



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2016

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P (MD) No.22210 of 2016

and

W.M.P (MD) No.15905 of 2016

C.Babu Rajan

: Petitioner

Vs.

1.The Secretary,
Transport Department,
Fort St. George,
Chennai - 600 009.

2.The Managing Director,
State Express Transport Corporation,
Pallavan Street, Chennai - 2.

3.The General Manager (Administration),
State Express Transport Corporation,
Pallavan Street, Chennai - 2.

4.The Branch Manager,
State Express Transport Corporation Ltd.,
Kanyakumari Branch, Kanayakumari,
Kanyakumari District.

: 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 pertaining to the impugned order in Memo No.055698/HR3/SETCTN/2016, dated 01.10.2016 on the file of the third respondent and quash the same as illegal and consequently to direct the respondents to permit the petitioner to serve as the Controller in the Control Section at the office of the fourth respondent within the time stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy

For Respondent No.1 : Mr.T.S.Mohammed Mohideen,
Additional Government Pleader.

For Respondent No.2 : Mr.K.Sathiyasingh
to R4

O R D E R

Injustice anywhere is a threat to justice everywhere.

..Martin Luther King

This is a case where a person who approached the Court seeking redressal have been taken to task, indirectly, only on account of the fact that he has approached this Court seeking redressal.



2.This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus, praying to call for the records pertaining to the impugned order dated 01.10.2016 on the file of the third respondent and to quash the same as illegal and consequently to direct the respondents to permit the petitioner to serve as the Controller in the Control Section at the office of the fourth respondent, within the time stipulated by this Court.

3.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader, who took notice for the first respondent and the learned counsel, who took notice for the respondents 2 to 4. By consent, the writ petition itself is taken up for final disposal.

4.0.The brief facts leading to the filing of this writ petition are as follows:

The petitioner is a person with 50% of disability having disability certificate to that effect. He joined the services of Nesamany Transport Corporation on 01.11.1988 as Conductor and from the year 1997, he has been transferred to the State Express Transport Corporation, Kanyakumari Division. Thereafter, he has been posted as the Controller at the Control Section at the office of the third respondent, from 01.11.2012.

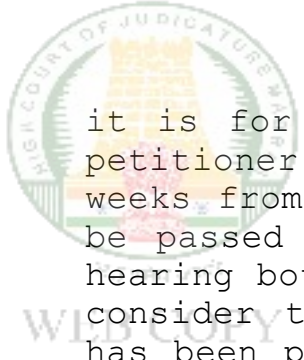
4.1.During the period of functioning as Conductor, the petitioner met with three accidents, during which, he suffered fracture of right side rib bone Nos.7,9 and 11 and his disability was found to be 50%. As per the disability certificate dated 12.12.2011, the disability was 50% and the nature of disability was described as locomotor disability and during that time, the petitioner had been employed as a conductor and thereafter he was provided with a light duty.

4.2. Later, on 26.06.2012, there is yet another certificate issued by the Assistant Professor, Department of Orthopaedics, Kanyakumari Government Medical College and Hospital, Asaripallam, Kanyakumari District, wherein the disability is again certified to be 50% and impairment was in relation to the locomotor. The condition is certified to be non-progressive and reassessment has not been recommended.

4.3.The grievance of the petitioner is that while he was serving in the Control Section, he was not provided with any employment from 27.07.2016. The complaint of the petitioner is that the Management was trying to appoint somebody else in the post and that is why he has not been given any alternative employment in the Control Section from 22.07.2016.

<https://hcservices.ecourts.gov.in/hcservices/>

4.4. When, this matter was reported to this Court, by filing a writ petition in W.P(MD)No.15655 of 2016, this Court observed that



it is for the respondents to consider the representation of the petitioner and to pass appropriate orders within a period of four weeks from the date of receipt of the order. That order came to be passed on 27.09.2016 and the same has been passed only after hearing both sides. Within four days of this Court's direction to consider the representation, the impugned order dated 01.10.2016 has been passed, under which, the petitioner has been directed to report for duty as conductor.

4.5. So far as his claim for leave is concerned, he has been directed to avail earned leave in respect of the period on which he was on leave i.e., from 21.08.2016 to 20.09.2016. The legality and validity of the order passed directing the petitioner to join duty as conductor, is under challenge in this writ petition.

5.The learned counsel for the respondents 2 to 4 would submit that there was no vacancy in the Control Section and therefore the petitioner has been directed to report for duty as conductor and there is nothing wrong in the order passed.

6.The learned counsel for the petitioner would submit that only because the petitioner approached this Court by filing W.P (MD)No.15665 of 2016, as a measure of victimization or vindictive action, the petitioner has been directed to report duty as conductor. It is pointed out that when a person was asking for alternative employment invoking the provisions of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1985 and when his disability has been considered and alternative duty has been provided, there is no justification to revert him to original job especially after the period of more than three years. Whether this is justified is the issue to be considered.

7.It is painful to note that a person, who was provided with a light duty on account of his disability, is ordered to do the original job with reference to his medical condition. Even assuming that the real reason is want of vacancy and if the petitioner can be provided only the job of a Conductor, even then, the employer should have taken efforts to find out whether he is fit enough to discharge his duty as a conductor. It is not the case of the third respondent that the petitioner was referred for medical opinion by sending him to Medical Board and based on the opinion given by the Medical Board, he was directed to report for duty as conductor.

8. Under such circumstances, the case of the petitioner that the persons, who are approaching the Court, would face only such unwarranted consequences seems to be probable. This kind of order, which are mechanically passed, without application of mind and without regard to the health condition of the petitioner is highly reprehensible and therefore, it is liable to be set aside.



8.1. The third respondent is not expected to pass any orders of this nature as it is passed in this case i.e., on 01.10.2016.

8.2. Under such circumstances, the impugned order dated 01.10.2016 passed by the third respondent is set aside. If really, the third respondent has entertained an opinion that the petitioner could have recovered from his disability, it is open to them to refer him for the opinion of the Medical Board and subject to the opinion given by the Medical Board, it is open to the third respondent to provide any suitable employment to the petitioner, but subject to the provisions of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1985. It is also made clear that till the medical opinion is obtained, if suitable alternative employment is not provided to the petitioner, then the third respondent shall be responsible for providing salary to the petitioner.

8.3. The writ petition is allowed on the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Secretary,
Transport Department,
Fort St. George,
Chennai - 600 009.
 - 2.The Managing Director,
State Express Transport Corporation,
Pallavan Street, Chennai - 2.
 - 3.The General Manager (Administration),
State Express Transport Corporation,
Pallavan Street, Chennai - 2.
 - 4.The Branch Manager,
State Express Transport Corporation Ltd.,,
Kanyakumari Branch, Kanayakumari,
Kanyakumari District.
- +One cc to Mr.T.Lajpathi Roy, Advocate, SR.No.71051
+One cc to The Special Government Pleader, SR.No.71109
smn
RL/7C/4P/BS/SAR2/13.2.2017

ORDER MADE IN
W.P (MD) No.22210 of 2016
and
W.M.P (MD) No.15905 of 2016
21.11.2016