

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15-10-2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

WRIT PETITION No.33128 of 2015

P.Selvan

.. Petitioner

vs

1. The Managing Director
Tamil Nadu State Transport
Corporation (Cbe) Ltd.,
37, Mettupalayam Road
Coimbatore 641 043

2. The General Manager
Tamil Nadu State Transport
Corporation (Cbe) Ltd.,
Erode Region, Chennimalai Road
Erode 638 001

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondents to consider the petitioner's representations submitted on various dates and to consider the plea to order for an alternative light duty with continuity of service and protection of pay and to treat the period from 12.6.2015, till date of providing alternative duty to the petitioner as duty with full pay and allowances with all consequential and other benefits.

For Petitioner : Mr.A.Rajendiran

For Respondents : Mr.P.Kannan Kumar

ORDER

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

2.The petitioner would state that he while working as a Selection Grade Driver in the services of the first respondent-Corporation, developed heart ailment and underwent an open heart surgery on 22.9.2006, at GKNM Hospital, Coimbatore

and thereafter, he was repeatedly representing the respondents to give lighter duty considering his medical condition, with pay protection and since it was not considered, the petitioner had filed W.P.No.13138/2013 and this Court vide order dated 7.10.2014, has directed the second respondent herein to consider the case of the petitioner on the applicability of Act 1 of 1996, by taking into consideration his physical condition and pass appropriate orders on merits and in accordance with law within a stipulated time.

3.The grievance expressed by the petitioner, is that though the second respondent has offered him to act as Conductor, it is not an equivalent post and the pay is also less and in terms of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995, he is entitled to pay protection also and in this regard, had submitted very many representations to the respondents and since no orders have been passed, came forward to file this writ petition.

4.The learned Counsel appearing for the petitioner, would submit that in the light of the open heart surgery undergone by the petitioner, and his precarious medical condition, the respondents are under statutory obligation to consider his claim and assign him with lighter duty with pay protection and since they have not done so, he is constrained to approach this Court by filing this writ petition and prays for appropriate orders.

5.Per contra, Mr.P.Kannan Kumar, learned Standing Counsel, who accepted notice on behalf of the respondents, would submit that though the petitioner was offered with the employment as a Conductor, which is a lighter duty, for the reasons best known to him, he has declined to accept the same, and hence the respondents cannot be compelled to assign the petitioner with a lighter duty and prays for dismissal of this writ petition.

6.The Court considered the rival submissions and also perused the materials placed before it.

7.Section 47 (1) of the Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995, reads as under:-

"47.Non-discrimination in Government employment:- (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service: Provided that, if an employee, after acquiring disability is not suitable for the

post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier."

8.This Court, in the light of the above facts and circumstances, directs the respondents 1 and 2 to consider the petitioner's representation dated 1.9.2015 and 15.9.2015, on merits and in accordance with law and pass orders thereon within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner. The writ petition is disposed of accordingly. No costs.

nsv

s/d-
Assistant Registrar (CO)

True Copy

Sub-Assistant Registrar

To:

1. The Secretary to Government
Higher Education Department
Fort St. George, Chennai 600 009
2. The Director of College Education
College Road, Chennai 600 006
3. The Joint Director of College Education
Chennai 600 006

+ 1 cc to Mr.P.Kannankumar, Advocate SR 57657

+ 1 cc to Mr.A.Rajendran, Advocate SR 56961

mg(co)
prk20/10

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