

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

W.P.No. 26 387/2019

BETWEEN:

Managing Director,
KSRTC & another

PETITIONERS

AND:

Sri.Jeevan Santosh Martis
& others

RESPONDENTS

INDEX

SL. NO.	PARTICULARS	Page No
1.	List of Dates/Synopsis	1-2
2.	Memorandum of Writ Petition	2-10
3.	Affidavit	11
4.	Annexure-A: Complaint	12-13
5.	Annexure-B: Reply	14-18
6.	Annexure-C: Impugned order	19-31
7.	Vakalath	32

BANGALORE
DATE: 20/06/2019

ADVOCATE FOR PETITIONERS
(B.L.SANJEEV)

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

W.P.No. /2019

BETWEEN:

Managing Director,
KSRTC & another

PETITIONERS

AND:

Sri.Jeevan Santosh Martis
& others

RESPONDENTS

SYNOPSIS/LIST OF DATES

1. 21/08/2013 Petitioner's services were regularized.
2. 03/07/2017 Petitioner filed complaint.
3. 18/03/2019 Impugned order was passed.

BRIEF FACTS OF THE CASE

Respondent No.1 was selected as a trainee conductor in Mangalore Division under the petitioner corporation and his services were regularized with effect from 10/02/2003. Further, without there being any violation of the provisions of the Act on the part of the petitioners, the respondent No.1 filed a complaint before the third respondent making baseless allegations against the petitioners. The third respondent without proper application of mind to the facts and circumstances of the case and relying only on the self serving statement made by the first respondent passed the impugned order. Aggrieved by that order, the petitioner has presented this petition.

BANGALORE
DATE: 20/06/2019

ADVOCATE FOR PETITIONERS
(B.L.SANJEEV)

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

W.P.NO: _____ /2019

BETWEEN:

1. Managing Director
Karnataka State Road Transport Corporation,
(K.S.R.T.C.) Central Offices,
Bangalore-560 027,
2. The Divisional Controller,
Karnataka State Road Transport Corporation,
(K.S.R.T.C.),
Putturu Division,
Putturu-574 201;
Dakshina Kannada District;

Petitioners are represented
by the Chief Law Officer,
KSRTC, Central Offices,
Shanthinagar,
Bengaluru-560027.

PETITIONERS

AND:

1. Sri Jeevan Santosh Martis,
S/o Sri Paul Salvadore Martis,
Aged about 43 years,
House No.1-43B, J.S.Cottage,
Maani Post, Bantwal Taluk,
Dakshina kannada District,
Pin-574 253;
2. Sri. ChandrashekaraPuttappa,
President,
Karnataka Rajya Vikalachethanara
Rakshana Samithi (R),
No.3/6, Modaliyar Compound,
9th Cross, II Main Road,
Chamarajapet,
Bangalore-560 018;
3. The Commissioner
For the Persons with Disabilities
(Equal Opportunities, Protection
Of Rights and Full Participation) Act, 1995,
No.55, II Floor, "Abhaya Sankeerna,
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: -

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. It is submitted that the respondent No.1 was selected as a trainee conductor in Mangalore Division under the petitioner corporation on 23/01/1999, he was brought on probation from 26/01/2001 and his services were regularized with effect from 10/02/2003. It is submitted that on 02/01/2012, the Bus bearing Regn., No.KA 19 F 2529 belonging to Dharmasthala Depot met with a road accident and the respondent No.1 who was on duty, sustained injuries to the left foot and hence IOD special leave was sanctioned to him for the period from 03/01/2012 to 30/04/2012. Further, the first respondent submitted a representation dated 13/11/2013, seeking to depute him for some light work stating that in view of the injuries sustained in the accident, he is not able to discharge duties of a conductor. In this regard, the first respondent was intimated to furnish all the relevant documents.
3. The petitioners further submit that thereafter, enclosing a Medical Certificate dated 29/04/2014 issued by the Mangalore Wenlock Hospital certifying that he has suffered 40% permanent disability, the first respondent submitted another representation dated 13/05/2014 praying to depute him for some light work. Accordingly, considering that medical certificate, as per Section 47 of the Persons with

Disabilities (Equal Opportunities, Protection Of Rights and Full Participation) Act, 1995 (hereinafter referred to as the 'Act' and as provided in the Corporation Circular dated 10/05/2013, the respondent No.1 was deputed to work in a light job at the Stores Section at Puttur Depot with effect from 01/07/2014. Further, on the request of the first respondent, he was given travel allowance provided to the physically disabled employees from July, 2016 as per Circular No.1562 dated 23/09/2015.

