

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03-11-2016

(Orders reserved on 21-10-2016)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.30430 of 2014

and M.P.Nos.1 and 2 of 2015

A.Arumugam

.. Petitioner

Vs.

1. The Secretary,
School Education Department,
Government of Tamil Nadu,
Fort St.George,
Chennai-600 009.
2. The Director of School Education,
College Road, Chennai-600 006.
3. The Chief Education Officer, Saidapet, Chennai.
4. The District Educational Officer (East),
Chennai-600 002.
5. The Secretary,
The Vallal SI Alagarasamy Chettiar,
Higher Secondary School,
Royapuram, Chennai-600 030. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the respondents to recognise the services of the petitioner in the fifth respondent-School from 01.12.2000 as continuous and uninterrupted under provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act (Central Act) and other corresponding provisions of law as applicable to the petitioner, pay the corresponding monthly salary from 01.12.2000 onwards and give him special grade over and above selection grade from 07.06.2009 and to pay all attendant benefits attached with the said post.

For Petitioner : Mr.C.Johnson
For Respondents : Mr.K.Dhanjayan, Spl.G.P.
for RR-1 to 4
Mr.D.Sreenivasan for R-5

ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Mandamus to direct the respondents to recognise the services of the petitioner in the fifth respondent-School from 01.12.2000 as continuous and uninterrupted under the provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act (Central Act) and other corresponding provisions of law as applicable to the petitioner, pay the corresponding monthly salary from 01.12.2000 onwards and give him special grade over and above the selection grade from 07.06.2009 and to pay all attendant benefits attached with the said post.

2. It is the case of the petitioner that he has passed B.P.Ed., and has satisfied all the necessary educational qualifications, and accordingly joined as Physical Education Teacher on 08.10.1984 in the fifth respondent-School. He had also passed B.Sc., M.Sc.(Physics) and M.Ed. Degrees. Taking into consideration the educational qualifications of the petitioner, the Management of the fifth respondent-School promoted him as B.T. Teacher on 07.06.1989. In order to accommodate their own candidate in the place of the petitioner, the Management forced him to opt for voluntary retirement. As he refused to do so, the Management troubled him. Unfortunately, the petitioner fell down in his house on 01.12.2000 and sustained severe backbone injuries (C6 and C7) among other injuries. In spite of treatment, he could not recover and his hands and legs were paralysed due to the spinal cord injury, resulting in his immobility, as he could not move out of bed. This has resulted in the petitioner not attending the School, which made him to apply medical leave from the date of accident. He continued to live with all infirmities attached to spinal cord injury and the Doctor gave a Disability Certificate, dated 04.11.2003, assessing his disability at 90%. Ever since his accident, he explained his health condition to the fifth respondent-School Management, and that the school teachers and school representatives met him in the hospital periodically.

3. It is the further case of the petitioner that his free movement is being drastically reduced due to physical impairment and on his behalf, his wife, family members and friends

repeatedly requested the Management of the fifth respondent-School to consider his disablement sustained while in service and prayed for accommodating him in any suitable post, so as to enable him to draw monthly salary on par with the teachers of his seniority, cadre and experience. The petitioner's constant and continuous efforts did not evoke any response from the Management of the fifth respondent-School, inspite of provisions contained in the relevant disability statutes as legislated by the Government, including the Disabilities Act cited supra. All his representations went in vain. His physical disability coupled with financial predicament led him to suffer from depression, and notwithstanding his sufferings, the fifth respondent-School did not respond his genuine requests as embodied in the disability statutes, especially the Disabilities Act (The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act.

4. Ultimately, the petitioner gave a representation on 22.07.2005 to the Management of the fifth respondent-School, requesting to disburse his monthly salary under the provisions of the said Disabilities Act, and due to his physical inability and lack of proper legal advise, he even went to the extent of opting for Voluntary Retirement and other related benefits. Later, he came to understand that he is entitled for full protection with regard to his post, salary and other monetary benefits. Hence, he requested the Management to consider his case sympathetically and allow him to draw monthly salary and benefits attached to the post, and as this has not yielded favourable result, he filed a Writ Petition before this Court in W.P.No.1834 of 2006 for a mandamus to direct the third respondent to provide alternative job to him in accordance with the provisions of the said Act forthwith. This Court, by order dated 16.03.2007 passed in the said Writ Petition, directed as follows, based on the consent given by the learned counsel for both parties:

"11. In view of the said submission, without expressing anything on the merits of the case, the third respondent is directed to send a request to the medical board, Stanley Medical College Hospital, to ascertain the claim of the petitioner as to whether he can handle classes by sitting in a wheel chair, within two weeks from the date of receipt of a copy of this order and based on the medical report given by the medical board of the Stanley Medical College Hospital, the third respondent is directed to comply with the request of the petitioner considering the mandatory provisions contained in Section 47

of the Act 1 of 1996. The third respondent is directed to pass orders based on the medical report to be furnished by the medical board, within two weeks from the date of receipt of the medical report of the petitioner from the medical board.

