

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:31.03.2015
CORAM
THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

W.A.No.2218 of 2013
and
M.P.No.1 of 2013

The Management of
Tamil Nadu State Transport Corporation
(Villupuram Division) Ltd.,
Villupuram .. Appellant

vs

P.Kasinathan ... Respondent

Prayer : Writ Appeal against the order passed by this Court dated 10.10.2012 in Review Application No.58 of 2012 in W.P.No.15713 of 2011.

Rev.A.No.58 of 2012:

Review Application filed under Order 47 Rule 1 r/w.114 C.P.C to review the order dated 09.02.2012 in W.P.No.15713 of 2011, which is filed under Article 226 of the Constitution of India, for the issuance of writ of mandamus, directing the respondents to provide alternate employment as per Section 47 of 'The PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHT AND FULL PARTICIPATION) ACT'1995'.

For Appellant : Mr.P.Paramasiva Doss

For Respondent सत्यमेव जयते : Mr.S.T.Varadarajulu

J U D G M E N T

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN.J.,)

The appeal arises out of the order passed by the learned Judge in a Review Application filed by the respondent herein.

2. Heard Mr.P.Paramasivadoss, learned counsel for the appellant and Mr.S.T.Varadarajulu, learned counsel for the respondent.

3. The respondent filed a writ petition in W.P.No.15713 of 2011

seeking a mandamus to direct the appellant herein to provide alternative employment to him in terms of the provisions of Section 47 of the Persons with Disabilities [Equal Opportunities, Protection of Rights and Full Participation] Act, 1995.

4. The case of the respondent was that he was employed as a Conductor in the appellant-Corporation from 05.07.2004 and that on 22.01.2007 his left leg ankle was crushed under the wheels of the bus, while he was on duty and that therefore, he must be provided alternative employment.

5. When the writ petition came up for hearing, it appears that the counsel for the appellant-Corporation submitted that the respondent had already been offered an alternative employment. Therefore, the writ petition was closed on the ground that nothing survived for adjudication, by an order dated 09.02.2012.

6. Thereafter, the respondent filed a review application in R.A.No.58 of 2012 contending that he was not given alternative employment. When the Review Application came up for hearing, the learned counsel for the appellant-Corporation again submitted that the Corporation will provide alternative employment to the respondent. Therefore, the review application was allowed. The relevant portion of the order passed in the Review Application on 10.10.2012 reads as follows:

"4. The submission of the learned counsel for the respondent that the respondent will give an alternate employment to the petitioner as per the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, is recorded.

5. In the result, this Review Application is allowed. As per the undertaking given by the learned counsel for the respondent, the petitioner shall be given an alternate employment taking into consideration of his disability and also the undertaking given by the petitioner in his affidavit that he will not claim any backwages, within a period of four weeks from today, without fail."

7. Thereafter, the appellant-Corporation appears to have made a mention before the learned Judge, requesting to incorporate the word "if" in the eighth line of para No.2 of the order. But the said request was turned down by an order dated 08.11.2012. Thereafter, the Corporation has come up with the above appeal against the original order passed in the Review application.

8. The main contention of the learned counsel for the appellant is that the respondent was a casual employee and that therefore, he

is not entitled to the benefits of the Act.

9. But, we will not allow the appellant to raise the contention at this stage. Both at the time, when the writ petition came up for hearing on the first occasion on 09.02.2012 and also on the next occasion when the review application filed by the respondent came up for hearing on 10.10.2012, the appellant-Corporation took a consistent stand to provide him alternative employment. Even in the memorandum of grounds of writ appeal, the appellant has not disowned such an offer. Therefore, the stand now taken orally before the Court cannot be accepted. Hence, the writ appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
The Management of
Tamil Nadu State Transport Corporation
(Villupuram Division) Ltd.,
Villupuram.

1 cc to Mr.S.T.Varadarajulu ,Advocate, SR.No.18016

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W.A.No.2218 of 2013

सत्यमेव जयते
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