

IN THE HIGH COURT OF KARNATAKA AT BANGALORE**W.P.NO. 44037/2016 (SK)****BETWEEN:**Managing Director,
K.S.R.T.C. & another

PETITIONERS

AND:

Sri. Ganapathi Naika & another

RESPONDENTS

SYNOPSIS/LIST OF DATES

- | | |
|----------------------------------|--|
| 1. 12/03/2003 | The respondent No.1 was appointed as driver-cum-conductor. |
| 2. 07/07/2007 | The Respondent No.1 met with an accident. |
| 3. 08/07/2007
To 02/03/11 | The Respondent No.1 was treated as on IOD. |
| 4. 05/02/2011 | Respondent No.1 was re-categorized from the Post of driver-cum-conductor to the post of Office Helper. |
| 5. 16/01/2015
&
18/09/2015 | Petitioners called upon the Respondent-1 to Produce the Medical Certificate in Form-3. |
| 6. 04/12/2015 | Respondent-1 was restored back to his original post |
| 7. 14/12/2015 | The Respondent No.2 directed the petitioners to restore back the Respondent-1 to his original post. |
| 8. 13/01/2016 | Petitioners informed the Respondent-1 about the order dt.04/12/2015 thereby compliance of order dt.14/12/2015. |

9. 20/02/2016

Respondent No.2 amended the order dt.14/12/2015 and directed the petitioners to accord promotion to the 1st respondent to the post of Junior Assistant-cum-Data Entry Operator.

Aggrieved by the order dated 20/02/2016, the petitioner has presented this writ petition to this Hon'ble Court.

BRIEF FACTS OF THE CASE

1. The petitioner corporation appointed the 1st respondent as a driver-cum-conductor on 12/03/2003. While working as driver-cum-conductor, the 1st respondent met with an accident on 07/07/2007 while on duty, wherein he sustained fracture injuries to his leg. Due to the said injuries, he was on IOD from 08/07/2007 to 02/03/2011 i.e., for a period of more than 3 years 7 months and 29 days.
2. Based on an opinion rendered by the Head of the Department, Orthopedic Department, Victoria Hospital, the Division Re-categorization Committee on 05/02/2011 re-categorized the 1st respondent from the post of driver-cum-conductor to the post of Office Helper. Thereafter, the 1st respondent was called upon to obtain a certificate from the Medical Board in prescribed Form no.3. Since the 1st respondent failed to furnish the medical certificate, his name was dropped while according promotion to the post of Junior Assistant cum Data Entry Operator.
3. The petitioner further submits that aggrieved by the same, the respondent No.1 approached the 2nd respondent and alleged that the petitioners denied him promotion to the post of Junior Assistants though he is eligible for promotion. Further, the 2nd petitioner vide DEO No.413/2015 dated 04/12/2015 restored back the respondent No.1 to his original post of driver-cum-conductor and assigned him with light duty of issuing advance tickets at Chikmagalur Bus Stand. .

