

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.19871 of 2014

D.Raja

.. Petitioner

vs.

1.The Managing Director,

Tamil Nadu State Transport Corporation (Salem) Ltd.,
Salem-636 007.

2.The General Manager,

Tamil Nadu State Transports,
Corporation (Salem) Ltd.,
Salem-636 007.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the second respondent in Pro.No.E.1-A/353/TNSTC (Salem) 2014 dated 25.04.2014, quash the same and to issue consequential direction to the respondents to grant to the petitioner the benefits of continuity of service, pay protection and attendant benefits from the date of the petitioner's discharge from duty of Conductor on 29.05.1994 to the date of reappointment as Office Attender on 17.10.1994 in the light of Section 47 of the Person with Disabilities (Equal Opportunities Protection of Rights and full participation) Act, 1995 and in the light of the order dated 25.04.2012 in W.P.No.10533/2012.

For Petitioner : Mr.J.Muthukumaran

For Respondents : Mr.P.Paramasivadoss

सत्यमेव जयते
O R D E R

This Writ Petition has been filed praying for issuance of a Writ of Certiorarified Mandamus to quash the order of the of the second respondent in Pro.No.E.1-A/353/TNSTC (Salem) 2014 dated 25.04.2014 and to issue consequential direction to the respondents to grant to the petitioner the benefits of continuity of service, pay protection and attendant benefits from the date of the petitioner's discharge from duty of Conductor on 29.05.1994 to the date of reappointment as Office Attender on 17.10.1994 in the light of Section 47 of the Person with Disabilities (Equal Opportunities Protection of Rights and full participation) Act, 1995 and in the light of the order dated 25.04.2012 in W.P.No.10533/2012.

2. The petitioner was appointed as Conductor in the erstwhile Anna Transport Corporation Limited, Salem-7 on 17.12.1984 and was drawing pay in the Scale of Rs.820-1160 from 01.05.1990 plus allowances. Whiles, the petitioner was asked to appear before the Medical Board, Government Mohankumaramangalam Medical College Hospital during May 1994 for medical examination and accordingly, the petitioner appeared before the Medical Board and opinion was given by the Medical Board stating that the petitioner is unfit to discharge the duties of conductor and that he may be given light duties. Therefore, the petitioner made a representation dated 04.06.1994 to the Management to give alternative employment and therefore, he was called upon to appear for interview and the petitioner attended the interview and vide proceedings dated 08.10.1994, the petitioner was appointed as Office Attender as a fresh entrant in the Scale of pay of Rs.990-15-1350 and he joined duty as Office Attender on 17.10.1994 and have been serving in the said post till date. After joining duty as a fresh entrant in the post of Attender, the petitioner made several representations to the Management to consider his case for continuity of service with pay protection, but his grievance was not considered. The respondents ought to have given him alternative employment with pay protection as provided in Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1994. The petitioner would further state that in identical issue in W.P.No.10533/2012 [M.S.Sivasubramani v. The Tamil Nadu State Transport Corporation (Salem) Ltd., Salem and another], this Court allowed the said writ petition and hence, the petitioner filed W.P.No.353 of 2014 praying for a direction to consider his representation and this Court, vide order dated 27.01.2014, directed the respondents to consider the petitioner's representation dated 15.12.2012 on merits and in accordance with law in the light of the judgment dated 25.04.2012 made in W.P.No.10533/2012. However, the second respondent, without considering the said judgment, rejected the claim of the petitioner, vide impugned order dated 25.04.2012 and hence, the petitioner has come forward with this writ petition.

3. When the taken is taken up for consideration, the learned counsel appearing for the petitioner relied upon the judgment of this Court dated 25.04.2012 made in W.P.No.10533 of 2012, wherein a learned Single Judge of this Court by considering the various judgments of this Court as well as the judgments of the Hon'ble Supreme Court, gave the following directions:

"6. In the present case, even though the impugned order was passed on 31.5.1995, the petitioner has not chosen to challenge the same all these years and there is a delay of more than 16 years. The petitioner is also given the post of Helper as a fresh entrant from 24.10.1995 and the petitioner is serving and receiving salary as Helper all these years. The petitioner having been allowed to serve as Helper, he is not entitled to get any backwages. However, the period of discharge i.e., from 31.05.1995 is to be counted for the purpose of notional increment and all other benefits other than backwages.

