



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.11.2016

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P (MD) No.20528 of 2016

and

W.M.P (MD) Nos.14701 and 14702 of 2016

P.Thanajjeyan

: Petitioner

Vs.

1.State Express Transport Corporation (Tamilnadu) Ltd.
rep. by its Managing Director,
Pallavan Salai, Chennai - 600 002.

2.The General Manager,
State Express Transport Corporation (Tamilnadu) Ltd.,
Pallavan Salai, Chennai - 600 002.

3.The Branch Manager,
State Express Transport Corporation (Tamilnadu) Ltd.,
Madurai Branch, Madurai.

4.The Dean,
Regional Medical Board,
Rajiv Gandhi Government General Hospital,
Chennai - 600 003.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the second respondent in Note No.047122/HR4/SETCTN/2013 dated 04.10.2016 in so far as referring the petitioner to the Regional Medical Board of Rajiv Gandhi Government Hospital, Chennai - 3 to ascertain his physical fitness to work as Driver Cum conductor and quash the same as illegal and in violation of Rule 575 and 576 of Tamil Nadu Medical Board and consequently direct the respondents to forthwith provide light duty/desk work to the petitioner and to provide continuity of service, pay protection in the post of Driver cum Conductor and to pay back wages payable to him from 06.10.2011 to till the date on which he is provided with alternative light duty.

For Petitioner : Mr.A.Rahul

For Respondents 1 to 3: Mr.K.Sathiyasingh

<https://hcservices.ecourts.gov.in/hcservices/> For Respondent No.4 : Mr.A.Muthukaruppan,
Addl. Government Pleader.

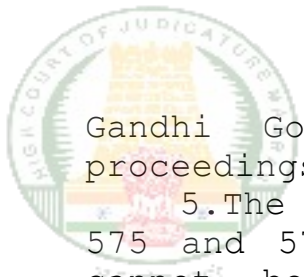
O R D E R

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus praying to call for the records relating to the proceedings of the second respondent in Note No.047122/HR4/SETCTN/2013 dated 04.10.2016 in so far as referring the petitioner to the Regional Medical Board of Rajiv Gandhi Government Hospital, Chennai - 3 to ascertain his physical fitness to work as Driver Cum conductor and quash the same as illegal and in violation of Rule 575 and 576 of Tamil Nadu Medical Board and consequently direct the respondents to forthwith provide light duty/desk work to the petitioner and to provide continuity of service, pay protection in the post of Driver cum Conductor and to pay back-wages payable to him from 06.10.2011 to till the date, on which he is provided with alternative light duty.

2.Heard the learned counsel appearing for the petitioner, the learned counsel, who took notice for the respondents 1 to 3 and the learned Additional Government Pleader, who took notice for the fourth respondent. By consent, the writ petition itself is taken up for final disposal.

3.The case of the petitioner is that the petitioner joined the service of the first respondent as Driver cum conductor w.e.f. 03.10.2007. He suffered stroke while engaged in duty. He also acquired heart ailment. He took leave from 06.10.2011. Three Medical Boards of Virudhunagar Government Headquarters Hospital and Thoothukudi Medical College Hospital have certified that the petitioner is unfit to work as Driver cum conductor. Despite the same, he was not given alternative light duty. Therefore, he approached this Court by way of filing W.P(MD)No.20796 of 2015, wherein this Court, issued a direction to refer him to the Medical Board and to provide alternative light duty based on the report of the Board. Despite the same, he is not provided with light duty. While so, by the impugned order dated 04.10.2016, the second respondent again referred him to the Regional Medical Board of Rajiv Gandhi Government Hospital, Chennai - 3 for medical examination. Aggrieved over the same, the petitioner has come forward with the present writ petition.

4.The petitioner has been referred to the Medical Board at Thoothukudi and the report of the Medical Board states that the petitioner is unfit to work as driver/conductor in TNSTC. This opinion is undated, but reference has been made to the hospital, by the communication dated 13.04.2016. Therefore, the certificate must be deemed to have been issued either on 13.04.2016 or immediately thereafter. The second medical opinion dated 18.05.2016 also reveals that the petitioner is unfit to work as driver/conductor and he is only fit for light duty or desk work. Despite these two opinions, now the second respondent wants to refer the petitioner to the Regional Medical Board of Rajiv



Gandhi Government Hospital, Chennai - 3, by the impugned proceedings, dated 04.10.2016.

5. The learned counsel for the petitioner would rely upon Rules 575 and 576 of Tamil Nadu Medical Board, under which a person cannot be referred to second medical opinion without the permission of the Government and same are extracted here-under:

"575. Appeal to a Medical Board: Subject to provisions of the paragraphs 490b and 568 above an appeal to a medical board against a Medical Officer's certificate should be allowed only at the request of Head of the Department and subject to the approval of the Director of Health Services and Family Planning / Director of Medical Education.

576. Appeal to a second Medical Board: There should no right of appeal from a Medical Board as it is not always possible to improve on the original Board, and as if it would be difficult to declare even if a second board is constituted, that the second Board is better than the first and should therefore carry more weight. But, if the Government are satisfied on the evidence produced to them of the possibility of an error of judgment in the decision of the first Board, it would be open to Government to allow an appeal to a second Board".

6. It is not the case of the second respondent that they have obtained permission from the Government to refer the petitioner to the opinion of the second medical board or to refer him to the opinion of the third medical board. Even reference to the opinion of the second medical board itself is illegal as at that point of time, the second respondent had not obtained the permission from the Government. There is not even an indication reflecting reasons, as to what propelled the administration to refer the petitioner for second medical opinion. In other words, whether the report suffered from any infirmity or whether it was suspicious or it suffered from non-consideration of materials etc. The hospital authorities at least should have declined to offer second medical opinion, as the reference itself is illegal.

7. The learned counsel for the petitioner has contended that driving a person to repeated opinions of the Medical Board without passing any final order is illegal.

8. It is the contention of the learned counsel for the respondents 1 to 3 that in respect of State Express Transport Corporation, the Regional Medical Board of Rajiv Gandhi Government General Hospital, Chennai, is the competent authority. If that is the case, why the petitioner was earlier referred to Tuticorin Government General Hospital, is not explained to this Court. Under such circumstances, this Court is of the firm opinion that the contention of the learned counsel for the respondents 1 to 3 is an



afterthought and therefore the said contention cannot be accepted. Therefore, the impugned proceedings directing the petitioner to subject himself for the opinion of the Regional Medical Board of Rajiv Gandhi Government General Hospital, Chennai is hereby set aside.

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9.The respondents 1 to 3 are directed to act upon the opinion of the First Medical Board and treat him as a person under disability and to provide all the benefits which are available to him under Section 47(1) of Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1985.

10.The respondents 1 to 3 are also directed to provide the petitioner with alternative employment with pay protection within a period of two weeks from the date of receipt of a copy of this order.

11.So far as the backwages are concerned, the petitioner is at liberty to give a representation to the respondents 1 to 3 and the respondents 1 to 3 will consider the same and pass orders on merits and in accordance with law, within a period of two weeks from the date of receipt of the representation.

12.This writ petition is allowed on the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/
Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar.

To

The Dean,
Regional Medical Board,
Rajiv Gandhi Government General Hospital,
Chennai - 600 003.

+1CC to M/S.K.Sathiya Singh, Advocate, SR.No.64927
+1CC to M/S.A.Rahul, Advocate, SR.No. 64529

ORDER MADE IN
W.P (MD) No.20528 of 2016
and

W.M.P (MD) Nos.14701 and 14702 of 2016