

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-4-2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

WRIT PETITION No.11505 of 2015

and

M.P.Nos.1 and 2 of 2015

M.Kuppusamy

.. Petitioner

vs

1. Tamilnadu State Transport Corporation

(Kovai) Ltd.,

rep. By its Managing Director

37, Mettupalayam Road

Coimbatore

2. The General Manager

Tamilnadu State Transport Corporation

(Kovai) Ltd.,

37 Mettupalayam Road

Coimbatore

3. The Dean

Coimbatore District Medical Board

The Government Medical College

Coimbatore

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records pertaining to the order dated 12.3.2015, passed by the 2nd respondent in proceedings No.3238/E3E/Pa.Thu-1/TNSTC/2015, quashing the same and consequently, directing the respondents 1 and 2 to provide the petitioner forthwith suitable alternative employment based on his physical conditions with continuity of service, pay protection, back wages and other consequential benefits with effect from 21.8.2013.

For Petitioner : Mr.R.Krishnaswamy

For Respondents : Mr.S.Sairaman for RR1 & 2

Mr.S.Pattabiram

Government Advocate for R3

ORDER

By consent, the writ petition itself is taken up for final disposal.

2.The petitioner claims that he joined the services of the first respondent-Transport Corporation on 2.7.1992, as a Driver and he is a diabetic patient and also developed ailment in his eyes. According to the petitioner, the second respondent has referred him to Vasan Eye Care Hospital at P.N.Palayam, Coimbatore, for an eye check-up and they have diagnosed that he is suffering from cataract on his right eye and advised him to undergo a surgery. The petitioner, accordingly, had undergone a surgery and still, his eye did not improve and in fact, his vision started deteriorating and he has been diagnosed "Anterior Ischemic Optic Neuropathy" in the right eye. The petitioner, after coming to know of his physical disability, requested the Branch Manager, Sungam Depot-II, to provide him alternate work or job, since he is not having a clear vision and is incapable of performing his duties as a Driver. The petitioner has also been visited with a Disciplinary Proceedings in the form of Charge Memo dated 23.12.2013, in No.5975/2013, and after enquiry, the Enquiry Officer found that the charge levelled against him, has been proved and he has also been issued with a second show cause notice dated 27.3.2015, calling upon him to put forth his further explanation.

3.According to the petitioner, he sought information under the Right to Information Act regarding his request for alternate employment, and vide communication dated 12.3.2015, he was directed to approach the Managing Director and as and when he submits an application, it will be considered. The petitioner, challenging the correctness of the said communication, came forward to file this writ petition.

4.Mr.R.Krishnaswamy, learned Counsel appearing for the petitioner, would submit that admittedly, the charge memo came to be issued, after the petitioner suffered the above said disability, and in all fairness, the respondents 1 and 2 ought to have taken into consideration his adequate disability and provided him with an alternate employment in terms of Section 47 of The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and without considering the same, has initiated disciplinary action and sought to terminate him from service and hence, prays for interference.

5.Per contra, Mr.S.Sairaman, learned Standing Counsel, who accepts notice for the respondents 1 and 2, on instructions, would submit that the impugned order is merely a communication furnished under the Right To Information Act, and therefore, it cannot be put to challenge and the petitioner did not participate in the

Disciplinary Proceedings and the Enquiry Officer has found him guilty of the charge levelled against him, and when the second show cause notice was also issued, the petitioner, in order to stall the Disciplinary Proceedings, came forward with the present plea and prays for dismissal of the writ petition.

6.This Court has carefully considered the rival submissions.

7.A perusal of the impugned communication dated 12.3.2015, would disclose that the petitioner was directed to approach the Managing Director viz. the first respondent, who may consider his grievance of getting alternate employment on account of the alleged physical disability suffered by him, as pointed out above.

