



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.12.2016

CORAM

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P (MD) No.23141 of 2016

and

W.M.P (MD) No.16619 of 2016

S.Raja

... Petitioner

vs.

1)The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Transport Department,
Secretariat, Fort St.George,
Chennai-600 009.

2)Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Rep. by its Managing Director,
Madurai Division,
Bye Pass Road, Madurai-625 016.

3)The General Manager,
Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Madurai Region,
Bye Pass Road,
Madurai-625 016.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings Niruvagam/A5/3654/97 dated 16.02.1998 and consequential order passed by the 3rd respondent in Ref.No.Niruvagam/A2/11137/97 dated 13.05.1998 and quash the same in so far as terminating his services on medical grounds without providing alternative employment and in so far as appointing him as fresh entrant as Clerk without providing pay protection in the post of Conductor and consequently directing the respondents to provide alternative employment to him from 16.02.1998 with pay protection, continuity of service, difference in wages by reckoning his past service rendered as Conductor in the 2nd respondent corporation for the purpose of granting of increments, review, promotion, pension and other attendant service benefits.



For Petitioner : Mr.A.Rahul
For Respondents : Mr.A.Jayaram

ORDER

WEB COPY

The petitioner was employed as Conductor from 1988 onwards in the respondent Transport Corporation. While he was on duty, he sustained grievous injuries in his right leg and right knee joint disc has been dislocated. The 2nd respondent directed the petitioner to appear before the Medical Board at Government Rajaji Hospital and accordingly, the petitioner appeared before the Medical Board which issued a certificate dated 22.01.1998 stating that the petitioner was not fit to work as Conductor. Thereafter, the respondent Corporation dismissed the petitioner from service by order dated 16.02.1998 on medical grounds. Pursuant to the representation of the petitioner, the respondent Corporation provided the petitioner alternative employment as Clerk. But, he was not paid the salary in the alternative employment, which he received earlier at the time of discharge as Conductor.

2.The learned counsel for the respondents has submitted that since the petitioner was provided alternative employment, nothing survives for adjudication in the writ petition.

3. This Court do not agree with the contention of the learned counsel for the respondent Corporation.

4.The petitioner was discharged from service by an order dated 16.02.1998 on the ground that he was not fit to work as Conductor. The said conclusion was reached by the Corporation based on the certificate issued by the Medical Board at Government Rajaji Hospital, Madurai. It is not disputed by the learned counsel for the respondents that the petitioner's right knee joint disc has been dislocated. Hence, obviously, he could not do the work of Conductor.

5.When the petitioner was found not fit to discharge the duty as Conductor by the report of the Medical Board dated 22.01.1998, the respondent Corporation ought to have provided him alternative employment, without discharging him from service by their order dated 16.02.1998.

It is useful to extract Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, as under:

''47.Non-discrimination in Government employment.-(1)No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service;



Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post **with the same pay scale and service benefits;**

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability;

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.'

6. As per Section 47 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, an employee shall not be discharged from service on a finding that he is unfit to hold the post due to medical reasons. On the other hand, he shall be provided any alternative employment, i.e., he should not be made to suffer due to non-employment/due to his unfitness on medical reasons. Hence, in all cases where the employees are discharged on the ground of unfitness and provided with alternative employment subsequently, **they are entitled to wages for the period of non-employment.** It is a well settled principle.

7. In this context, it is useful to extract Paragraphs 17, 19 and 20 of the judgment of the Apex Court in **Bhagwan Dass and another v. Punjab State Electricity Board**, reported in **2008 (2) L.L.N. 1:**

'17. From the materials brought before the Court by none other than the respondent-Board, it is manifest that notwithstanding the clear and definite legislative mandate some officers of the Board took the view that it was not right to continue a blind, useless man on the Board's rolls and to pay him monthly salary in return of no service. They accordingly persuaded each other that the appellant had himself asked for retirement from service and, therefore, he was not entitled to the protection of the Act...

18. ...

19. We understand that the officers concerned were acting in what they believed to be the best interests of the Board. Still under the old mindset it would appear to



them just not right that the Board should spend good money on someone who was no longer of any use. But they were quite wrong, seen from any angle. **From the narrow point of view the officers were duty-bound to follow the law and it was not open to them to allow their bias to defeat the lawful rights of the disabled employee.** From the larger point of view the officers failed to realise that the disabled too are **equal citizens of the country** and have as much share in its resources as any other citizen. The denial of their rights would not only be unjust and unfair to them and their families but would create larger and graver problems for the society at large. **What the law permits to them is no charity of largesse but their right as equal citizens of the country.**

20. In light of the discussions made above, the action of the Board in terminating the service of the disabled employee (appellant 1) with effect from 21 March 1997 must be held to be bad and illegal. In view of the provisions of S.47 of the Act, the appellant must be deemed to be in service and he would be entitled to all service benefits including annual increments and promotions, etc. till the date of his retirement. The amount of terminal benefits paid to him should be adjusted against the amount of his salary from 22 March 1997 till date. If any balance remains, that should be adjusted in easy monthly installments towards his future salary. The appellant shall continue in service till his date of superannuation according to the service records. He should be reinstated and all due payments, after adjustments as directed, should be made to him within six weeks from the date of presentation of a copy of the judgment before the Secretary of the Board.''

8. In view of the dictum laid down by the Apex Court, the respondent-Corporation is directed not to discharge any workman, who is found to have acquired disability during employment, but to provide alternative employment with pay protection, as per Section 47 of the Act. Particularly in cases where workmen acquired disability during and out of employment and the same is very well known to the Corporation, the respondent Corporation has also the moral responsibility besides the legal duty under Section 47 of the Act to provide alternative employment and the workmen shall be paid wages during the interregnum, if any.

9. Though the respondent Corporation provided alternative employment, the respondent Corporation failed to give pay protection to the petitioner and hence, he was treated only as a fresh entrant and he was also paid lesser scale of pay. In the view of this Court, the order dated 13.05.1998 giving alternative



employment as a fresh entrant with a lesser scale of pay is liable to be interfered with.

10. However, the learned counsel for the petitioner has prayed for counting the service from 16.02.1998, the date on which the petitioner was discharged from service till the petitioner was given alternative employment, for all purposes, except for actual payment of wages. Thus, according to the learned counsel for the petitioner, if the service after the accident is counted till the petitioner was given alternative employment, for the purpose of fixing of pay, promotion, review, increment, pension etc., the petitioner would be satisfied. Therefore, according to him, the petitioner is not claiming any actual monetary benefit for the said period.

11. In these circumstances, the writ petition is allowed, the impugned orders dated 16.02.1998 and 13.05.1998 are quashed with the following directions:

(a) The writ petitioner shall be continued in the alternative employment without any interruption and his pay as Conductor shall be protected as if he continued in service without any interruption in service.

(b) It is reiterated that the petitioner shall be continued in the alternative employment as stated above, and the pay shall be protected and the service from 16.02.1998 till his alternative employment shall be counted for all purposes, except for purposes discussed supra. However, there shall be no order as to costs. Consequently, W.M.P(MD)No.16619 of 2016 is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1) The Principal Secretary to Government,
State of Tamil Nadu,
Transport Department,
Secretariat, Fort St. George,
Chennai-600 009.

2) The Managing Director,
Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Madurai Division,
Bypass Road, Madurai-625 016.



3)The General Manager,
Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Madurai Region,
Bye Pass Road,
Madurai-625 016.

+1 cc to M/S.A.K.THANGAVELU, Advocate SR.No.79384

W.P (MD) No.23141 of 2016
02.12.2016

SMA/CM-MSA/15.02.2017:6P/5C