

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2015

CORAM:

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

Writ Petition No.23356 of 2014
and
M.P.Nos.1 and 2 of 2014

A.Gunasekaran

.. Petitioner

vs.

1. The Managing Director
Tamil Nadu State Transport Corporation
(Coimbatore) Limited
No.37, Mettupalayam Road
Coimbatore.

2. The General Manager
Tamil Nadu State Transport Corporation
Erode Region, Chennimalai Road
Erode-1.

..Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of mandamus to directing the respondents to give the petitioner any alternative light duty works in their Corporation after ascertaining the petitioner's physical fitness through medical examination in continuation of the petitioner's earlier tests done on 26.11.2013, 24.12.2013, 07.01.2014 on the basis of the petitioner's representation dated 06.08.2014 and consequently to provide him any permanent alternative light duty employment in the cadre equal to the post of driver with pay protection, continuity of service and all other attendant benefits as per Section 47 of the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995.

For Petitioner

: Mr.S.Viswanathan

For Respondents

: Mr.P.Kannan Kumar

O R D E R

The petitioner was appointed as a driver in Tamil Nadu State Transport Corporation. Since he underwent surgery for Hydronephrosis, he is not in a position to drive vehicles. The petitioner,

therefore, wanted alternate employment. The request was not considered by the Corporation. The petitioner, therefore, filed a writ petition before this Court in W.P.No.10795 of 2013. This Court vide order dated 19.04.2013 directed the respondents to consider his representation with reference to the medical records and refer him to the Medical Board, if necessary, and pass further orders on the same. Accordingly, the respondents have initiated action. The second respondent, ultimately passed an order, which is impugned in this writ petition on the ground that the petitioner failed to appear for medical examination. The said order is under challenge in this writ petition.

2. The first respondent in his counter affidavit, indicated that proceedings were taken against the petitioner on account of his misconduct. According to the first respondent, sufficient opportunity was given to the petitioner to appear before the Medical Board; but, however, he failed to avail the said opportunity and as such, the impugned order does not call for interference.

3. The learned counsel for the petitioner submitted that the petitioner was compelled to appear before the learned Judicial Magistrate, Bhavani in connection with a case in STC No.3824 of 2009 and that was the reason for his failure to appear before the Medical Board.

4. The learned Counsel for the Transport Corporation, on instructions, submitted that the Corporation directed the petitioner to join duty on 06.02.2015; but, however, he failed to join and as such, he is not entitled to any kind of indulgence.

5. There is no dispute that the petitioner earlier submitted an application for alternate employment. This Court taking into account the representation submitted by the petitioner, directed the Corporation to refer the petitioner to Medical Board. It is a matter of record that the petitioner failed to appear before the Medical Board inspite of sufficient opportunity given by the Corporation. The petitioner has got his own explanation for his absence to appear before the Medical Board. The petitioner is now prepared to appear before the Medical Board. I am, therefore, of the view that appropriate orders should be passed to do justice to both the parties.

6. The petitioner is directed to join duty by Monday, ie., 02.03.2015. Thereafter his application for alternate employment will be considered by the first respondent. It is open to the first respondent to refer the petitioner to a Medical Board for opinion. Thereafter, his representation for alternate employment shall be decided taking into account the medical report.

7. The writ petition is disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CO)

Dt:3/3/2015

True Copy

Sub-Assistant Registrar

To

1. The Managing Director
Tamil Nadu State Transport Corporation
(Coimbatore) Limited
No.37, Mettupalayam Road
Coimbatore.
2. The General Manager
Tamil Nadu State Transport Corporation
Erode Region, Chennimalai Road
Erode-1.

+ 1 cc to Mr.P.Kannankumar, Advocate sR 10779

+ 1 cc to Mr.S.Viswanathan, Advocate SR 10659

scd(co)
prk3/3

W.P.No.23356 of 2014

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