



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MS.JUSTICE J.NISHA BANU

Writ Appeal (MD).No.1377 of 2015

and

M.P.(MD).No.1 of 2015 and C.M.P.(MD).No.8082 of 2016

Tajudeen Bava

...Appellant/Petitioner

Vs.

1. The General Manager,
Tamil Nadu State Transport Corporation,
Head Office, Bypass Road,
Dindigul.

2. The Managing Director,
Tamil Nadu State Transport Corporation,
Head Office, Bypass Road,
Madurai.

...Respondents/Respondents

Prayer: Writ Appeal is filed under Clause 15 of Letters Patent Act against the order passed by this Court in W.P.(MD).No.15854 of 2015 dated 02.09.2015.

Prayer in WP(MD). 15854/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue Writ of Mandamus or any directions directing the respondents to refer the petitioner to the competent Medical Board to ascertain his disabilities to perform duties as a Driver and thereafter to provide the suitable alternative employment with pay protection, continuity of service and other attendant benefits based on the Medical certificate issued by the medical board in the terms of the section 47 of the persons with disability (Equal opportunities, protection of Rights participation) Act, 1995 (Act 1 of 1996).

For Appellant : Mr.S.A.Ajmalkhan
For Respondents : Mr.A.Jeyaram

J U D G M E N T

(Judgment of the Court was made by M.SATHYANARAYANAN, J.)

By consent, the writ appeal itself is taken up for final disposal.
<https://hcservices.ecourts.gov.in/hcservices/>



2. The petitioner had applied for the post of driver in the service of the Tamil Nadu State Transport Corporation and vide call letter dated 26.04.2007, he was called for interview and was selected and appointed as a driver, on 25.10.2009, on a daily wage basis (reserve crew) and subsequently, his services were regularised from 09.08.2010 as a permanent employee, vide proceedings dated 23.11.2010. The appellant/writ petitioner was transferred from Thirupparankundram Branch to Palani Region and he was working at Cumbum Branch-I in the post of driver Badge No.55785.

3. According to the appellant/writ petitioner, on 08.02.2015, he suffered due to nerves problem and he was admitted in Cumbum Government Hospital and he was referred for further better treatment and he took treatment in 'Neethiyarasu Nuro Hospital', Madurai and after undergoing series of medical test, it was found that he suffered seizure disorder, which is nerves problem. The petitioner, on account of the said illness, was unable to perform his duty, as a driver of a public transport and therefore, made a request, seeking alternate employment in terms of Section 47 of the Persons with Disability (Equal Opportunities, Protection of Rights Participation) Act, 1995, in the form of representation and also made a request that he may be referred to the Medical Board. So that, his request for alternate employment under the said Act can be considered. Since no proper response is forthcoming, the petitioner has filed the Writ Petition No.15854 of 2015, praying for appropriate orders.

4. The writ petition was listed for admission and it was taken up for final disposal and in the impugned order, dated 02.09.2015, the learned Judge found that since the petitioner was refused employment on account of the said disability, the remedy open to him is to work out his remedy by approaching the Labour Court by raising industrial dispute and thus, dismissed the writ petition and aggrieved by the same, the present writ appeal is filed.

5. Mr.S.A.Ajmalkhan, the learned counsel appearing for the appellant would submit that the appellant along with his representation submitted the relevant records to substantiate that he is suffering due to seizure disorder on account of nerves problem and in all fairness, the first respondent ought to have referred the petitioner to the Medical Board to find out his disability and without considering the same, the learned Judge has erroneously dismissed the writ petition, granting liberty to the petitioner to raise industrial dispute.

6. Per contra, Mr.A.Jeyaram, the learned Standing counsel appearing for the respondents would contend that on account of the disability, the petitioner has not been given any employment and if he is given an employment in a public transport, there is



likelihood of an accident and since the petitioner is having an alternative remedy, the learned Judge correctly dismissed the writ petition and therefore, prays for dismissal of the writ appeal.

7. This Court carefully considered the rival submissions made by Mr.S.A.Ajmalkhan, the learned counsel appearing for the petitioner and Mr.A.Jeyaram, the learned Standing counsel appearing for the respondents and also perused the typed set of papers.

8. It is not in serious dispute that the petitioner is a permanent employee in the service of the first respondent Corporation and according to him, he is suffering due to seizure disorder on account of nerves problem. In support of the same, medical records have been enclosed in the form of typed set of document.

9. In the considered opinion of the Court, the first respondent Corporation, in all fairness ought to have referred to him to the Medical Board, but for the reasons best known to them they have not done so.

10. As per Chapter-II of the Tamil Nadu Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 2002 came to be framed vide G.O.(Ms.)No.120, Social Welfare and Nutritious Meal Programme, dated 09.08.2002, Guidelines for Evaluation of Various Disabilities provided. It is relevant to extract the same.

Guidelines for Evaluation of Various Disabilities.

3. **Guidelines.-** Guidelines for evaluation of various disabilities as published in the Gazette of India, Part I, Section I, No.4-2/83/H.W.III, Government of India, Ministry of Welfare, and as may be amended from time to time, shall be followed for evaluation of various disabilities read with sections 2(b), (e), (i), (l), (n), (o), (q), (r), (t) and (u). (Annexure to the rules).

4. **Authorities to give Disability Certificate.-** The Civil Assistant Surgeon who is specialized in the field of Orthopaedics, Ophthalmology, E.N.T. And Psychiatry as the case may be, shall examine the persons who claim to be handicapped and issue necessary disability certificate.

5. **Reference to the Medical Board.-** The Civil Assistant Surgeon concerned will, after due examination, give a permanent disability certificate in cases of such permanent disabilities where there are no chances of variation in the degree of disability. Wherever there is any chances of variation in the degree of disability, the Medical Board will decide the validity in the certificate.

6. **Validity of the Certificate.-** The certificate issued under the above rule will be valid for the whole of the



country except the State of Jammu and Kashmir and will make a person eligible to apply for facilities, concessions and benefits admissible under any scheme of Government or Non-Governmental Organisations, subject to such conditions as the Central or the State Government may impose from time to time.

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11. In the light of the said statutory mandate, the first respondent Corporation is directed to refer the petitioner to the concerned Medical Board for evaluation of the alleged disability, within a period of two weeks from the date of receipt of a copy of this order and the said Board, on the appearance of the petitioner shall evaluate and give a certificate as expeditiously as possible, preferably, within a further period of six weeks thereafter. Thereafter, the first respondent Corporation, shall take a decision on merits and in accordance with law, in the light of the provisions of the Disabilities Act and Rule framed thereunder and pass appropriate orders within a further period of four weeks and communicate the decision taken to the petitioner.

12. In the result, the writ appeal is allowed and the impugned order dated 02.09.2015 passed by this Court in W.P.(MD).No.15854 of 2015 is set aside. However, there will be no order as to costs.

Sd/-

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar(CS)

To

+1cc to Mr.S.A.Ajmal Khan, Advocate in SR.65430

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02.11.2016

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