4. The petitioners further submit that as the first respondent complained to the Welfare Officer stating that he has been made to work on computers at the Stores Section, the District Welfare Officer for the Disabled persons, Dakshina Kannada, Mangalore instructed to give him computer work only in respect of the files concerned to him. Hence, the Depot Maanagger, Puttur Depot was directed to give any of the five light jobs to the first respondent as provided in Corporation Circular dated 10/05/2013. Accordingly, the first respondent was deputed to fill diesel in the Depot and to enter its details in the concerned Register, calculating KMPL etc.,
5. It is submitted that the first respondent was involved himself in several misbehavior and misconduct cases; wherein in two cases minor punishments were imposed against him, in one case, article of charges was issued and in one more case, the first respondent was placed under suspension and enquiry proceedings in that case was completed and the order is yet to be passed and further, after revoking the suspension order on 22/12/2018, he was deputed to work at Sullia Depot and presently he is working at Sullia Depot in Traffic Section.
6. It is submitted that in the meantime, on 03/07/2017, the respondent No.1 filed a complaint before the third respondent making baseless allegations against the petitioners. Pursuant to the receipt of notice in the said complaint, the 2nd

petitioner filed a detailed reply, wherein the actual facts of the case were brought to the notice of the third respondent. Copies of the complaint and the reply submitted to the Commissioner for Disabilities is produced herewith marked as Annexure- A & B. It is submitted that the third respondent without proper application of mind to the facts and circumstances of the case and relying only on the self serving statement made by the first respondent, granted him the following reliefs:

- a) To provide light work to the first respondent which he can discharge and to transfer him to the place of his convenience.
- b) To treat the suspension period of 1st respondent as on duty and to provide him all the monetary benefits;
- c) To provide 6% of his basic pay as travel allowance to the first respondent with effect from the date of issuance of Disability Certificate;
- d) To take disciplinary action against the 2nd respondent as per KSRTC C&D Regulations;
- e) To educate the physically disabled employees about the facilities and rights available to them under the Act by conducting workshops and by issuing circulars and notices in that regard.

A copy of the said order dated 18/03/2019 is produced herewith marked as **Annexure-C**.

7. Being aggrieved by the order dated 18/03/2019 passed by the 3rd respondent, vide Annexure-C, the petitioners have presented this writ petition for redressal of their grievances as they have no other alternate and efficacious remedy except to approach this Hon'ble Court. The Petitioners further submit that they have not filed any other writ petition or proceedings

either before this Hon'ble Court or before any other Forum on the same cause of action.

GROUNDS

8. The impugned order is illegal and opposed to the facts and circumstances of the case.

9. The third respondent has not exercised his discretion in a judicious manner. The decision of the second respondent is not reasonably founded on the evidence on record.

10. It is submitted that the third respondent has no power to pass the impugned order. Further, the third respondent is not justified in entertaining the complaint filed by the second respondent since no right whatsoever of the second respondent was deprived. The third respondent has exceeded his jurisdiction and hence the impugned order is unsustainable in law.

11. The 3rd respondent has passed the impugned order by exercising the powers vested in him under the Act, Section 62 of which reads thus:

“Section 62: Commissioner to look into complaints with respect to matters relating to deprivation of rights of persons with disabilities- without prejudice to the provisions of Section 61, the Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to-

(a) Deprivation of rights of persons with disabilities;

(b) Non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by

the appropriate governments and the local authorities for the welfare the protection of rights of persons with disabilities and take up the matter with the appropriate authorities.”

The Petitioners submit that since they have neither deprived any of the rights of the first respondent nor non-implemented any of the orders passed for welfare and protection of rights of the 1st respondent, the 3rd respondent is not justified in passing the impugned order exercising the powers under the Act. Hence, the impugned order is unsustainable in law and liable to be set aside.