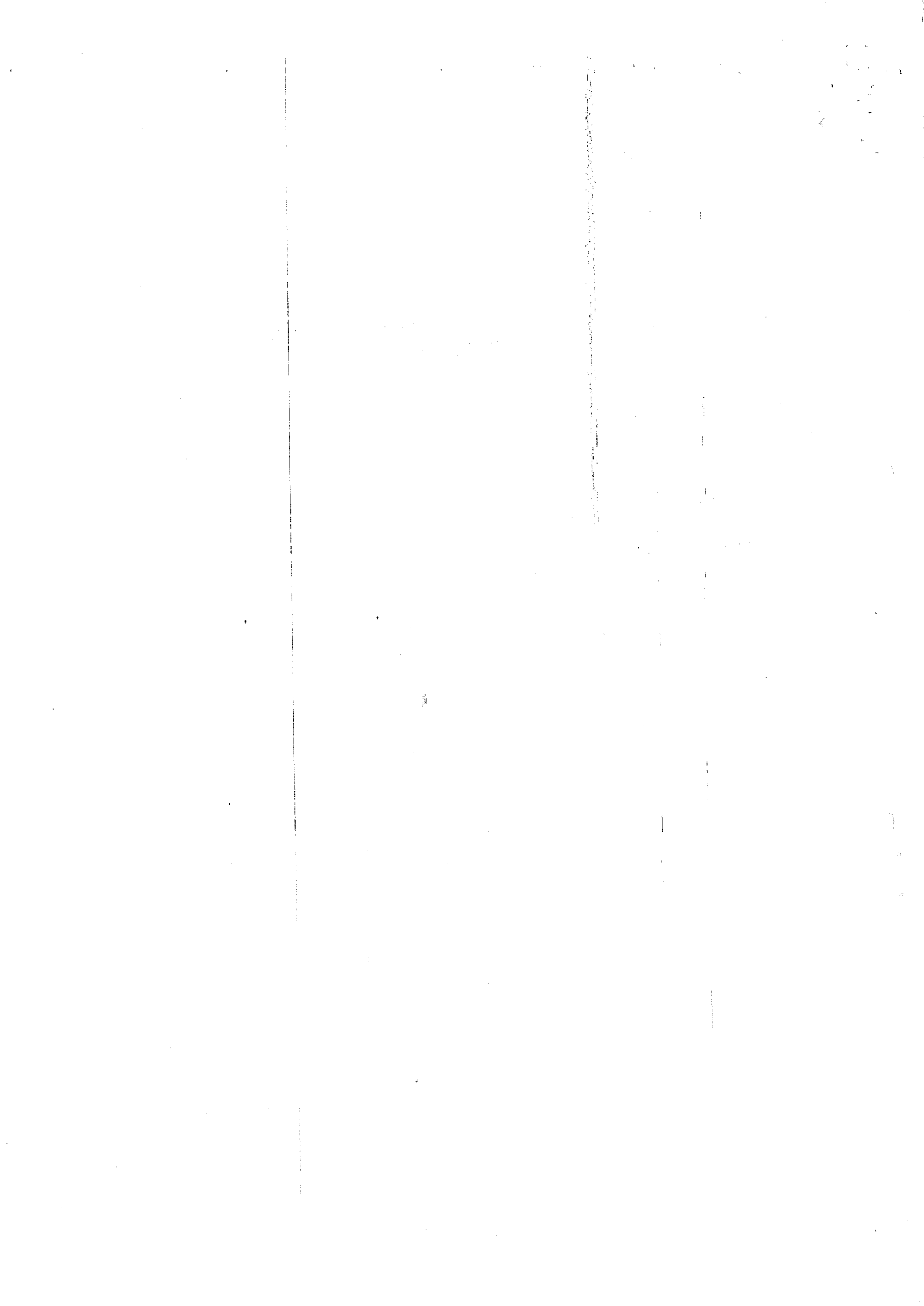
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4. On 14/12/2015, the 2nd respondent disposed off the case filed by the respondent No.1, directing the petitioners to restore the respondent to his original post and to extend all service benefits as provided under Section 47 of the Act. Pursuant to the said order, the petitioners brought to the notice of the 2nd respondent about restoring back the respondent No.1 to his original post of driver-cum-conductor with all the service benefits available for that post and thus the directions issued in the order dated 14/12/2015 has been complied. Thereafter, the 2nd respondent amended the order dated 14/12/2015 by order dated 20/02/2016 and directed the petitioners to accord promotion to the respondent No.1 to the post of Junior Assistant -cum- Data Entry Operator.

BANGALORE
DATE:16/08/2016

ADVOCATE FOR PETITIONER
(B.L.SANJEEV)



IN THE HIGH COURT OF KARNATAKA AT BANGALORE
(ORIGINAL JURISDICTION)

W.P.NO: _____ /2016

BETWEEN:

1. The Managing Director,
Karnataka State Road
Transport Corporation,
Shanthinagara,
Bangalore-560 027;
2. The Divisional Controller,
K.S.R.T.C.,
Chikmagalur Division,
Chikmagalur;

The Petitioners are represented by
The Chief Law Officer,
K.S.R.T.C.,
Central Offices,
K.H. Road, Shanthi Nagar,
Bengaluru-560 027.

