

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

Cont.P.No.1613/2016

G.Pari

Petitioner

Vs.

1. Thiru K.Muthukaruppan,
Managing Director,
Tamil Nadu State Transport Corporation,
(Villupuram Limited), Villupuram.
2. Thiru.E.Santhanam,
General Manager,
Tamil Nadu State Transport Corporation,
(Villupuram Limited), Cuddalore Region,
Cuddalore

Respondents

Contempt Petition filed under section 11 of the Contempt of Courts Act, 1971, to punish the respondents for disobedience of the order and directions issued by this Court on 03.08.2015 in WP No.23504 of 2015.

For Petitioner : Mr. R.Krishnaswamy

For Respondents : Mr. P.Paramasiva Doss

ORDER

The petitioner on an earlier occasion approached this Court by filing WP No.23504 of 2015 against the respondents herein, praying for issuance of a writ of mandamus directing them to provide him forthwith suitable alternative employment in commensurate with his health condition and with continuity of service, pay protection wages and other benefits with effect from 16.08.2013 and also give the petitioner, the third review with effect from 01.09.2013 with arrears and other consequential benefits and this Court, after putting the respondents on notice and after hearing the submissions made by the learned standing counsel appearing for the respondents, has disposed of the writ petition on 03.08.2015, indicating that without going through the materials, has directed the 1st respondent to consider and dispose of the petitioner's representation dated 29.07.2015 in accordance with law and pass appropriate orders within a period of six weeks from the date of receipt of copy of that order and also directed the respondent not to take any precipitative action with regard to the employment of the petitioner. The petitioner, alleging willful violation of the said order, came forward to file this contempt petition.

2. The contempt petition was listed on 28.06.2016 and on that day, this Court directed the learned counsel appearing for the petitioner to serve notice on Mr.P.Parmasivadoss, learned standing counsel appearing for the respondent/ contemnor and also directed the matter to be listed on 05.07.2016 and on that day, this Court has taken note of the submission as to the violation done by Rajiv Gandhi Government General Hospital, Chennai and also the report given by them during November 2014 and directed further that the said Medical report has not been forwarded and directed Mr.P.Paramasivadoss to forward necessary communication to Rajiv Gandhi Government General Hospital along with copy of the Medical report, with a copy marked to the petitioner and also to fix the date of medical examination under intimation to the petitioner.

3. The matter was again listed on 04.08.2016 and it was represented by the learned counsel appearing for the petitioner that he is going to appear before the Medical Board on 05.08.2016 and again, the matter was listed on 19.01.2017 and on that date, this Court has taken note of the certificate issued by the Medical Board stating the fact that "the Patient is advised to do light work.....

Patient is unfit for driving.....". The learned counsel appearing for the contemnor would state that the medical

certificate has not been given in the format prescribed as per the Persons with Disabilities (Equal Opportunities, Protection of rights and Full participation) Act, 1995, and this Court, has recorded that in the light of the mandatory provision under section 47 of the said Act, the respondent/contemnor is under mandate to act on the Medical Certificate furnished by the Rajiv Gandhi, Government Hospital, Chennai and therefore, this Court passed an interim direction directing the respondent to act on the said certificate and pass appropriate order in accordance with law within a period of four weeks from the date of receipt of copy of that order and directed to list the matter on 20.02.2016.

4. On 20.02.2016, the matter was adjourned to 22.02.2017 and on that day, it was represented by the petitioner that he has been accommodated as a Non-ITI helper and also taken note of the submission made by the learned counsel appearing for the petitioner that with regard to the disability, as and when the Medical Board require, he will appear and taking note of the undertaking given by the petitioner that he will join duty as Non-ITI Helper, adjourned the matter to 13.03.2017 and on that day, it was brought to the knowledge of this Court, the proceedings of the Managing Director dated 16.02.2017 and

it was indicated that the petitioner was assigned with light duty between 08.09.2015 to 08.03.2016 and in the absence of the percentage of disability certificate made by the Medical Board, he shall appear before the Medical Board as and when required and the matter was directed to be listed on 10.04.2017 and on that day, it was brought to the knowledge of this Court that the petitioner has been given alternate employment from 16.02.2017 onwards and also taking note of the prayer that he should have been given employment at least from the date from which he has suffered the physical disability, time is sought for by the respondent / contemnor to file additional counter affidavit with additional particulars and once again, it was adjourned to 13.06.2017 and on that day, the learned standing counsel once again prayed for time to get necessary instructions as to the compliance of the statutory provisions. Thereafter, the matter has been adjourned thrice and it was the submission of the learned counsel appearing for the petitioner that though the order was passed by this Court in the light of Section 47 of the Persons with Disabilities Act, the respondents / contemnors have not complied with the order.