12. The writ petition is disposed of with the above direction. No costs. Connected miscellaneous petition is closed."

5. Thereafter, the Management of the fifth respondent-School, by letter dated 08.04.2007, directed the petitioner to appear before the Medical Board for obtaining a Disability Certificate for the purpose of considering his case under the provisions of the said Act. As per the direction of the Management and the Medical Board, the petitioner appeared before the Medical Board on 16.08.2005 and 19.09.2005 and the Medical Board quantified his disability at 85%, and inspite of obtaining the said Disability Certificate, the Management has not taken action. It is claimed by the petitioner that under the said Act, even a person assessed at 40% disability, is entitled for the benefits available to the disabled. Subsequently, the petitioner issued Lawyer's notice to the Management calling for immediate action on his representation, for which, they replied. It is further averred by the petitioner that the Medical Board viewed that he is mentally sound and capable of delivering teachings by sitting in a wheeled chair, despite which, the Management declined alternative employment, which is evident from the order dated 16.05.2007.

6. The above rejection of the petitioner's request by the Management of the School, has resulted in the petitioner filing another Writ Petition in W.P.No.23224 of 2007 seeking issuance of a Writ of Certiorarified Mandamus to quash the said order, dated 16.05.2007, with direction to either give him alternative employment or pass order keeping him in the supernumerary post till the age of retirement/superannuation and to pay monthly salary to him. This Court, by order dated 14.10.2009, observed and directed as follows:

"7. In Kunal Singh Vs. Union of India and another reported in AIR 2003 SC 1623 wherein the Hon'ble Supreme Court while analysing the scope of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, has held as follows:

"Further merely because under Rule 38 of the CCS Pension Rules, 1972 the appellant got invalidity pension is no ground to deny the protection, mandatorily made available to the appellant under Section 47 of the Act. Once it is

held that the appellant has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay scale and service benefits; if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation, which is earlier."

8. In view of the said law laid down by the Hon'ble Supreme Court, it is obligatory on the part of either the third respondent or the State to provide alternative employment by creating supernumerary post. In the case on hand, the third respondent is an aided school and even if the petitioner is given alternative employment in the same school, ultimately, salary and other monetary benefits are going to be paid only by the State. Therefore, in my considered opinion, it would be in the interest of justice to give option to the first respondent to create supernumerary post either in the third respondent School or in any other institution or office, or library falling within the jurisdiction of the first respondent to provide alternative employment.

9. The learned senior counsel appearing for the petitioner would fairly submit that the petitioner is willing to work either in the third respondent-school or in any other institution or office in any post without disturbing the pay-scale or other service benefits of the petitioner.

10. In view of the above, the Writ Petition is allowed. The impugned order of the third respondent is set aside and the first respondent is directed to create a supernumerary post in the third respondent school to provide alternative employment for the petitioner or to provide alternative employment in any other institution or office or library falling within the jurisdiction of the first respondent within the city of Chennai, without disturbing the pay-scale and other service benefits as required under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. Connected miscellaneous petition is closed. No costs."

7. The above said order of this Court led the petitioner to send a representation, dated 12.11.2009 to the respondents, seeking the relief, inspite of which, the respondents have not taken any action, which warranted the petitioner to file a Contempt Petition before this Court in Cont.P.No.634 of 2010 in W.P.No.23224 of 2007, subsequent to which, the respondents decided to take the petitioner back to the job with monthly salary. As there was compliance of the order of this Court, recording the same, the Contempt Petition was closed. The respondents chose to absorb the petitioner with effect from 14.10.2009, by quoting the date of judgment in W.P.No.23224 of 2007. It is the further claim of the petitioner that on completion of ten years of service as B.T. Teacher, he was originally given Selection Grade in the cadre of B.T. Assistant on 07.06.1999, pursuant to which, he was given salary attached to the said cadre.

8. Adding further to his physical ailment, he fell down in December 2010 and was not able to attend the classes, as he was hospitalised and was under treatment. Only after the order was passed in Cont.P.No.634 of 2010, he was permitted to join duty in the School on 22.12.2010, subsequent to which, he was attending the School in wheel-chair and discharging his duties. In order to make his suffering worse, the petitioner was not drawing the necessary salary and he was drawing the salary as that of the one drawn immediately before his accidental fall on 01.12.2000.

9. Hence, he approached the authorities under the Right to Information Act for non-payment of full salary among other requests made therein with regard to his service benefits by way of representation dated 26.10.2013 through his wife. The fifth respondent replied by giving vague answers and admitted the payment of last drawn salary of the year 1999. Therefore, this has made the petitioner to file this Writ Petition for the relief stated supra.

10. When the Writ Petition is taken up for consideration, learned Senior Counsel appearing for the petitioner made detailed submissions by adverting to the averments made in the affidavit filed in support of the Writ Petition and also by relying upon the provisions of the said Disability Act. He also relied on the decisions of the Supreme Court reported in 2008 (1) SCC 579 (Bhagwan Dass and another Vs. Punjab State Electricity Board) and 2003 (4) SCC 524 = AIR 2003 SC 1623 (Kunal Singh Vs. Union of India).

11. Opposing the above submissions made by the learned

Senior Counsel appearing for the petitioner, the fifth respondent has filed a detailed counter affidavit and submitted that the decision regarding creation of posts, pay scale fixation, etc., can be taken only by the respondents 1 to 4, and the role of the fifth respondent-School is limited, except complying with the orders issued by them. Hence, he prayed for dismissal of the Writ Petition.

12. Though this Writ Petition was adjourned on several occasions, the respondents 1 to 4 have not chosen to file counter affidavit. Heard the submissions made by the learned Special Government Pleader appearing for the respondents 1 to 4.

13. Keeping in mind the above submissions made on either side, I have carefully considered the same and perused the materials available on record.

14. It is pertinent to note that the issue involved in this Writ Petition is squarely covered by the above said two decisions relied on by the learned Senior Counsel appearing for the petitioner. In 2003 (4) SCC 524 = AIR 2003 SC 1623 (cited supra), the Apex Court held as follows:

"12. Merely because under Rule 38 of the CCS (Pension) Rules, 1972, the appellant got invalidity pension is no ground to deny the protection mandatorily made available to the appellant under Section 47 of the Act. Once it is held that the appellant has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay scale and service benefits; if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation, whichever is earlier. It appears no such efforts were made by the respondents. They have proceeded to hold that he was permanently incapacitated to continue in service without considering the effect of other provisions of Section 47 of the Act.

13. For the reasons stated and discussions made above, the appeal deserves to be accepted. Hence the impugned order affirming the order of termination of services of the appellant is set aside and the appeal is allowed. We direct the respondents to give relief in terms of Section 47 of the Act.

14. There shall be no order as to costs."

15. In the other decision of the Supreme Court reported in 2008 (1) SCC 579 (cited supra), the Apex Court directed as under:

"In the light of the discussions made above, the

action of the Board in terminating the service of the disabled employee (appellant No.1) with effect from March 21, 1997 must be held to be bad and illegal. In view of the provisions of Section 47 of the Act, the appellant must be deemed to be in service and he would be entitled to all service benefits including annual increments and promotions etc. till the date of his retirement. The amount of terminal benefits paid to him should be adjusted against the amount of salary from March 22, 1997 till date. If any balance remains, that should be adjusted in easy monthly instalments from his future salary. The appellant shall continue in service till his date of superannuation according to the service records. He should be reinstated and all due payments after adjustments as directed, should be made to him within six weeks from the date of presentation of a copy of the judgment before the Secretary of the Board.

In the result the appeal is allowed with costs quantified at Rs.5,000/-."

16. In the light of the above judgments of the Supreme Court, I am of the considered view that the prayer of the writ petitioner has to be allowed. Accordingly, the Writ Petition is allowed. Within a period of two weeks from the date of receipt of a copy of this order, the fifth respondent-School is directed to send a proposal for pay fixation by considering his emoluments prior to his accident on 01.12.2000 and on par with his juniors, in accordance with necessary emoluments, increments, selection/special grades and grant of notional promotion, etc. On receipt/consideration of such a proposal from the fifth respondent-School, the respondents 1 to 4 shall act in accordance with the provisions of Section 47 of the said Act and also in consonance with the above rulings of the Supreme Court, by providing him necessary salary after due computation/adjustment wherever required, within a period of four weeks thereafter. No costs. The Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Copy to

1. The Secretary,
School Education Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
2. The Director of School Education,
College Road, Chennai-600 006.
3. The Chief Education Officer, Saidapet, Chennai.
4. The District Educational Officer (East),
Chennai-600 002.
5. The Secretary,
The Vallal SI Alagarasamy Chettiar,
Higher Secondary School,
Royapuram, Chennai-600 030.

+1cc to Mr.C. Johnson, Advocate, S.R.No.62406
+1cc to Mr.D. Kalaiselvi, Advocate, S.R.No.62796

ss(CO)
md(25/11/2016)

W.P.No.30430 of 2014

सत्यमेव जयते

WEB COPY