7. Following the above referred judgments, the impugned orders are set aside and the respondents are directed to give alternative employment to the petitioner in any one of the post in which he is eligible to be fit within two weeks from the date of receipt of the copy of this order. The petitioner is also entitled to get all promotional and other benefits. It is made clear that except the claim of backwages from 31.5.1995 till date, all other rights are to be given to the petitioner. This order is passed taking note of the employment given to the petitioner as Helper as new entrant from 24.10.1995 and the delay on the part of the petitioner in challenging the order dated 31.5.1995."

4. Heard the submissions of the learned counsel appearing for the respondents and also perused the entire materials available on record.

5. I am of the opinion that the decision relied on by the learned counsel appearing for the petitioner is squarely applicable to the facts of the present case. Hence, in the light of the above cited decision, this Writ Petition is allowed and the impugned order of the second respondent in Pro.No.E.1-A/353/TNSTC (Salem) 2014 dated 25.04.2014 is set aside and the respondents are directed to grant to the petitioner the benefits of continuity of service, pay protection and attendant benefits from the date of the petitioner's discharge from duty of Conductor on 29.05.1994 to the date of reappointment as Office Attender on 17.10.1994, in the light of Section 47 of the Persons with Disabilities (Equal Opportunities Protection of

Rights and full Participation) Act, 1995 and also in the light of the order dated 25.04.2012 in W.P.No.10533/2012. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

jvm

To

1.The Managing Director,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
Salem-636 007.

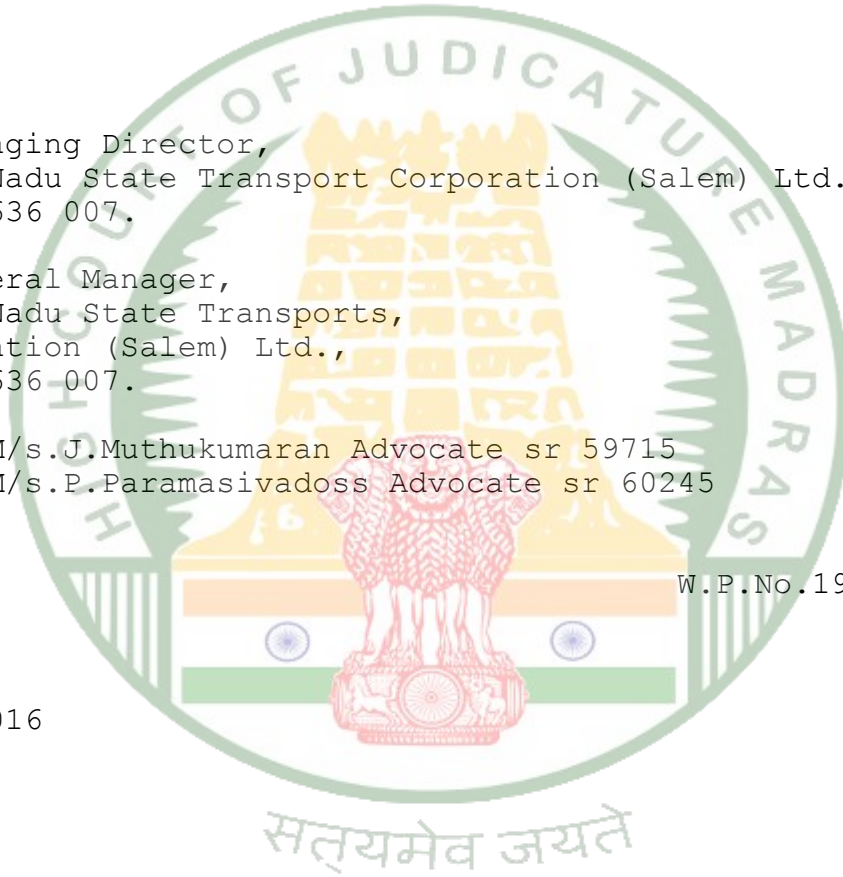
2.The General Manager,
Tamil Nadu State Transports,
Corporation (Salem) Ltd.,
Salem-636 007.

+1 cc to M/s.J.Muthukumaran Advocate sr 59715

+1 cc to M/s.P.Paramasivadoss Advocate sr 60245

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