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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.05.2015

CORAM:

THE HONOURABLE MS.JUSTICE R.MALA

W.P.(MD)No.8580 of 2015

and

M.P.(MD)No.1 of 2015

S.Rajendran

: Petitioner

Vs.

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The District Supply Officer,
Office of the District Supplies,
Virudhunagar District,
Virudhunagar.

3.The Personal Assistant (General)
to the District Collector,
Virudhunagar District,
Virudhunagar.

4.The Thashildar,
Aruppukottai Taluk,
Aruppukottai,
Virudhunagar District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for the issue of a Writ of Certiorarified Mandamus to call for the records pertaining to the order dated 06.05.2015 made in RC A3/31/2015 on the file of the Personal Assistant (General) to the District Collector, the third respondent herein and quash the same and direct the respondents to post the petitioner in an alternative post suitable to his educational qualification in terms of Section 47 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

For Petitioner : Mr.A.V.Arun

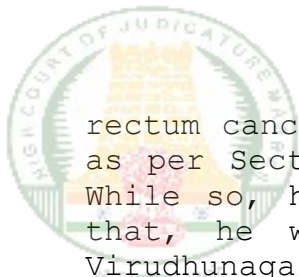
For Respondents : Mr.A.K.Baskarapandian,
Special Government Pleader
O R D E R

Mr.A.K.Baskarapandian, learned Special Government Pleader, takes notice on behalf of the respondents.

2. The petitioner has come up with the present Writ Petition challenging the transfer order issued to him and also sought for an alternative employment under Section 47 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as "the Act").

<https://hcservices.ecourts.gov.in/hcservices/>

3. The learned counsel appearing for the petitioner would submit that the petitioner is working as a Jeep Driver. Since he was suffering from



rectum cancer, he has made an application seeking alternative employment, as per Section 47 of the Act, taking into account his health condition. While so, he was transferred from Tiruchuzhi to Aruppukkottai and after that, he was transferred to the Office of District Supply Officer, Virudhunagar.

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4. Useful reference can be made to the judgment of the Apex Court in **2003(4) SCC 524 [Kunal Singh v. Union of India]**, which was later followed by a Division Bench of this Court in **A.Veeriya Perumal vs. The Secretary to Government [2006(4) MLJ 335]**. Similar issue came up for consideration before this Court in **P.Mani vs. The Managing Director [W.P.No.39012 of 2002, dated 16 June, 2003]**; **P.Thangamarimuthu vs. Tamil Nadu State Transport..... [2006(1) MLJ 452]**; **Managing Director, Tamil Nadu State Transport Corporation Ltd., vs. E.Humayun Sheriff [CDJ 2013 MHC 4654]**; and **R.Rajamani vs. Tamil Nadu State Transport Corporation (Villupuram Division-1) Ltd**, decided on August 30, 2012, wherein it was held that as per Section 47 of the Act, no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service.

5. At this juncture, it is useful to refer to Section 47 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, which reads thus:

"Sec.47. Non-Discrimination of Government employment.- (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

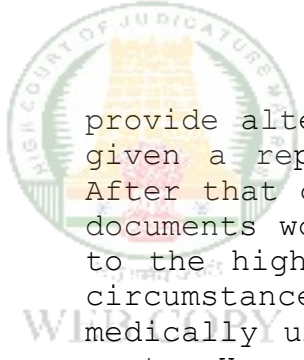
Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits.

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.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

6. On perusal of the records produced by the petitioner in the form of typed-set of papers, it is seen that as per the letter of the Government dated 20.06.1989, the posts of Jeep Driver and Junior Assistant are considered to be equal and as per the Rules, the Jeep Driver can be transferred to the post of Junior Assistant, depending upon the eligibility. Since the petitioner has made an application to provide alternative employment, he was referred to the Medical Board and the Medical Board also gave a report dated 21.01.2015, stating that he is unfit to the post of Jeep Driver, which is found place in page No.9 of the typed-set of papers. The respondents have not taken any steps to



provide alternative post for about five months. The petitioner herein has given a representation dated 21.02.2015 seeking alternative employment. After that only, the present transfer has been effected. A perusal of the documents would go to show that the respondents also sent a communication to the higher officials in this regard and also got the reply. In such circumstances, as per Section 47 of the Act, the petitioner, who is medically unfit to the post of driver, shall not be posted to the same post. However, the third respondent herein, without considering the health condition of the petitioner and flouting the statutory provision of Section 47 of the Act, has transferred the petitioner to the District Supply Officer, Virudhunagar District, who is an inspection authority. In such circumstances, I am of the view that the order impugned herein is unsustainable.

7. At this juncture, the learned Special Government Pleader appearing for the respondents would submit that already the petitioner was relieved from service. He would further submit that the third respondent wants three months time for accommodating the petitioner to some other post.

8. In view of the foregoing reasons, I am of the view that it is a fit case for quashing the transfer order. Accordingly, the impugned order dated 06.05.2015 of the third respondent is set aside and the Writ Petition is allowed. The third respondent is given three months time for providing the petitioner with alternative post, which he is entitled to as per eligibility. Till such time, the respondents are directed not to post the petitioner as driver in any of the place. No costs. Consequently, the connected miscellaneous petition is closed.

9. Post the Writ Petition on 01.09.2015 'for reporting compliance'.

Sd/-
Vacation Officer/
Assistant Registrar(per.Admn)

/True Copy/

Sub- Assistant Registrar

To

- 1.The District Collector,
Virudhunagar District,
Virudhunagar.
- 2.The District Supply Officer,
Office of the District Supplies,
Virudhunagar District,
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4.The Thashildar,
Aruppukottai Taluk,
Aruppukottai,
Virudhunagar District.

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5.The Section Officer,
Writ Section,
Madurai Bench of Madras High court,Madurai.

+1cc to M/s.A.V.Arun, Advocate in SR.No. 26433/15
+1cc to Special Government Pleader in SR.No. 26506/15

SML
Sm:29.05.2015:4P/8C

Order made in
W.P. (MD)No.8580 of 2015
DATED - 28.05.2015