12. In an identical case, regarding the powers of the Commissioners under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and the Rules made there under, the Hon'ble Supreme has held that:-

“.....neither the Chief Commissioner nor any Commissioner functioning under the Disabilities Act has power to issue any mandatory or prohibitory injunction or other interim directions. The fact that the Disabilities Act clothes them with certain powers of a civil court for discharge of their functions (which include the power to look into complaints), does not enable them to assume the other powers of a civil court which are not vested in them by the provisions of the Disabilities Act.”

Therefore, the 3rd respondent does not have the power to issue any mandatory or prohibitory injunction or interim directions. Since the 3rd respondent has exercised the

jurisdiction not vested in him, the impugned orders being illegal are liable to be quashed.

13. That the third respondent can only examine matters relating to deprivation of rights of persons with disabilities and cannot confer or create any right. The 3rd respondent has the power to look into complaints with respect to matters relating to non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instruction issued by the competent authority for the welfare and protection of rights of persons with disabilities. Since there is no such lapses committed by the petitioners and more over, when the first respondent has not alleged that the petitioners have failed to implement any law, rules, bye-laws etc., provisions of Section 62(b) of the Act is not attracted and as such, the third respondent is not justified in passing the impugned order.
14. That the 3rd respondent exceeded his jurisdiction by issuing directions to allocate place of convenience to the first respondent and to treat suspension period as on duty and to extend all the monetary benefits to the first respondent when he was kept under suspension for his misconduct and disciplinary proceedings are pending. Further, the 3rd respondent seriously erred in directing to initiate disciplinary action against the 2nd petitioner. The 3rd respondent, by issuing such directions, has assumed the powers of a civil court which are not vested in him by the provisions of the Act. As such, the impugned order is unsustainable in law and liable to be set aside.
15. The impugned order was passed mechanically, and without proper application of mind to the facts and circumstances of the case.
16. That the impugned order suffers from illegality and material irregularity.

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

GROUND FOR INTERIM RELIEF

18. The foregoing averments would prima-facie show that the order at Annexure-C is ex-facie unsustainable in law and therefore liable to be quashed. Implementation of the directions in terms of the order at Annexure-C, during the pendency of the above writ petition, would cause great hardship and irreparable loss to the petitioner 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-C 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 3rd respondent in case No.26/2017-18/1342, which has culminated in its order dated 18/03/ 2019 produced at Annexure-C;
- b) Issue a writ in the nature of certiorari or any other appropriate writ, order or direction, quashing the order dated 18/03/2019 passed by the 3rd respondent in case No.26/2017-18/1342, vide Annexure-C.
- 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.

INTERIM PRAYER

The petitioners humbly pray 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 18/03/2019 passed by the 3rd respondent in case No.26/2017-18/1342, vide Annexure-C, during the pendency of the above writ petition, in the interest of justice and equity.

BANGALORE
DATE: 20/06/2019

ADVOCATE FOR PETITIONERS
(B.L.SANJEEV)

Address for Service:

B.L.Sanjeev,
Advocate,
BLS LEGAL,
TF-1, Alpine Arch,
Langford Road,
Bangalore-560025.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

W.P.No. _____ /2019

BETWEEN:

Managing Director,
KSRTC & another

PETITIONERS

AND:

Sri.Jeevan Santosh Martis
& others

RESPONDENTS

AFFIDAVIT

I, Supreetha, w/o Sri Nikesh, aged about 34 years, resident of Bengaluru, do hereby solemnly affirm and state as under:

1. I am working as Assistant Law Officer in the petitioner Corporation and being well conversant with the facts of the case, swearing to the contents of this affidavit on behalf of the petitioner as I have been authorized and instructed to do so.
2. The statements made in paragraphs 1 to 18 of the memorandum of Writ Petition accompanying this affidavit are true to the best of my knowledge, information and belief.
3. Annexure-A and B are the true copies of their originals and Annexure-C is the certified copy.

IDENTIFIED BY ME

ADVOCATE

DEPONENT

BANGALORE

DATE: /06/2019

NO. OF CORRECTIONS: