

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.21260 of 2012

and

MP.No.1 of 2012

N.Dhanabal

..Petitioner

Vs.

1. The Managing Director,
Tamil Nadu State Transport Corp.,
(Coimbatore) Ltd.,
37, Mettupalayam Road,
Coimbatore-641 043.

2. The General Manager,
Tamil Nadu State Transport Corp.,
(Coimbatore) Ltd.,
Chennimalai Road,
Erode-638 001

..Respondents

Petition filed under Article 226 of The Constitution of India praying seeking for issuance of a Certiorarified Mandamus to call for the records connected with the order of discharge dated 12.09.2000 passed by the 1st respondent in proc.1/D 12/660 A/Law/Div 2/2000 and the subsequent 18(1) settlement dated 29.10.2008 entered into by the petitioner and the respondent vide Proc. Pa.No.11685/D4/660A/Law/TNSTC/EMa/2007 and also the consequential order dated 11.11.08 passed by the 1st respondent in proceeding Pa.No.12105/P3/PaP1/TNSTC/Div/EMa/08 appointing the petitioner as a fresh entrant in the post of Helper, quash all the said three proceedings and also direct the respondent to consider and provide the Petitioner with permanent alternative employment in the cadre Equal to the post of Driver with pay protection, continuity of service and all other attendant benefits - as per Section 47 persons with Disabilities (Equal Opportunities Protection of Right and Full Participation) Act 1995.

(Prayer amended as per order
dated 25.11.2014 by MMSJ in
Mps.1/2014 in WP Nos.212600 & 21261/2012)

For Petitioner .. Ms.S.Girija

For RR1 & 2 .. Mr.Paramasivados

ORDER

The petitioner has approached this Court seeking the following reliefs:

"To issue a Certiorarified Mandamus to call for the records connected with the order of discharge dated 12.09.2000 passed by the 1st respondent in proc.1/D 12/660 A/Law/Div 2/2000 and the subsequent 18(1) settlement dated 29.10.2008 entered into by the petitioner and the respondent vide Proc. Pa.No.11685/D4/660A/Law/TNSTC/EMa/2007 and also the consequential order dated 11.11.08 passed by the 1st respondent in proceeding Pa.No.12105/P3/PaP1/TNSTC/Div/EMa/08 appointing the petitioner as afresh entrant in the post of Helper, quash all the said three proceedings and also direct the respondent to consider and provide the Petitioner with permanent alternative employment in the cadre Equal to the post of Driver with pay protection, continuity of service and all other attendant benefits - as per Section 47 persons with Disabilities (Equal Opportunities Protection of Right and Full Participation) Act 1995".

2.The petitioner was appointed as Driver on 29.12.1997, under the service of the respondent Corporation. He was discharged from service on medical grounds on 12.09.2000 that he was not fit to drive vehicles. Thereafter, the petitioner had made a representation to the Corporation that he should be given an alternative employment. However, the same was not considered and on persistent attempt, finally a settlement had been arrived at between the management and the workman on 29.10.2008 under Section 18(1) of the I.D.Act. Based on the settlement dated 11.11.2008, the petitioner was given alternative employment as Helper but as a fresh entrant on fresh scale of pay without giving any benefit of continuity of service as driver. However, in order to overcome the crisis faced by the family of the petitioner's unemployment, the

petitioner has accepted the offer of employment under the settlement as "Helper".

3. Thereafter, the petitioner had come to know that under Section 47 of the Persons with Disabilities (Equal Opportunities Protection of Right and Full Participation) Act 1995 (hereinafter referred to as an "Act") that a person who is found unfit to hold the post occupied by him on medical grounds, is entitled for alternative employment with pay protection and other attendant benefits. Section 47 of the Act is mandatory and has to be scrupulously followed by all of the Government Departments. Unfortunately, in this case, the petitioner was discharged from service without offering any alternative employment and was forced to take a fresh employment after a period of several years that too as a fresh employment. Since his request for alternative employment from the date of his discharge from service on medical ground was not acceded to, the petitioner is before this Court seeking to challenge the order date 11.11.2008 appointing the petitioner afresh in the post of 'Helper' and the consequential prayer.

4. Upon notice, Mr. P. Paramasivados, learned Counsel entered appearance on behalf of the respondents.

5. Learned counsel for the petitioner would strenuously contend that Section 47 of the Act is mandatory and has to be implemented in all circumstances where an employee is discharged from service on medical grounds. In this case, though the petitioner was fit to work in the alternative employment, he was not offered any alternative employment in terms of the Act and besides he was offered employment as a helper only in 2008, that too, as fresh entrant. Such action on the part of the respondent is in violation of mandatory provisions of Section 47 of the Act and the same is liable to be interfered with.

6. On the other hand, the learned counsel for the respondent Corporation would submit that the petitioner, on his own volition had entered into a settlement for alternative employment under Section 18(1) of the I.D. Act and thereafter, he was offered employment as 'Helper'. Since the settlement is binding on the workman, the petitioner cannot turn around and seek for alternative employment with pay protection from the date of his discharge.

7. This Court has considered the rival submissions made by the learned counsel for the parties and perused the materials

and pleadings placed on record.

8.As rightly pointed out by the learned counsel for the petitioner that Section 47 of the Act, is mandatory and has to be scrupulously followed by all the Government Departments/Corporation. Although the petitioner was provided with alternative employment, he was denied such employment contrary to the provisions of the Act. In fact, the settlement entered into by the petitioner under Section 18(1) of I.D. Act cannot be held against him, since the petitioner has a statutory right to be offered alternative employment with pay protection in terms of Section 47 of the Act.

9.In the instant case, the petitioner was denied such alternative employment and thereafter, the action of the Corporation in offering alternative employment after several years from the date of discharge of the petitioner's service that too, as fresh entrant, cannot be countenanced both in law and on facts.

10.In view of the above narrative, this Court has no hesitation in allowing the writ petition and the offer of employment in the aforesaid settlement proceeded on 11.11.2008 which is impugned, is set aside insofar as providing employment to the petitioner as fresh entrant to the post of "Helper". There shall be a consequential direction to the respondent/Corporation to grant pay protection to the petitioner from the date of discharge in terms of Section 47 of PWD Act. However, it is made clear that the petitioner is having not worked during the period, he is not entitled to get arrears of pay. However, the petitioner is entitled to difference in pay from the date of filing of the present writ petition till date. The respondent/Corporation is also directed to pay Provident Fund Contribution arrears as admissible to the credit of the petitioner from the date of discharge from his service on medical grounds. The said exercise shall be completed by the respondent Corporation, within a period of two months from the date of receipt of a copy of this order.

11.The writ petition stands allowed and the impugned orders, viz., order of discharge dated 12.09.2000 passed by the 1st respondent in proc.1/D 12/660 A/Law/Div 2/2000 and the subsequent 18(1) settlement dated 29.10.2008 entered into by the petitioner and the respondent vide Proceedings

Pa.No.11685/D4/660A/Law/TNSTC/EMa/2007 and also the consequential order dated 11.11.08 passed by the 1st respondent in proceeding Pa.No.12105/P3/PaP1/TNSTC/Div/EMa/08, appointing the petitioner as afresh entrant in the post of Helper, are hereby set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Managing Director,
Tamil Nadu State Transport Corp.,
(Coimbatore) Ltd.,
37, Mettuppalayam Road,
Coimbatore-641 043.
2. The General Manager,
Tamil Nadu State Transport Corp.,
(Coimbatore) Ltd.,
Chennimalai Road,
Erode-638 001.

+1cc to Ms.S.Girija, Advocate, S.R.No.87527

+1cc to Mr.Paramasivadoss, Advocate, S.R.No.88369

W.P.No.21260 of 2012 &
M.P.No.1 of 2012

CS/10/01/18

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