PETITIONERS

AND:

1. Sri. Ganapathi M.Naika,
S/o Mailya Naika,
Aged about 43 years,
Office Assistant,
Booking Counter,
KSRTC Bus Stand,
Chikamagalur,
2. The Commissioner
For the Persons with Disabilities
(Equal Opportunities, Protection
Of Rights and Full Participation)
Act, 1995,
No.55, II Floor,
Karnataka Slum Development Board Building,
Resaldar Road, (Platform Road),
Seshadripuram,
Bangalore-560 020.

RESPONDENTS

WRIT PETITION FILED UNDER ARTICLES 226 AND 227 OF THE
CONSTITUTION OF INDIA

The petitioner above named states as follows: -

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1. The Petitioner Corporation, formed under Road Transport Corporation Act 1950, is carrying on the service of passengers transportation in and outside the State of Karnataka. The service conditions of all the employees working in the petitioner corporation are governed by Karnataka State Road Transport Corporation Servants (Conduct & Discipline) Regulations 1971.
 2. The petitioner corporation appointed the 1st respondent as a driver-cum-conductor on 12/03/2003. While working as driver-cum-conductor, the 1st respondent met with an accident on 07/07/2007 while on duty, wherein he sustained fracture injuries to his leg. Due to the said injuries, he was on IOD from 08/07/2007 to 02/03/2011 i.e., for a period of more than 3 years 7 months and 29 days.
 3. The petitioners further submits that based on an opinion rendered by the Head of the Department, Orthopedic Department, Victoria Hospital, the Division Re-categorization Committee held a meeting on 05/02/2011 and had re-categorized the 1st respondent from the post of driver-cum-conductor to the post of Office Helper. Further, in view of coming into force of Circular No.1491 dated 10/05/2013, the petitioner issued an endorsement dated 16/01/2015 to the 1st respondent calling upon him to obtain a certificate from the Medical Board in prescribed Form no.3; to examine whether his post and pay should be protected as per Circular No.1491 or whether he should be continued in the post of office helper as per Circular No.681. Since the 1st respondent failed to respond to that letter, the 2nd respondent again issued an endorsement dated 18/09/2015, calling upon him to produce the certificate from the Medical Board in prescribed Form no.3. A copy of the said endorsement dated 18/09/2015 is produced herewith marked as **Annexure-A**. However, the respondent failed to furnish the medical certificate as called for, and hence his name was dropped

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while according promotion to the post of Junior Assistant cum Data Entry Operator from the post of office helper.

4. The petitioners further submits that aggrieved by the same, the respondent No.1 approached the 2nd respondent and lodged a complaint under Section 62 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act, 1995 (hereinafter referred to as the Act), which came to be registered as Case No.05/2015-16. In his complaint, the respondent No.1 alleged that the petitioners denied him promotion to the post of Junior Assistants though he is eligible for promotion. Further, the Medical Board, Mallegowda District Hospital, Chikmagalur vide certificate dated 07/10/2015 certified that the respondent had suffered 55% disability and forwarded the certificate to the 2nd petitioner, vide letter dated 06/11/2015. Pursuant thereto, the 2nd petitioner vide DEO No.413/2015 dated 04/12/2015 restored back the respondent No.1 to his original post of driver-cum-conductor and assigned him with light duty of issuing advance tickets at Chikmagalur Bus Stand. Copies of the letter dated 06/11/2015 with the certificate dated 07/10/2015 and DEO dated 04/12/2015 are produced herewith marked as **Annexure-B, B1 & C** respectively.
5. The Petitioner further submits that in the meantime, on 14/12/2015, the 2nd respondent disposed off the case filed by the respondent No.1, directing the petitioners to restore the respondent to his original post and to extend all service benefits as provided under Section 47 of the Act. A copy of the said order is produced herewith marked as **Annexure-D**. Pursuant to the said order, the petitioners brought to the notice of the 2nd respondent about restoring back the respondent No.1 to his original post of driver-cum-conductor with all the service benefits available for that post and thus the directions issued in the order dated 14/12/2015 has been complied. A copy of the letter dated 13/11/2016 written by the 2nd petitioner to the 2nd

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respondent is produced herewith marked as **Annexure-E**. Further, the 2nd respondent, without any rhyme or reason and despite being aware that his earlier order has already been implemented, amended the order dated 14/12/2015 by order dated 20/02/2016 and directed the petitioners to accord promotion to the respondent No.1 to the post of Junior Assistant ~~-cum-~~ Data Entry Operator. A copy of the amended order dated 26/02/2016 is produced herewith marked as **Annexure-F**.

