

***HON'BLE SRI JUSTICE RAVI NATH TILHARI**

+WRIT PETITION No.5486 OF 2011

%14.09.2022

Sri Ch.S. Rajeswara Rao

....Petitioner

And:

Govt., of A.P. rep. by Principal
Secretary, Transports
Department and others.

....Respondents

! Counsel for the petitioner : Sri Ch. Gopala Raju

^ Counsel for the respondents : Sri K.M.R. Bala Prasad,
learned counsel
representing Sri P. Durga
Prasad Standing Counsel

< Gist:

> Head Note:

? Cases referred:

¹ 2008(1) SCC (L&S) 242

² W.P.No.3031 of 2008 decided on 01.11.2010

³ 2018 LawSuit (All) 1355

⁴ AIR 2017 SC 1621

⁵ AIR 2018 SC 4534

⁶ (2003) 4 SCC 524

⁷ 1964 SCC OnLine SC 1

⁸ (2013) 7 SCC 595

HON'BLE SRI JUSTICE RAVI NATH TILHARI

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14.09.2022

Between:

Sri Ch.S. Rajeswara Rao

....Petitioner

And:

Govt., of A.P. rep. by Principal
Secretary, Transports
Department and others.

....Respondents

DATE OF JUDGMENT PRONOUNCED:14.09.2022.

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be Marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the fair Copy of the Judgment? Yes/No

RAVI NATH TILHARI, J

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**WRIT PETITION No.5486 OF 2011****JUDGMENT:-**

1. Heard Sri Challagali Gopala Raju, learned counsel for the petitioner and Sri K.M.R. Bala Prasad, learned counsel representing Sri P. Durga Prasad, learned standing counsel for Andhra Pradesh Road Transport Corporation (for short, "the Corporation") appearing for the respondents 2 to 5.

2. The petitioner was appointed as a casual conductor in the Corporation in the year 1984 and his services were regularized in the year 1987. While he was on duty he met with an accident and was hospitalized and after first aid treatment he was sent to Corporation hospital, Tarnaka, Hyderabad from where on medical advise he was sent to [Nizam's Institute of Medical Sciences \(for short, "NIMS"\)](#) and in operation of spinal cord his two discs were removed. The corporation retired the petitioner from service on medical ground vide order dated 21.07.2001. The petitioner made several representations for providing alternative employment to which the corporation paid no attention.

3. The petitioner filed Case No.165 of 2005 (Ch. S. Rajeshwara Rao vs. The Managing Director, A.P.S.R.T.C and others) before the Commissioner, Disabled Welfare & State

Commissioner under Persons with Disabilities Act, 1995 (in short, "the Commissioner") in which the Commissioner vide order dated 25.09.2006 set aside the proceedings dated 21.07.2001, and directed the respondents to consider the petitioner's claim in the light of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short, the Act, 1995), within specified period.

4. Pursuant to the order dated 25.09.2006, the petitioner was continued in service vide order dated 15.02.2007 and his services were utilised at bus pass station, Governorpet-I Depot, vide order dated 21.02.2007 and since then he continued. The petitioner requested the Corporation for payment of wages for the interregnum period from 21.07.2001 upto 15.02.2007, with increments as also for pay fixation in the cadre of conductor but without any response from the Corporation.

5. The petitioner filed the present writ petition under Article 226 of the Constitution of India for the following reliefs:

".....the Hon'ble Court may be pleased to issue a writ order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in not paying the salaries from the date of medical unfit to till the date of alternative employment i.e 21.07.2001 to 15.02.2007 and pay fixation difference with notional increments to the above period, as illegal, arbitrary and violative to Section 47 of the Act, 1995

and is also in violation of Article 21 of the Constitution of India and consequently direct the respondents to pay the wages from the date of medical unfit to till the date of alternative employment i.e 21.07.2001 to 15.02.2007 and pass such other order or orders.”

6. Sri Ch. Gopal Raju, learned counsel for the petitioner submitted that in view of the statutory provisions of Section 47 of the Act, 1995, the petitioner ought to have been offered alternative employment to some other post with the same pay scale and service benefits. The petitioner is entitled to receive the salary for the interregnum period.

7. Sri Ch. Gopal Raju placed reliance on the judgments in the cases of **Bhagwan Dass and another vs. Punjab State Electricity Board**¹, **K. Moses vs. A.P.S.R.T.C**² and **Laxmi Kant Sharma vs. State of U.P and 5 others**³.

8. Sri K.M.R. Bala Prasad, learned standing counsel for the Corporation submitted that the writ petition suffers from laches. The petitioner is claiming salary w.e.f 21.07.2001 upto 15.02.2007 by filing petition in the year 2011.

