other alternative job when he is found to be unfit for A-2 category. Since the respondents have not explored that opportunity and failed to give reasonable opportunity to the petitioner before passing the impugned order, **the impugned order dated 29-06-2011 is liable to be set aside. The petitioner shall be deemed to be in service from the date of passing of the impugned order dated 29-06-2011.** However, the respondents are hereby directed

to issue orders providing the petitioner any other suitable job to which he is physically fit, if necessary, they may also obtain the opinion of the Medical Board. This exercise should be completed within a period of ninety (90) days from the date of receipt of a copy of this order.

Accordingly, the writ petition is disposed of. No order as to costs.

3) In so far as W.P.No.33825 of 2012 which is referred to in the prayer portion (b) of the Petitioner herein, the said writ petition has been restored for hearing vide order dated 09.10.2013 passed in WPMP No.35814 of 2013 in WP No.33825 of 2012 which reads as under :

“In view of the application moved in WPMP No.35814 of 2013 seeking modification or correction in the order dated 25.03.2013, I consider that it would be more appropriate to recall the entire order dated 25.03.2013 in W.P.No.33825 of 2012 which itself has been passed taking an extremely compassionate view of the prevailing circumstances in the case. Hence, the order passed on 25.03.2013 in the writ petition is recalled and it is set aside. **The**

W.P.No.33825 of 2012 is restored for hearing. Post the writ petition before the Court hearing the subject matter."

7. This Court has not dealt with W.P.No.33825 of 2012 since it has not been listed before this Court when W.P.No.37602 of 2014 had been heard finally by this Court.

With these observations the Present Writ Petition No.37602 of 2024 is allowed. However there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

MRS. JUSTICE SUREPALLI NANDA

Date: 03.06.2024

Note : L.R. Copy to be marked.
B/o. *Yvkr/Ktm*