

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2015

CORAM :

THE HON'BLE MR.JUSTICE D.HARIPARANTHAMAN

W.P.No.15842 of 2015

M.Jayakumar

...Petitioner

-vs-

1. The Managing Director,
Tamil Nadu State Transport
Corporation (Salem) Ltd.,
No.12, Ramakrishna Road, Salem.
2. The General Manager,
Tamil Nadu State Transport
Corporation (Salem) Ltd.,
Dharmapuri Region,
Bharathipuram, Dharmapuri.

...Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records of the 2nd respondent dated 10.02.2015 and made in Pa.Mu.No.376/11290/D6/TNSTC/2013 and quash the same and further direct the 1st respondent to refer the petitioner to the Medical Board, provide alternative employment based on the appeal dated 10.04.2015. (Prayer amended as per order of Court dated 20.07.2015 made in M.P.No.1 of 2015)

For Petitioner : Mr.M.Selvam

For Respondents : Mr.P.Paramasivadass

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O R D E R

Heard the learned counsel for parties.

2.The petitioner joined the respondent Transport Corporation as a driver in 2009. He has rendered nearly six years of service. He suffered a massive heart attack in June, 2013 and consequently, he was bed ridden. The doctor diagnosed that he is suffering coronary artery disease. He was advised to undergo open-heart by-pass surgery. As per the advice, he was admitted to the Narayana Hridayalaya at Bangalore on 30.07.2013 and he underwent open-heart by-pass surgery on 06.08.2013 and was discharged from hospital on 12.08.2013. He was advised bed rest.

3.In the meantime, he was issued a charge memo dated 19.09.2013 alleging that he was unauthorisedly absent from 26.07.2013. While he was taking treatment, an ex parte enquiry was conducted and an order dated 10.02.2015 was passed dismissing him from service for his unauthorised absence from 26.07.2013.

4.The petitioner has now sought to question the aforesaid order dated 10.02.2015 and also sought for a direction to refer him to the Medical Board and to provide alternative employment as per Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The learned counsel for the petitioner submits that the petitioner is also not interested in the backwages for the period of his alleged unauthorised absence.

5.The petitioner has enclosed the medical records relating to the by-pass surgery underwent by him in Narayana Hridayalaya at Bangalore. He was admitted in the said hospital on 30.07.2013. The surgery was performed on 06.08.2013 and he was discharged on 12.08.2013. In these circumstances, the charge memo was issued alleging that he was unauthorisedly absent from 26.07.2013.

6.In view of the above and also recording the submission of the learned counsel for the petitioner that the petitioner is willing to forego the backwages for the period of his unauthorised absence from 26.07.2013, I have no hesitation to interfere with the impugned order. Hence, the impugned order is liable to be quashed and is accordingly, quashed. A direction is issued to the respondent-Corporation to refer the petitioner to the Medical Board in the Government Hospital at Dharmapuri and to get a report as to his fitness to continue as a driver within a period of twelve (12) weeks from the date of receipt of the copy of the order. In the meantime, the respondent shall provide the petitioner some light duty till the

report is obtained from the Medical Board as to his fitness to continue as a driver. If the Medical Board gives its report that the petitioner is not fit to continue as a driver, he shall be continued in the light duty with pay protection.

7.In the circumstances, the writ petition is disposed of, directing the respondent-Corporation to provide employment to the petitioner in the above terms within a period of one (1) week from today. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

sra

To

1. The Managing Director,
Tamil Nadu State Transport
Corporation (Salem) Ltd.,
No.12, Ramakrishna Road, Salem.
2. The General Manager,
Tamil Nadu State Transport
Corporation (Salem) Ltd.,
Dharmapuri Region,
Bharathipuram, Dharmapuri.

1 CC to Mr.M.Selvam, Advocate SR.No.36895

1 CC to Mr.P.Paramasivadass, Advocate SR.No. 37151

W.P.No.15842 of 2015

GGK (CO)
PSI (24.07.2015)

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