9. Sri K.M.R. Bala Prasad next submitted that for claiming relief in the light of Section 47 of the Act, 1995, the disability must be one of those specified in Section 2(i) of the Act, 1995.

¹ 2008(1) SCC (L&S) 242

² W.P.No.3031 of 2008 decided on 01.11.2010

³ 2018 LawSuit (All) 1355

He placed reliance on the judgment of the Hon'ble Apex Court in **Andhra Pradesh State Road Transport Corporation rep., by its Managing Director and others vs. B.S. Reddy**⁴.

10. Sri K.M.R. Bala Prasad, further submitted that the Workman cannot claim back wages as of right and the courts cannot direct back wages on setting aside of the order of dismissal. He placed reliance in the case of **Rajasthan State Road Transport Corporation, Jaipur vs. Pool Chand (dead) through legal heirs**⁵.

11. I have considered the submissions advanced by the learned counsels for the parties and perused the material on record.

12. The facts are not in dispute. The petitioner was working as a Conductor in the Corporation. He was appointed as a casual labour in April, 1984 and his services were regularized in the year 1987. While he was on duty, he met in an accident and undergone a surgery of spinal cord in which his two discs were removed. On the ground of medical unfitness he was retired from the service on 21.07.2001. Challenging the order dated 21.07.2001 the petitioner filed Case No.165 of 2005. The Commissioner vide order dated 25.09.2006 allowed the said case, setting aside the impugned proceedings dated 21.07.2001

⁴ AIR 2017 SC 1621

⁵ AIR 2018 SC 4534

and directed the Corporation to consider the petitioner's claim de-novo in the light of Section 47 of the Act, 1995. The petitioner was, therefore continued as conductor and his services were utilized at Bus Pass Station, Governorpet-I Depot vide orders dated 15.02.2007 and 21.02.2007.

13. The dispute is for payment of salary from 21.07.2001 upto 21.02.2007 during which period the petitioner remained out of service on account of his retirement imposed by the Corporation on the ground of medical unfitness.

14. In the light of the submissions advanced the following points arise for consideration:

- i) Whether the petition suffers from laches? and
- ii) Whether the petitioner is entitled for the payment of arrears of salary for the period w.e.f 21.07.2001 upto 21.02.2007?

15. Before proceeding further, it is pertinent to mention that the Act, 1995 has been enacted, as the Preamble of the Act itself indicates, to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region. In a meeting to launch the Asian and Pacific Decade of the Disabled Persons 1993-2002 convened by the Economic and Social Commission for Asian and Pacific

Region, which was held at Beijing on 1st to 5th December, 1992, a proclamation was adopted on the Full Participation and Equality of People with Disabilities in the Asian and the Pacific Region. Our India is a signatory to the said proclamation. The proclamation was on the following lines:

"To give full effect to the proclamation it was felt necessary to enact a legislation to provide for the following matters:

(i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;

(ii) to create barrier free environment for persons with disabilities;

(iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-a-vis non-disabled persons;

(iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;

(v) to lay down a strategy for comprehensive development of programmes and services and equalization of opportunities for persons with disabilities; and

(vi) to make special provision of the integration of persons with disabilities into the social mainstream."

16. Section 47 of the Act, 1995 relevant to the controversy involved herein, provides as under:

“47. (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.”

17. Section 47(1) is clear in terms that "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service. The proviso to Section 47(1) in fact confers a right on an employee, who acquired disability and was declared unsuitable for the post he was holding, for being shifted to some other post with the same pay scale and service benefits. By that proviso, not only the alternate employment but also the pay scale and the service benefits are also protected.

18. The scope of Section 47 came up for consideration before the Hon'ble Supreme Court in **Kunal Singh v. Union of India**⁶, wherein the Hon'ble Supreme Court held as follows in paragraphs which is reproduced:

“9. Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of Section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The Section further provides 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: if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from Sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce

⁶ (2003) 4 SCC 524

in rank an employee who acquires a disability during the service. In construing a provision of social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service.”

19. In **Kunal Singh** (supra), the Hon’ble Apex Court thus held that a person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The Section further provides 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: if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

20. In **Kunal Singh** (supra) the Hon'ble Apex Court held that in construing a provision of social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act.

