

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P. NO. 1374 of 1998

DATED: 04-04-2007

Between:-

Nadimpalli Kasiviswanadha Raju, s/o Subba Raju, aged 45 years, occ: Employee in APSRTC , Empl.No. 455795, Driver APSRTC, Anakapalli Depot, Narasingaraopeta, Kothuru 531 021, Anakapalli (M), Visakhapatnam District.

... PETITIONER

And

The Managing Director, APSRTC Musheerabad, Hyderabad and three others.

...RESPONDENTS

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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ORDER

Seeking to declare the action of respondents in not permitting the petitioner to join duty as a driver, though he was hale and healthy, the present writ petition is filed. The petitioner also seeks a consequential direction to respondents 1 to 3 to release arrears of salary due to him from July, 1997.

In the affidavit filed in support of the writ petition, it is stated that the petitioner was appointed as a driver on 12-11-1987, that he has been discharging his duties without any complaints from higher authorities, that in April, 1997 when he suffered from mild headache his case was referred to the A.P.S.R.T.C. Hospital, Tarnaka, Hyderabad controlled by the respondent-corporation, and that, while he was continuing treatment as an out patient since April, 1997, the respondents had neither defined nor diagnosed his disease. The petitioner claims to be hale and healthy and not to have any health problems. According to him, during the nine months period he was never treated as an in-patient even on a single day and was only directed to visit the hospital periodically. It is also his case that the hospital authorities did not certify that he was unfit to join duty as a driver nor was he permitted to resume his duties. The petitioner would contend that his salary was stopped since July, 1997 and that he has been paid ex-gratia at the rate of Rs.1,000/- per month for six months

from 28-05-1997 to 16-10-1997 and that subsequently ex-gratia was also stopped. The petitioner would contend that, despite repeated representations, the 4th respondent did not diagnose his illness since April, 1997, nor was he being paid salary. The petitioner would contend that if the 4th respondent certified that he was unfit to hold the post of driver, it was the responsibility of the Corporation to provide alternative employment to him.

A counter-affidavit is filed by the then Chief Law Officer of the A.P.S.R.T.C. who has been authorized to file a counter-affidavit on behalf of the Corporation. It is specifically stated therein that the petitioner, who was appointed as a driver on 12-11-1987, was attached to Anakapally Bus Depot, that on 14-04-1997 the petitioner had produced a sick certificate under the recommendation of the Medical Officer, R.T.C. clinic at Anakapally and was directed to undergo treatment at Tarnaka Hospital, Hyderabad. Respondents would submit that the contention of the petitioner that his salary was stopped since July, 1997 is false and incorrect, that the petitioner was sanctioned all kinds of eligible leave and, after exhausting the leaves, he was paid ex-gratia under Regulation 50(C) of A.P.S.R.T.C. Employees (Leave) Regulations, since the A.P.S.R.T.C. Hospital, Tarnaka identified that he was suffering from T.B. It is stated that since the maximum period of leave, under Regulation 50(C) of the A.P.S.R.T.C. Employees (Leave) Regulations, was six months which

expired by 27-11-1997 no wages were drawn and paid to the petitioner and that the petitioner is not eligible for any wages as per the Regulations of the Corporation from 28-11-1997 onwards as the earn leave, half pay leave on medical grounds available to his credit had been exhausted, that extraordinary leave for the maximum prescribed period of six months was paid to him as per rules and regulations which was in force, and that ex-gratia was paid to him upto 27-11-1997. Respondents would deny the petitioner's contention that the A.P.S.R.T.C. Hospital at Tarnaka had not diagnosed his illness and submit that the hospital authorities had diagnosed the petitioner's illness in April, 1997 itself at Tarnaka Hospital and that his case had been recommended for treatment under Regulation 50(C) of the A.P.S.R.T.C. Employees (Leave) Regulations. It is stated that all eligible wages, according to the rules and regulations, were paid to the petitioner and hence the question of drawal of arrears of salary from July, 1997 does not arise.

Regulation 50(C) of the A.P.S.R.T.C. Employees (Leave) Regulations reads thus:-

“50(C) Leave Admissibility and leave salary for the treatment of “Leprosy/T.B./Cancer/Heart Diseases/ Renal (Kidney) Failure, Mental illness”.

- (1) An employee who has been in continuous service of minimum of 5 years and who is suffering from Leprosy/T.B/Cancer/Heart disease/Renal(Kidney) failure (Leading to transplant or frequent dialysis), mental illness and undergoing treatment at a Recognized

Institution/Hospital or RTC Hospital/Dispensary, as an in-patient or out-patient, on production of a certificate to this effect from the CMO,APSRTC Hospital is entitled to leave salary equal to full pay leave for a period not exceeding 6 (six) months in lieu of half pay leave due to the employee on medical certificate provided the earned leave at his credit has been exhausted. Thereafter, the normal rule of half pay salary shall apply to the extent half pay leave is due on medical certificate.

- (2) If the leave due under clauses (1) above, falls short of the period of treatment, the employee may be granted extra-ordinary leave. While on extra-ordinary leave, the competent authority, may grant "ex-gratia" payment equal to half of his/her pay, without any allowances or Rs.1,000/- (Rupees One thousand only) whichever is less for the maximum period of 6 (six) months on production of a certificate from the Chief Medical Officer, APSRTC Hospital.

Provided the period of absence under Clause (1) and (2) above shall be supported by a Medical Certificate as under Clause (1) from time to time and to the effect that there is a reasonable prospect of the employee returning to duty after the treatment."

The said Regulation deals with leave admissibility and leave salary for treatment of "Leprosy/T.B./Cancer/Heart Diseases/ Renal (Kidney) Failure, Mental illness". All that the aforesaid rules provide is with regards payment of salary for the period of leave on medical grounds. It is not even the case of respondents in their counter-affidavit that they had terminated the services of the petitioner on finding him medically unfit to discharge his duties. The specific assertion of the petitioner, in the affidavit filed in support of the writ petition, that he was hale and healthy and fit to join duties as a driver has not been denied by the respondents. The specific relief sought for in this writ petition is

to declare the action of respondents in not permitting the petitioner to join duty as a driver as arbitrary and illegal. The respondents have not disputed the fact that the petitioner was not permitted to join duty. While the counter-affidavit deals elaborately with the leave granted to the petitioner, it is eloquently silent on the question whether the petitioner was fit to join duty and whether he was prevented from doing so. In the absence of a specific denial in this regard the Court is left with little option but to accept the averments made in the affidavit filed in support of the writ petition. The writ petition is allowed and the respondents, for their failure to permit the petitioner to join duty without even declaring that he was unfit to do so, shall pay him the arrears of salary due to him from 27-11-1997 till he was actually permitted to join duty or his services were terminated in accordance with the statutory regulations in force. Both Sri V. Rajagopal Reddy, learned counsel for the petitioner and Smt. B.G. Uma Devi, learned Standing Counsel for the respondent-corporation, would express ignorance about the subsequent events. It is therefore made clear that, in case the respondents have terminated the services of the petitioner subsequent to the filing of the writ petition, this order shall not preclude the petitioner from challenging the said proceedings in accordance with law.

The writ petition is, accordingly, allowed. However, in the circumstances, without costs.

RAMESH RANGANATHAN, J

Dated: 04-04-2007

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