8.The Medical Certificate enclosed in the typed-set of documents, prima facie, would indicate that the petitioner is suffering ailment on account of Anterior Ischemic Optic Neuropathy in the right eye and taking into consideration the fact that he has rendered service for so many years from 1992, this Court is of the view that the petitioner is to be permitted to submit a representation to the first respondent seeking alternate employment, and till it's disposal, the further action on the Disciplinary Proceedings initiated against him, is to be deferred.

9.In the result, the writ petition is disposed of and the petitioner is permitted to submit a representation to the first respondent seeking alternate employment on account of the physical disability suffered by him, within a period of two weeks from the date of receipt of a copy of this order, and the first respondent, on receipt of the same, is directed to consider it on merits and in accordance with law, in terms of Section 47 of The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and pass orders as expeditiously as possible and not later than four weeks from the date of receipt of the representation and till such time, the further proceedings pursuant to the second show cause notice dated 27.3.2015, issued in No.1/G8A/5975/TNTC/13, shall be deferred. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

nsv

To:

1. The Managing Director
Tamilnadu State Transport Corporation
(Kovai) Ltd.,
37, Mettupalayam Road
Coimbatore

2. The General Manager
Tamilnadu State Transport Corporation
(Kovai) Ltd.,
37 Mettupalayam Road
Coimbatore

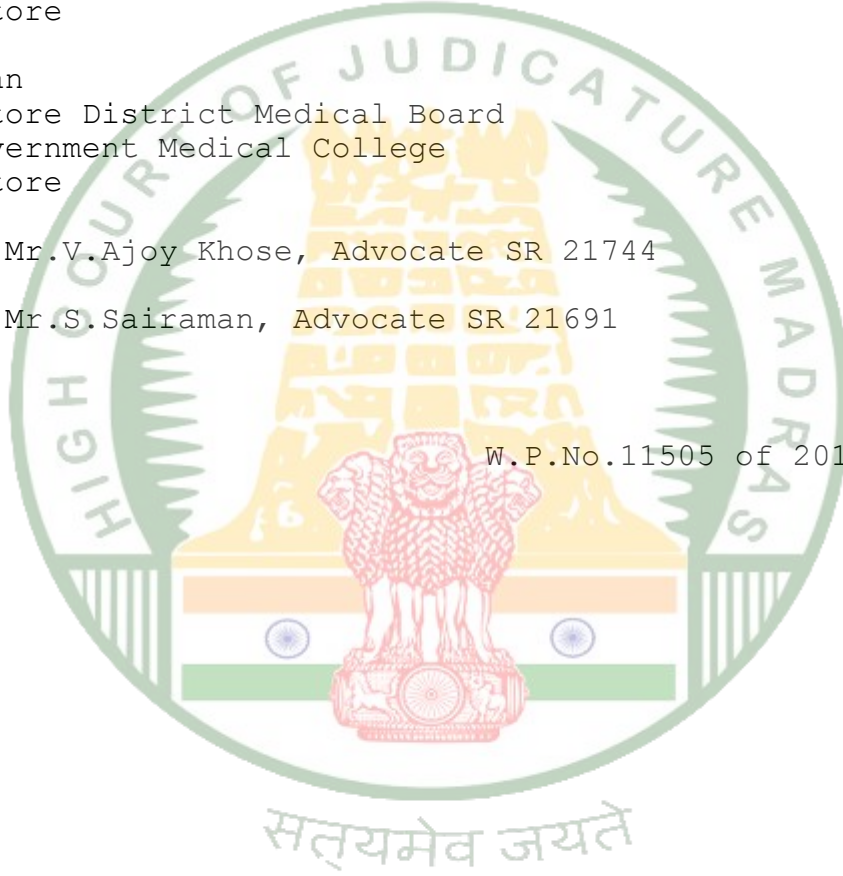
3. The Dean
Coimbatore District Medical Board
The Government Medical College
Coimbatore

+ 1 cc to Mr.V.Ajoy Khose, Advocate SR 21744

+ 1 cc to Mr.S.Sairaman, Advocate SR 21691

rsy(co)
prk11/5

W.P.No.11505 of 2015



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