Point No.1:

21. So far as the submission of the learned counsel for the respondent-Corporation that the petition suffers from laches is concerned, the same cannot be accepted, considering the object sought to be achieved by the Act, 1995 for the persons who suffered from disability. The disability by itself can be considered to be a ground disentitling the petitioner in not approaching this Court at the earlier point of time. From the facts on record, also it is evident that the petitioner did not give up his claim and continuously requested the respondent Corporation for grant of the salary/arrears of salary for the interregnum period by filing representations. The Court is not oblivious of the fact that in many cases it has been held that repeated representations would not come to the rescue of the person approaching the Court where the claim is highly belated

or has become a stale claim, but such a principle, this Court does not find appropriate to apply to the claim of a disabled person, in protecting his statutory right under Section 47 of the Act, 1995 which is a social beneficial enactment and as held by Hon'ble the Apex Court in **Kunal Singh** (Supra) that the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act, 1995.

22. The Corporation, in the interest of justice, ought to have come forward, keeping in view the direction of the Commissioner to consider the petitioner's case *denovo* in the light of Section 47 of the Act, 1995 and granted the salary for the interregnum period, as Section 47 itself provides for grant of alternative employment to a disabled employee or on equivalent posts carrying the same pay scale and not to oust such employee from the service. However, such relief was not considered and the matter was kept pending. It is not the case of the respondent-Corporation that the petitioner's claim was rejected. Normally a person approaches the court, as a last resort and with respect to a disabled person, it is only after finding no hope of justice from the respondent Corporation, the petitioner had to approach this Court. Under the circumstances as also in view of the settled law on the subject of the Act, 1995,

this Court is not inclined to take the view that the writ petition suffers from laches so as to deny the statutory benefits to the petitioner.

23. In **Narayani Debi Khaitan vs. State of Bihar and others**⁷, the Constitution Bench of the Hon'ble Apex Court held that there can be little doubt that if it is shown that a party moving the High Court under Article 226 of the Constitution of India for a writ is, in substance, claiming a relief which under the law of limitation was barred at the time when the writ petition was filed, the High Court would refuse to grant any relief in its writ jurisdiction. The Hon'ble Apex Court held that no hard and fast rule can be laid down as to when the High court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. That is a matter which must be left to the discretion of the High court and like all matters left to the discretion of the Court. It is apt to refer para 8 of **Narayani Debi Khaitan** (supra) as under:

“8. It is well-settled that under Art. 226, the power of the High Court to issue an appropriate writ is discretionary. There can be no doubt that if a citizen moves the High Court under Art. 226 and contends that his fundamental rights have been contravened by any executive action, the High Court would naturally like to give relief to him; but even in such a case, if the

⁷ 1964 SCC OnLine SC 1

petitioner has been guilty of laches, and there are other relevant circumstances which indicate that it would be inappropriate for the High Court to exercise its high prerogative jurisdiction in favour of the petitioner, ends of justice may require that the High Court should refuse to issue a writ. **There can be little doubt that if it is shown that a party moving the High Court under Art. 226 for a writ is, in substance, claiming a relief which under the law of limitation was barred at the time when the writ petition was filed, the High Court would refuse to grant any relief in its writ jurisdiction. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. That is a matter which must be left to the discretion of the High Court and like all matters left to the discretion of the Court, in this matter too discretion must be exercised judiciously and reasonably.”**

24. This Court, therefore, on point No.1 holds that there are no laches in filing petition and even if it be taken that the petitioner has approached late, for the reasons mentioned above, this Court is exercising its discretion in favour of entertaining the petition and deciding the same on merits to impart justice to the disabled person.

Point No.2:

25. Learned standing counsel for the Corporation placing reliance on **B. S. Reddy** (supra), contended that the benefit of Section 47 of the Act, 1995 will be available only to those who suffered from ‘disability’ covered by Section 2(i) of the Act, 1995. In **B.S Reddy** (supra), the Hon’ble Apex Court held that the

expression “disability” in Section 47 of the Act is not used in a different context so as not to go by the definition given in Section 2(i) of the Act. The benefit of Section 47 of the Act, 1995 will be available only to those who are covered by Section 2(i) of the Act, 1995. The Hon’ble Apex Court further held that even though Section 2(i) of the Act may not cover every disabled employee, but even those employees are not without any benefit. They are entitled to invoke the benefit under the Scheme of the Andhra Pradesh and Telangana Transport Corporations if covered under the said scheme.

26. The case of **B.S. Reddy** (supra) is of no help to the respondent Corporation.

27. Firstly, it is not the case of the corporation that the disability, the petitioner suffered from, is not covered under Section 2(i) of the Act, 1995. The Commissioner, vide order dated 25.09.2006, directed the corporation to consider the petitioner’s case in the light of Section 47 of the Act, 1995. The order of the Commissioner was not challenged which attained finality long ago. Not only this, the order has been implemented also by the corporation by orders dated 15.02.2007 and 21.02.2007 by continuing the petitioner as Conductor but utilizing his services at bus pass station. Now at this stage of the litigation which is for the prayer of grant of salary for the

interregnum period, it is not open to the Corporation to raise such a plea.