6. Being aggrieved by the order dated 20/02/2016 passed by the 2nd respondent in Case No.05/2015-16/1463, vide Annexure-F, the petitioners have presented this memorandum of writ petition, as they have no other alternate and efficacious remedy for redressal of their grievances except to approach this Hon'ble Court. Petitioner further submits that they have not filed any other writ petition or proceedings on the same cause of action either before this Hon'ble Court or before any other authority earlier.

GROUNDS

7. The impugned order is illegal and opposed to the facts and circumstances of the case.
8. The second respondent is not justified in passing the impugned order by amending the earlier order dated 14/12/2015 since the said order was already acted upon and compliance of which was also reported to the 2nd respondent. As such, the impugned order is illegal and without any basis.
9. The 2nd respondent failed to exercise his discretion in a judicious manner. The decision of the 2nd respondent is not reasonably founded on evidence of the case and has failed to take into consideration the steps taken by the petitioners to restore back the respondent No.1 to his original post of driver-cum-conductor with all the service benefits available for that post.

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10. It is submitted that since the respondent No.1, being an employee of the petitioner corporation who got injured while on duty resulting in physical disability, comes within the purview of Section 47 of the Act, he was continued in his original post by providing all the service benefits available to that post and assigned him the light duty of issuing advance journey tickets at the Bus Stand. Hence question of promoting him to the post of Junior Assistant-cum-Data Entry Operator from original post of Driver-cum-conductor does not arise. As such, the impugned order is unsustainable in law and liable to be set aside.

11. The 2nd respondent exceeded his jurisdiction in passing the impugned order. Since there was no violation whatsoever of the provisions of Section 47 of the Act, the question of the 2nd respondent exercising his powers provided under the Act does not arise. AS such the impugned order is illegal and liable to be set aside.

12. Since the petitioners had already complied the directions issued by the 2nd respondent in his order dated 14/12/2015 and fulfilled the requirement under Section 47 of the Act, the 2nd respondent ought not to have passed the impugned order.

13. The impugned order is not a speaking order at all since the same is bereft of any cogent reasons and hence it is liable to be quashed.

14. The impugned order was passed mechanically and without proper application of mind to the facts and circumstances of the case.

15. That the impugned order suffers from illegality and material irregularity.

16. Viewed from any angle, the impugned order is unsustainable in law and hence liable to be set aside.

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GROUND FOR INTERIM RELIEF

17. The foregoing averments would prima-facie show that the order at Annexure-F is ex-facie unsustainable in law and therefore liable to be quashed. Promoting the respondent No.1 to the post of Junior Assistant-cum-Data Entry Operator, during the pendency of the above writ petition, would cause great hardship and irreparable loss to the petitioner corporation besides rendering the above writ petition infructuous. It is therefore just and proper that this Hon'ble Court be pleased to grant an ad-interim order of stay, staying the operation and execution of order at Annexure-F during the pendency of the above writ petition, in the interest of justice and equity.

PRAYER

WHEREFORE, the petitioner humbly prays that this Hon'ble Court be pleased to -

- a) Call for records of the proceedings of the Commissioner for Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the 2nd respondent herein, pertaining to case No.05/2015-16/1463, which has culminated in the order dated 26/02/2016, vide Annexure-F.
- b) Issue a writ in the nature of certiorari or any other appropriate writ, order or direction, quashing the order dated 26/02/2016 passed by the Commissioner for Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 in case No.05/2015-16/1463, vide Annexure-F.
- c) Grant such other reliefs that may be deemed fit by this Hon'ble Court, under the facts and circumstances of the case, in the interest of justice and equity.

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INTERIM PRAYER

The petitioners humbly prays that this Hon'ble Court may be pleased to grant an ad-interim order of stay, staying the operation and execution of the order dated 26/02/2016 passed by the Commissioner for Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (2nd respondent herein) in case No.05/2015-16/1463, vide Annexure-F; during the pendency of the above writ petition, in the interest of justice and equity.

BENGALURU
DATE: /08/2016

ADVOCATE FOR PETITIONER
(B.L.SANJEEV)

Address for Service:

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