



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2016

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.16628 of 2013
and M.P.(MD) No.1 of 2013

K.Pandi

... Petitioner

Vs.

- 1.The Tamil Nadu State Transport Corporation (Madurai) Ltd,
Represented by its Managing Director,
Bye-Pass Road,
Madurai - 10.
- 2.The General Manager,
The Tamil Nadu State Transport Corporation (Madurai) Ltd.,

Madurai Region,
Madurai.
- 3.The Dean,
Government Rajaji Hospital,
Madurai.

... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents 1 and 2 to refer the petitioner before the medical board of the 3rd respondent hospital to ascertain the petitioner's disability and to provide the petitioner's suitable alternative employment in the Mofussal Branch, Madurai Region of Tamil Nadu State Transport Corporation (Madurai) Ltd., with pay protection, continuity of service and back wages payable to the petitioner with effect from 25.01.2013 i.e., from the date on which the petitioner was denied duty in the post of Conductor due to 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 1 & 2

:Mr.A.Jeyaram

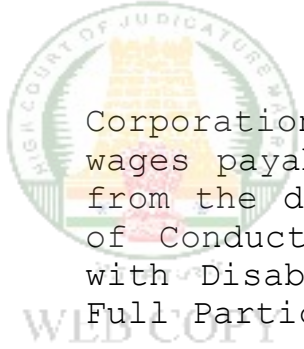
For 3rd Respondent

:Mr.G.Muthukannan

Government Advocate

O R D E R

The prayer in the writ petition is for a Writ of Mandamus, directing the respondents 1 and 2 to refer the petitioner before the medical board of the 3rd respondent hospital to ascertain the petitioner's disability and to provide the petitioner suitable alternative employment in the Mofussal Branch of the respondent



Corporation with pay protection, continuity of service and back wages payable to the petitioner with effect from 25.01.2013 i.e., from the date on which the petitioner was denied duty in the post of Conductor due to disability as per Section 47(1) of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

2.The petitioner since had met with an accident on 24.01.2013, he was disabled to continue the job as Conductor, which post the petitioner held till the date of accident, at the respondent Corporation. Therefore, he had requested the respondent Corporation by a number of representations and particularly by representation dated 26.06.2013 to refer him to the Medical Board and after ascertaining the disability, he may be provided alternative employment under the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as Act). Since no response is forthcoming from the respondents 1 & 2, the petitioner has come up with the present writ petition.

3.Heard both sides.

4.The learned counsel for the petitioner would submit that after filing this writ petition, the petitioner was referred to Medical Board on 13.05.2014 and after ascertaining the disability, the respondents 1 & 2 had given alternative employment at commercial department from 12.07.2014. Though his main grievance of getting alternative employment has been fulfilled, his present grievance is that during the period where between the date of accident, where he become disabled and the date of his reemployment i.e., 12.07.2014, the petitioner had not been given any pay protection, arrears of salary and continuity of service. In this regard, the learned counsel for the petitioner would invite the attention of this Court to Section 47 of the said Act, which reads thus:

"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."

The learned counsel also made reliance upon the judgment of this Court made in **W.P.(MD) No.5858 of 2011, dated 19.12.2011**, in the matter of **A.Mani v. The Managing Director, Tamil Nadu State Transport Corporation, Kumbakonam and others**, wherein Section 47 of the Act was considered by this Court and the following orders were passed:

"4.The learned counsel for the petitioner has been given a copy of the said order. However, the learned counsel for the petitioner stated that this order did not talk about any back wages. It is needless to state that already this Court in more than one writ petition emphasized that Section 47(1) is an injunction against the employer from dispensing with the service of a person who has become disabled. The disability has to be considered under the provisions of the Act. Therefore, it is needless to state that such person, if the services were dispensed with or discontinued or denial of alternative employment, is also entitled for wages, as if, there was no denial of employment. Taking note of this direction issued by this Court, since the respondents offered the alternative employment, it is for the petitioner to make any representation in case the wages are not paid and the respondents have positively response to such representation. If any adverse orders are passed, it is always open to the petitioner to make the grievance of the same before an appropriate forum."

5.On the other hand, the learned Standing Counsel appearing for the respondents 1 & 2 would submit that after filing this Writ Petition as claimed by the petitioner, he was referred to Medical Board and after getting the report from the Medical Board, considering his disability he was given alternative employment from 12.07.2014. Thereafter, on 03.03.2016, the respondents 1 and 2 had referred the petitioner for second Medical Board to ascertain whether the disability of the petitioner was permanent or non-permanent and whether his illness was cured or not, so as to enable the respondents 1 & 2 to change the designation of the petitioner by protecting his pay as envisaged under the Act. It was also submitted by the learned Standing Counsel for respondents 1 and 2 that as against the second reference dated 03.03.2016, the petitioner had already preferred W.P.(MD) No.6901 of 2016 and the same is pending.

6.The above said factors as well as the submissions of the learned counsel for the respective parties have been considered



7.The petitioner's grievance of referring him to Medical Board for ascertaining his disability has been fulfilled as stated above and the petitioner is presently working in commercial department as an alternative employment. As has been rightly pointed out by the learned counsel for the petitioner, during the period where the petitioner was not given job or was not able to do job because of the disability can be considered for the purpose of services in view of Section 47 of the Act as held by this Court in the judgment referred supra.

8.Following the same, this Court directs that since the respondents 1 and 2 have offered alternative employment to the petitioner and the petitioner is also working in the alternative employment, the petitioner shall be at liberty to make a specific request of his grievance of getting pay protection, pay arrears and continuity of service for the period between 24.01.2013, the date on which he become disabled and 12.07.2014, the date on which he was given alternative employment and if such representation is made by the petitioner, it is open to the respondents 1 and 2 to consider the same on merits and in accordance with law, especially under the provision of Section 47 of the Act as well as the judgment of this Court referred to above. In case such representation is made, needful as indicated above shall be done within three months from the date of receipt of representation from the petitioner.

9.With these directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(crl side)

/True copy/

Sub Assistant Registrar

To

- 1.The Managing Director,
Tamil Nadu State Transport Corporation (Madurai) Ltd,
Bye-Pass Road,
Madurai - 625 010.
- 2.The General Manager,
The Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Madurai Region,
Madurai.



3.The Dean,
Government Rajaji Hospital,
Madurai.

+1cc to Mr.A.Rahul, Advocate SR.No.80722/16

+1cc to special Government Pleader SR.No.80868/16

sj

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W.P. (MD) No.16628 of 2013
and M.P. (MD) No.1 of 2013
14.12.2016