28. Secondly, the disability suffered by the petitioner is removal of two disc due to his spinal cord operation.

29. Section 2(1)(i) of the Act, 1995 defines 'disability' as under:

“2. Definition: (1) In this Act, unless the context otherwise requires-

- (i) “disability” means—
- [\(i\)](#) blindness;
- [\(ii\)](#) low vision;
- [\(iii\)](#) leprosy-cured;
- [\(iv\)](#) hearing impairment;
- [\(v\)](#) locomotor disability;
- [\(vi\)](#) mental retardation;
- [\(vii\)](#) mental illness;

30. Section 2(1)(o) defines locomoter disability as under:

- [\(o\)](#) “locomotor disability” means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy;

31. It is not the case of the Corporation that the petitioner's disability of the bones, joints or muscles did not lead to substantial restriction of the movement of the petitioner's limb. On the contrary, the petitioner was retired on the ground of medical unfitness due to removal of the discs in spinal cord operation.

32. In view of the aforesaid, the disability from which the petitioner suffered is a 'locomotor disability' and covered under Section 2(1)(i)(v) read with Section 2(1)(o) of the Act, 1995 and his case is covered under Section 47 of the Act, 1995.

33. So far as the payment of arrears of salary for the period in question is concerned, the petitioner was not at fault for not discharging the duties during the interregnum period for which the corporation was responsible as it failed to discharge its statutory duty. The petitioner cannot be deprived of the salary for the period claimed and cannot be made to suffer for the fault of the corporation. Under the Act, it was the statutory duty of the Corporation not to throw the petitioner out of service but to provide the alternative employment to some other post with the same pay scale and service benefits and if there was no such post available the supernumerary posts should have been created.

34. In **State of U.P vs Dayand Chakravary and others**⁸, the Hon'ble Apex Court held that the principle of 'no work no pay' shall not be applicable to such employee who is prevented by the employer from performing his duties as the employee cannot be blamed for having not worked.

⁸ (2013) 7 SCC 595

35. In **K. Moses** (supra), this Court held that if the employee suffered from the disability under the Act, 1995 he cannot be subjected to break in service for want of suitable post being immediately available. He would be entitled to claim continuity of service for all purposes from the date of his so-called retirement from service. It was held that in view of the social welfare benefit statutorily vested in the employee under the Act, 1995, the APSRTC had no right to deny the terminal benefits for the period the employee was deliberately and willfully kept out of his services. The employee therein was held entitled to full back wages from the date of his retirement from service till his reinstatement in a suitable post.

36. It is apt to refer relevant part of the judgment in **K. Moses** (supra) as under:

“It is relevant to note that under the second proviso to sub-section (1) of Section 47 of the Act of 1995, the employer is obligated to create a supernumerary post to accommodate the disabled employee in the event it is not possible to adjust him against any existing post. This indicates that such an employee is not to be subjected to a break in service for want of a suitable post being immediately available. The petitioner herein would therefore be entitled to claim continuity of service for all purposes from the date of his so-called retirement from service under the proceedings dated 13.11.2006. As he was deprived of a social welfare benefit statutorily vested in him under the Act of 1995, the APSRTC has no right to deny him the financial benefits for the period that he was deliberately and willfully kept out of its service. The petitioner would

therefore be entitled to full back wages from the date of his retirement from service till his reinstatement in a suitable post. The writ petition is accordingly allowed with costs, quantified at Rs.10,000/-.”

37. In **Laxmi Kant Sharma** (supra) upon which the learned counsel for the petitioner placed reliance, the Allahabad High Court held that it was not open to the corporation to contend that there was no alternative job for the disabled employee who should have been given the alternative job. It was further held that it was only on account of the omission on the part of the corporation that the employee was deprived of the duty and of the salary. Holding that it is a basic principle of law that no one can take the benefit of his own fault, the Allahabad High Court issued direction to make payment of salary for the interregnum period with interest to the employee.

