



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2016

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P (MD) No.17887 of 2016

and

W.M.P (MD) No.12936 of 2016

A.Muthuramalingam

: Petitioner

Vs.

1.Tamilnadu State Transport Corporation
(Madurai) Ltd. rep. by its
Managing Director,
Bye Pass Road,
Madurai.

2.The General Manager,
Tamilnadu State Transport Corporation
(Madurai) Ltd.,
Virudhunagar Region,
Virudhunagar.

3.The Branch Manager,
Tamilnadu State Transport Corporation
(Madurai) Ltd.,
Srivilliputhur Branch,
Virudhunagar Region,
Virudhunagar District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 to 3 to provide him suitable alternative employment in the Srivilliputhur Branch, Virudhunagar Region of Tamil Nadu State Transport Corporation (Madurai) Ltd., with pay protection, continuity of service and back wages payable from the date on which the petitioner was denied duty on account of his disability as per Section 47(1) of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

For Petitioner : Mr.A.Rahul

For Respondents : Mr.A.P.Muthupandian

O R D E R

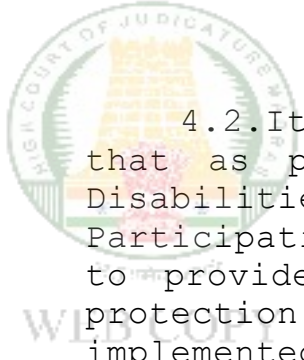
This writ petition has been filed for issuance of a Writ of Mandamus, directing the respondents 1 to 3 to provide suitable alternative employment, to the petitioner, in Srivilliputhur Branch, Virudhungan Region of Tamil Nadu State Transport Corporation (Madurai) Ltd., with pay protection, continuity of service and back wages payable from the date, on which, the petitioner was denied duty on account of his disability as per Section 47(1) of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

2.Mr.A.P.Muthupandian, learned counsel, takes notice for the respondents. By consent, the writ petition itself is taken up for final disposal.

3.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

4.0.The case of the petitioner is that the petitioner was appointed as Conductor in the first respondent Transport Corporation with effect from 01.08.1991. So far, he has completed 25 years of service. As he was suffering from hearing disability to the extent of loosing complete hearing ability in his left ear and 60% loss of hearing in the right ear, he was unable to interact with the passengers while distributing the tickets. He was kept out of regularly duty with effect from 18.09.2015. The second respondent referred the petitioner to the Medical Board attached to the Government Hospital, Virudhunagar. The Medical Board, by the Certificate, dated 29.02.2016, certified that the petitioner is suffering from hearing impairment and therefore he is unfit for the post of Conductor. The disability was assessed as less than 75%.

4.1.The second respondent was not satisfied with the report of the Medical Board and again directed the petitioner to appear before the same Medical Board on 08.08.2016. The Medical Board after examining his ears, certified that he is partially deaf and his condition is non-progressive and not likely to improve and therefore he is not fit for the post of Conductor. The petitioner was also sent to Audio Logical Evaluation and an Audiogram Report dated 17.03.2015 was issued to the effect that the petitioner suffered total hearing loss in his left ear and moderate sensor neural hearing loss in his right ear. Despite the several Medical Reports certifying the same hearing impairments, the respondent Transport Corporation did not give any alternative employment to the petitioner. Expressing the grievance, the petitioner has sent the last representation on 10.08.2016. Till date, no order has been passed.



4.2. It is the claim of the learned counsel for the petitioner that as per the provisions of Section 47(1) of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the respondents are statutorily bound to provide alternative employment to the petitioner, with pay protection and continuity of service. But the provisions are not implemented at all. Under such circumstances, this Writ of Mandamus has been filed seeking a direction to the respondents 1 to 3, to provide suitable alternative employment to the petitioner, with pay protection, continuity of service and back wages payable from the date on which the petitioner was denied duty on account of his disability, as per Section 47(1) of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

5. The learned counsel for the petitioner would submit that undoubtedly, the petitioner is entitled to the benefit under Section 47(1) of the Act, in view of the certificates issued by the Medical Board and under the said circumstances, the respondents should have provided alternative employment to the petitioner.

6. The learned counsel appearing for the respondents would submit that the petitioner did not report duty on and from 29.07.2016.

7. The said contention cannot be accepted as there is no order passed by the respondent providing alternative employment to the petitioner prescribing the date and time for reporting to alternative duty. Under such circumstances, the respondents shall consider the representation of the petitioner dated 10.08.2016 within a period of one week, from the date of receipt of a copy of this order and to provide alternative employment to the petitioner in the light of the provisions of Section 47(1) of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

8. With the above direction, this writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

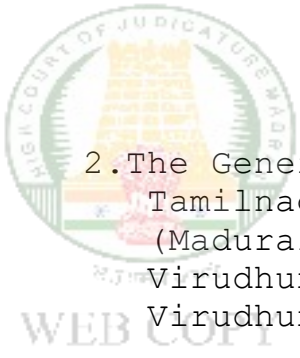
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Managing Director,
Tamilnadu State Transport Corporation
(Madurai),
Bye Pass Road,
Madurai.



2.The General Manager,
Tamilnadu State Transport Corporation
(Madurai) Ltd.,
Virudhunagar Region,
Virudhunagar.

3.The Branch Manager,
Tamilnadu State Transport Corporation
(Madurai) Ltd.,
Srivilliputhur Branch,
Virudhunagar Region,
Virudhunagar District.

+2cc to M/s.A.Rahul, Advocate SR.No.54633 and 53875

ORDER MADE IN
W.P (MD) No.17887 of 2016
and
W.M.P (MD) No.12936 of 2016

20.09.2016

smn
SD/EM-MPA/18.10.2016/4P/6C