

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.36354 of 2016 &

WMP.No.3310 of 2016

Palani

... Petitioner

vs.

1. Tamilnadu State Transport Corporation
(Salem) Ltd., rep. by its Managing Director,
12, Ramakrishna Road, Salem - 7.
 2. The General Manager,
Tamilnadu State Transport Corporation
(Salem) Ltd., Dharmapuri Region,
Bharathipuram, Dharmapuri.
- ... Respondents.

Writ Petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus after calling for the records pertaining to the order dated 16.09.2016 passed by the second respondent in proceedings No.PA4/6699/TNSTC/Thapuri/2016, quash the same and consequently direct the respondents to provide the petitioner light duty/alternative job in commensurate with his disability with continuity of service, pay protection, backwages and all other attendant benefits from 12.08.2013 award for costs.

For Petitioner : Mr.R.Krishnaswami

For Respondents : Mr.P.Paramasivados

ORDER

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

2. The petitioner has come up with the present writ petition for a Writ of certiorarified Mandamus, to quash the order dated 16.09.2016 passed by the second respondent in proceedings No.PA4/6699/TNSTC/Thapuri/2016 and consequently direct the respondents to provide the petitioner light duty/alternative job in commensurate with his disability with continuity of service, pay protection, backwages and all other attendant benefits from 12.08.2013

3. The case of the petitioner is that the petitioner joined the services of the first respondent corporation, in their Dharmapuri region as a driver on 03.03.2006 and was posted to work at Peeagaram Depot. The petitioner has been suffering from diabetics and blood pressure from the year 2010 and he has been taking treatment for the same from then. Since then, the petitioner was not having clear vision. On 30.07.2013, when the petitioner reported for work, due to swelling of his left eye, he went to the local hospital. The doctor after examination advised the petitioner not to go for any laser surgery and they gave medicines to arrest and reduce the swelling and pain in his left eye. Therefore, the petitioner applied for medical leave from 12.08.2013 and went to IRT Medical College Hospital at Perundurai for eye check-up where the doctors issued a report certifying that the petitioner was suffering with Proliferative Diabetic Retinopathy on his left eye and also they referred the petitioner to the Government Eye Hospital at Egmore, Chennai for further assessment regarding visual handicap.

4. The further case of the petitioner is that on 18.09.2013, when the petitioner went to the Government Eye Hospital at Egmore, Chennai, the doctors of the said hospital issued a certificate stating that the petitioner is suffering from Proliferative diabetic retinopathy in left eye and he has been suffering from restricted, refractive and defective eye vision and hence his night vision would be very poor and advised the petitioner not to drive vehicles and they also certified that he is not fit for the post of driver. Therefore, the petitioner submitted a representation to the respondents on 28.09.2013 requested to provide suitable alternative employment for him. As the request of the petitioner for alternative employment was not considered by the respondents, the petitioner filed W.P.No.1357 of 2014 to direct the respondents to consider the representation of the petitioner.

5. In the said Writ Petition, this Court by an Order dated 01.12.2014 directed the respondents to refer the petitioner to the Medical Board and to provide the petitioner an alternative employment based on the report of the medical report. Thereafter, the second respondent by a letter dated 06.04.2015 referred the petitioner to the Government Medical College and Hospital, Dharmapuri and the Professor and HOD of the Department of Ophthalmology issued a certificate certifying that the petitioner has been suffering with Diabetic retinopathy BE., with 20% disability and that he is unfit for the post of driver. On the basis of the report of the medical board, the second respondent without issuing any order in writing, issued oral direction directing to provide the petitioner light job namely diesel filling work at Pennagaram Depot on and from 15.09.2015. On 09.12.2015 and in April 2016, again the petitioner was

referred to medical Board and the medical board also submitted reports dated 16.12.2015 certifying that the petitioner is unfit for the post of driver and that his disability is of a permanent nature.

6. While so, the second respondent issued the impugned order dated 16.09.2016 stating that the disability and percentage of disability which the petitioner has been suffering with, though permanent, are not coming within the definition of 2(i) and 2(t) respectively of the Persons with Disabilities Act 1995 and hence the request of the petitioner to provide an alternative employment is not legally possible and the petitioner was directed and advised to continue the work and duty of a driver. Even though the petitioner made a request to consider the above order and decision in person to permit the petitioner to continue the light duty, namely, diesel filling work which was given to the petitioner from 15.09.2015, the respondents declined and refused to accept and concede to his request. Hence, the petitioner has come forward with the present petition.

7. When the matter is taken up for hearing, the learned Counsel for the petitioner relying upon a decision of this Court in Management of Tamil Nadu State Transport Corporation (Villupuram Division-III) Limited, Kancheepuram vs. B.Gnanasekaran reported in (2007) 5 MLJ 1 would submit that in that case, this Court has given a direction to the petitioner Management to give an alternative light duty to the respondent. In this regard, it is useful to extract para 4 of the said decision which reads as follows:

"... Learned Counsel urged that from a conjoint reading of the definition of 'person with disability' and Section 47 of the Disabilities Act, it would be evident that those persons who acquire disability i.e. more than 40% during service, his/her service cannot be dispensed with or he/she reduced in rank, though it is open to the employer to shift such employee to some other post with the same pay scale and service benefits and in the absence of such post, to keep him/her on a supernumerary post or such post until a suitable post is made available or till the person attains the age of superannuation. Learned Counsel submitted that there is nothing on record that the respondent was a person with disability as defined under Section 2(t) of the Disabilities Act and whether the disability was more than 40%."

8. Heard the learned Counsel appearing for the respondent.

9. Considering the facts of the present case, it is seen that the Regional Medical Board, Government Dharmapuri Medical College Hospital, Dharmapuri, has issued a Certificate dated 16.12.2015 in respect of the medical fitness of the petitioner stating that he is unfit for driving. Therefore, applying the principle laid down in the decision in (2007) 5 MLJ 1 cited supra to the present case, the impugned order has to be set aside. Accordingly, the Writ Petition is allowed and the impugned order is set aside with a direction to the respondents to provide the petitioner light duty/alternative duty in commensurate with the petitioner's disability with continuity of service, pay protection, back wages and all other attendant benefits from 12.08.2013 within two weeks from the date of receipt of a copy of this Order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1. Managing Director,
Tamilnadu State Transport Corporation
(Salem) Ltd.,
12, Ramakrishna Road, Salem - 7.
2. The General Manager,
Tamilnadu State Transport Corporation
(Salem) Ltd., Dharmapuri Region,
Bharathipuram, Dharmapuri.

+1 cc to Mr.V.Ajoykhose, advocate, sr.65263

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krd 9/12

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W.P.No.36354 of 2016

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