38. It is apt to reproduce paras 11 and 12 of **Laxmi Kant Sharma** (supra) as under:

“11. The petitioner was not allowed to join duty and was neither paid salary from 01.04.2014 till 11.06.2015. Instead, he was forced to avail of whatever earned medical leave was left in his leave account on the pretext of his medical examination. It is pertinent to mention that the Service Regulations specifically provide for the conditions for grant of earned medical leave, and unless the conditions for such grant are satisfied, such leave cannot be sanctioned. As the petitioner was not given any duty/salary and instead by the specific order passed by the Corporation

Authorities, he was directed to avail of earned medical leave, he had no option but to avail the same only in order to protect himself from the charge of misconduct. In such circumstances, the petitioner is entitled to restoration of his earned medical leave for the period in question, and for payment of salary during the period he was most arbitrarily and unreasonably kept out of service. It is also wrong to suggest that the petitioner was given full salary till 01.04.2014. A bare perusal of the leave record of the petitioner Annexure C.A.-1 clearly indicates that the petitioner was given 30 days of earned medical leave from 19.02.2014 to 20.03.2014, most illegally and arbitrarily, without giving him any salary for that period. It is a basic principle of law that no one can take a benefit of his own fault. Even though the circular dated 29.04.2015 specifically provided for giving alternative duty to the drivers sent for medical examination, yet the Corporation most illegally and arbitrarily deprived the petitioner from his duty/salary from 01.04.2014 till 11.06.2015, on the pretext of medical examination. It is wrong to suggest that the petitioner was given full salary till 01.04.2014. A bare perusal of the leave record of the petitioner, Annexure C.A.1, clearly indicates that the petitioner was given 30 days of earned medical leave from 19.02.2014 to 20.03.2014, most illegally and arbitrarily, without giving him any salary for that period. Furthermore, the petitioner was forced to avail of earned medical leave only in order to meet the day to day expenses of his family as he was not being paid any salary, and he had no other source of income. Since 15.06.2014, as no earned medical leave was left in the petitioner's account, he was not paid anything till he was allowed to join duty again on 12.06.2015. Thus only on account of the most arbitrary and unreasonable act/omission on part of the Corporation Authorities, the petitioner was deprived of not only duty/salary, but also he and his family was driven to a life of penury during the

period in question. The act/omission on the part of the respondent Corporation is absolutely illegal, arbitrary, erroneous, perverse and violative of Articles 14 and 21 of the Constitution of India, section 47 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and the Service Regulations framed by the Corporation itself.

12. Hence, the respondents are directed to make the payment of the salary of the petitioner for the period of 01.04.2014 to 11.06.2015, along with simple interest @ 8% and to restore the earned medical leave of the petitioner, w.e.f., April, 2014 to July, 2014, which he was forced to avail during the aforesaid period, by the respondent Corporation.”

39. In **Rajasthan State Road Transport Corporation, Jaipur** (supra) the Hon’ble Apex Court held as under in Paras 11 and 12 upon which the learned standing counsel for the corporation placed much reliance:-

“11. In our considered opinion, the Courts below completely failed to see that the back wages could not be awarded by the Court as of right to the workman consequent upon setting aside of his dismissal/termination order. In other words, a workman has no right to claim back wages from his employer as of right only because the Court has set aside his dismissal order in his favour and directed his reinstatement in service.

12. It is necessary for the workman in such cases to plead and prove with the aid of evidence that after his dismissal from the service, he was not gainfully employed anywhere and had no earning to maintain himself or/and his family. The employer is also entitled to prove it otherwise against the employee, namely, that the employee was gainfully employed during the relevant period and hence not entitled to claim any back wages. Initial burden is, however, on the employee.”

40. The aforesaid case is not a case relating to an employee who suffered from disability while in service and had no statutory protection of Section 47 of the Act, 1995. The Corporation cannot derive any benefit of the **Rajasthan State Road Transport Corporation, Jaipur** (supra).

41. In view of the aforesaid discussion, the 2nd point of determination framed above is answered that the petitioner is entitled for the salary for the period w.e.f 21.07.2001 upto 21.02.2007 with increments at par the other employees of the Corporation on the post of conductor.

42. In the result, the writ petition is allowed. The respondent-Corporation is directed to pay full salary to the petitioner for the period w.e.f 21.01.2001 upto 21.02.2007 after calculating the same as per the pay scale applicable to the post of Conductor for the relevant period. The arrears shall be paid within a period of two months from the date of production of copy of this judgment before the respondent-Corporation along with simple interest thereon @ 6% p.a w.e.f 21.02.2007 upto the date of payment.

43. If consequent upon the addition of the increments as aforesaid for the aforesaid period, some more arrears of salary become due to the petitioner for subsequent period also i.e after 21.02.2007, the same shall also be paid to the petitioner after

adjusting the amount of salary paid to the petitioner, within the same period as aforesaid.

44. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

RAVI NATH TILHARI, J

Date:14.09.2022

Note:

Issue CC in one week.

L.R copy to be marked.

B/o.

Gk

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

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