5. The matter is listed today before this Court and Mr.V.Ajay Khose, learned counsel appearing for the petitioner would submit that the petitioner was given employment from 01.10.2015 to 02.04.2016 and the petitioner was provided with light duty and thereafter, he was not given employment on the ground that he is to appear before the Medical Board and however, the Medical Board did not receive any communication from the Transport Corporation and only on 19.07.2016, the respondent sent a communication to the Medical Board for evaluating the petitioner and accordingly, the petitioner appeared and the Medical Board given the medical report dated 09.08.2016 stating that "the patient is advised to do light work and to avoid any strenuous work and the patient is unfit for driving for the reason...." and thereafter on 09.03.2017, the petitioner has been provided with employment and as on today, he is working as non -ITI Helper Chidambaram.

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6. It is the primordial submission of the learned counsel appearing for the petitioner that but for the disability that happened on account of employment, he would have been in service and citing the said disability, the petitioner was not provided with employment for the period between 16.08.2013 to 30.09.2015 and again from 02.04.2016 to 07.03.2017 and appropriate direction may be given to the

respondent to pay the salary due and payable to him with other consequential service amenities.

7. *Per contra*, Mr.P.Paramasivados, learned counsel appearing for the respondents would vehemently contended that admittedly, the petitioner was not employed during the period of disability as he absented himself by stating that he is suffering from disablement and since he was not present during the said period, the principle of "no work no pay" would come into force and as such, there is no need to pay salary during the period of absence.

8. The learned counsel for the petitioner contended that it is a benevolent legislation and once the concerned employee suffered disability during the course of employment, he is entitled to get alternative employment with some benefits.

9. In the light of the mandatory nature of the said provision coupled with the fact that this Court is of the view that denial of salary to the petitioner on the ground that he has not worked for the above said period can't be sustained. As rightly contented by the learned counsel appearing for the petitioner but for the disability, he would have been continued in employment on account of protection available under the said Act.

10. In the light of the same, the respondent is directed pay salary to the petitioner for the period from 16.08.2013 to 30.09.2015 and from 02.04.2016 to 07.03.2017 and confer other consequential benefits, if any, within a period of ten weeks from the date of receipt of a copy of this order and communicate the decision to the petitioner.

11. The contempt petition is closed with the above observations.

rka

SD/-
ASSISTANT REGISTRAR (COMM.CASES)

//Certified to be true copy//

Dated at Madras this the day of 2018.

सत्यमेव जयते

COURT OFFICER (O.S.)

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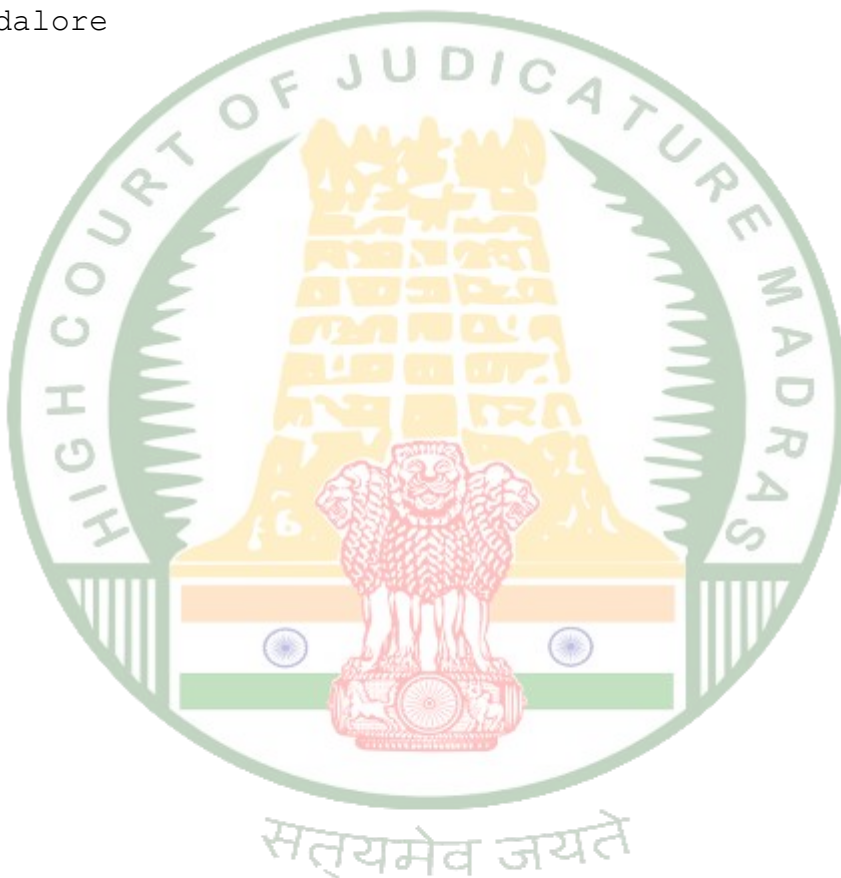
one cc to Mr. P. Paramasiva A Doss, SR.No.13439.

<https://hcservices.ecourts.gov.in/hcservices/> One cc to Mr. V. Ajoy Khose, SR, No.13264.

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To

1. The Managing Director,
Tamil Nadu State Transport Corporation,
(Villupuram Limited), Villupuram.
2. The General Manager,
Tamil Nadu State Transport Corporation,
(Villupuram Limited), Cuddalore Region,
Cuddalore



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