

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2017

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.3588 of 2011

P.Marimuthu

... Petitioner

Vs

Tamil Nadu State Transport
Corporation (Coimbatore) Ltd.,
Erode Region,
Rep.by its General Manager,
Chennimalai Road, Erode,
Erode District.

... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of nature of DECLARATION declaring that the action of the respondent in not fixing the petitioner's basic pay correctly on par with his colleagues and immediate junior as illegal and consequently direct the respondent to fix his scale of pay and basic pay correctly on par with his colleagues and immediate junior and to pay his the difference amounts towards back wages and other attendant benefits and towards wages from the date of reinstatement together with interest, award costs.

For Petitioner : Mr.V.Ajoy Kohse

For Respondent : Mr.P.Paramasivadosh

O R D E R

Heard Mr.V.Ajoy Khose, learned counsel appearing for the petitioner and Mr.P.Paramasivadosh, learned counsel appearing for the respondent.

2. The petitioner has approached this Court seeking the following relief:-

"To issue a Writ of nature of DECLARATION declaring that the action of the respondent in not fixing the petitioner's basic pay correctly on par with his colleagues and immediate junior as illegal and consequently direct the respondent to fix his scale of pay and basic pay correctly on par with his colleagues and immediate junior and to pay his the difference amounts towards back wages and other attendant benefits

and towards wages from the date of reinstatement together with interest, award costs."

3. The case of the petitioner is as follows:-

The petitioner was appointed on 21.10.1992 as a Driver in the respondent Corporation. While, in service, he met with an accident on 13.12.1996 and thereupon, he became unfit for the post of driver. According to the petitioner, the accident arose in the course of his employment of the Corporation. Thereafter, he was discharged from service on medical grounds on 19.12.1998. The petitioner had filed W.P.No.16775 of 1999, challenging the order of discharge. This Court by an order dated 25.09.2000, directed the respondent to provide him suitable alternate employment with continuity of service. In pursuance to the said direction, the petitioner was given alternative employment on 30.04.2001, that too as a fresh entrant. In the meanwhile, as against the direction of the Single Judge of this Court, passed in the above said Writ Petition, the Management filed W.A.No.668 of 2001 and the same was disposed by order dated 10.08.2007 with the direction to the respondent to comply with Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (hereinafter called as "Act") within a period of eight weeks from the date of receipt of a copy of this order.

4. However, according to the petitioner herein, there was no compliance to Section 47 of the Act and therefore, the petitioner was forced to file Contempt Petition No.1872 of 2007. According to the petitioner, although his pay was revised and paid with arrears but the same was not satisfactory because the fixation of pay and other benefits were not correct, however, the contempt petition was ultimately closed with liberty to workout his remedy in the manner known to law.

5. In the above circumstances, this Writ Petition is filed seeking issue of declaration declaring that the action of the respondent in not fixing the Petitioner's basic pay correctly on par with his colleagues and immediate junior as illegal and for consequential direction.

6. According to the learned counsel for the petitioner, his junior N.Kannan is drawing more pay than the petitioner and therefore pay protection and consequential other benefits with arrears may be paid to him by the corporation.

7. For the above said relief, notice was taken by the learned counsel for the Corporation, who would submit that a direction may be issued to the Corporation to dispose of the representation submitted by the petitioner in this regard.

8. The learned counsel for the petitioner would submit that such direction would only give way to further litigation and the representation of the petitioner would not be considered in favour of the petitioner.

9. This Court has considered the rival submissions made on either side and perused the pleadings and materials placed on record.

10. As regards the application of Section 47 of the Act is concerned, it is to be noted that the said Section has to be complied with in letter and spirit and the implementation of the same cannot be allowed to suit the views of the management. The implementation of the said Section is mandatory as per the Act, therefore, any failure to implement it cannot be countenanced in law.

11. The grievance of the petitioner is that his pay fixation and other benefits has not been made properly in terms of Section 47 of the Act. Therefore, on the said ground, the petitioner has made out a case for grant of relief sought in this Writ Petition.

12. In the above said circumstances, this Writ Petition is allowed as prayed for. The respondent is directed to pass orders within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

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To

The General Manager,
Tamil Nadu State Transport
Corporation (Coimbatore) Ltd.,
Erode Region,
Chennimalai Road, Erode,
Erode District.

+ 1 cc to Mr.V.Ajoy Kohse Advocate,SR.88039
+ 1 cc to Mr.P.Paramasivadoss Advocate,SR.88367

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nr 19/01/2018