

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 29.11.2017
CORAM
THE HONOURABLE Mr.JUSTICE V.PARTHIBAN
W.P.No.29752 of 2008

S.Haridhas

... Petitioner
Vs

1.The State of Tamil Nadu
Rep by the Secretary,
Transport Department,
Fort St.George, Chennai-9.

2.The Managing Director,
State Express Transport Corporation Ltd.,
Pallavan House, Chennai 600 002. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records relating to the second respondent's order made in letter No.43/075259/Ma.Wa.4/Aa.Vi.Po.Ka.Tha.Na/2008, dated 01.12.2008, to quash the same and consequently direct the respondents to extend all benefits both service and monetary as provided under Section 47 of persons with the disability (Equal Opportunities, Protection of Rights and Full Participation) Act, forthwith.

For Petitioner : Mr.L.Chandrakumar
For Respondents : Mr.S.Gunasekaran,
Additional Government Pleader for R1
: Mr.V.R.Kamalanathan for R2

O R D E R

Heard Mr.L.Chandrakumar, learned counsel for the petitioner and Mr.S.Gunasekaran, learned Additional Government Pleader appearing for the first respondent and Mr.V.R.Kamalanathan, learned counsel appearing for the second respondent.

2. The petitioner has approached this Court for seeking the following relief,

"To issue a writ of Certiorarified Mandamus, to call for the records relating to the second respondent's order made in letter No.43/075259/Ma.Wa.4/Aa.Vi.Po.Ka.Tha.Na/2000, dated 01.12.2008 to quash the same and consequently direct the respondents to extend all benefits both service and monetary as provided under Section 47 of persons with

the disability (Equal Opportunities, Protection of Rights and Full Participation) Act, forthwith."

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

The petitioner was employed as Driver under the respondent Corporation in 1979. While discharging his duties, the petitioner met with an accident on 29.03.1995, and suffered multiple injuries. In view of the injury suffered by him, the petitioner had to undergo prolonged medical treatment as inpatient. In view of the medical treatment taken by the petitioner, he could not report for duty for some time. As a consequence of the accident committed by the petitioner, a disciplinary action was initiated against him and on conclusion of the disciplinary action, the petitioner was removed from service on medical grounds on 30.07.1997.

4. The petitioner challenged the disciplinary proceedings by filing a original suit on the file of Principal District Munsif , Nagercoil, in O.S.No.227 of 2001. The Munsif Court decreed the suit on 01.07.2004, directing the Corporation to provide alternative employment as provided under the persons with the Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, (hereinafter referred to as the Act). Thereafter, the petitioner requested the Corporation to implement the judgment and decree of the Civil Court by providing reinstatement with the alternative employment, as per the provisions of the above Act. Since, no order was forthcoming from the Corporation, the petitioner filed a writ petition in W.P.No.8936 of 2008, for a direction to consider the representation dated 12.12.2007. This Court by order dated 11.04.2008, directed the Corporation to consider the representation of the petitioner.

5. In pursuance of the direction, the petitioner was directed to appear in person on 08.09.2008. However, pursuant to the appearance of the petitioner, the request of the petitioner came to be rejected on the ground that the petitioner had already agreed and consented for appointment as a fresh entrant, in the post of Helper, in the pay scale of Rs.4270-60-5710, from the date of joining duty, in pursuance of Section 18(1) settlement, dated 05.01.2007. The settlement was reached between the Corporation and the petitioner, on the understanding that the appeal preferred against the order passed by the District Munsif, Nagarcoil, was withdrawn by the Corporation, as the decree passed by the Munsif Court was nullity and was not maintainable. It also appears that on the basis of the understanding vide settlement dated 05.01.2007, the appeal was also withdrawn by the Corporation.

6. According to the petitioner, the said agreement had been reached by the force of the circumstances, since the petitioner

was unemployed for nearly ten years and in order to sustain himself, he was forced to enter into such agreement, which was lopsided and against his interest. Since the claim of the petitioner for reinstatement was denied and his appointment in January 2007 was treated as a fresh appointment, which meant that the petitioner would not be entitled to any retirement benefits, as is the entire past service from the date of his initial appointment would get wiped out. He has approached this Court, seeking a relief as stated supra.

7. The learned counsel for the petitioner, at the outset, would submit that after joining as a fresh entrant in 2007 as Helper, the petitioner retired from service on 31.05.2011, on attaining the age of superannuation. In which case, the petitioner was not given any benefit on his retirement, since he had hardly worked only for four years or so, in the Corporation as a fresh entrant.

8. Moreover, the learned counsel for the petitioner would submit that even assuming that the decree passed in favour of the petitioner was non-est and nullity, but the beneficial provisions as contained in Disability Act, particularly, Section 47, cannot be denied to the petitioner for alternative employment. Admittedly, the petitioner suffered multiple injury and became incapacitated during the course of his employment. Therefore, the Section 47 of the Disability Act, has to be invoked in the case of the petitioner. Therefore, the learned counsel for the petitioner would submit that although the petitioner had wrongly taken re-course to civil proceedings before the District Munsif Court, Nagarcoil, yet, he was entitled to the protection of Section 47 of the Disability Act, regardless of the civil proceedings.

9. Upon notice, learned Additional Government Pleader for the first respondent and the learned counsel for the second respondent, have entered appearance and opposed the relief being granted to the petitioner. The learned counsel appearing for the Corporation would submit that a Memorandum of Settlement under Section 18(1) of the Industrial Disputes Act, 1947, had been entered into by the petitioner on 05.01.2007, in and by which, the petitioner entered into the following terms of settlement:-

1. The Management agrees to reinstate Thiru.S.Haridhas, Ex-Driver, EDP No.2037 as per G.O.Ms.No.746, Transport Department, dated 02.07.1981 as helper as fresh entrant in the time scale of pay of Rs.4270-60-5710 from the date of his joining duty in pursuance of the above settlement.
2. He is not entitled for any claim or benefits whatsoever for the past service and for the non-employment period.

3. He has to abide by the terms and conditions in force in this Corporation from time to time.
4. That his appointment as fresh entrant is as per the Wage Settlement arrived during September 2003.
5. Both parties agree for the disposal of the Appeal Suit AS:SR.No.5782/2004, preferred by the Corporation against O.S.No.227/2001, filed by Thiru S.Haridhas, before the District Munsif, Nagercoil, on the above terms and not to pursue further.
6. If any necessity arises to interpret or clarify any of the above conditions, the matter will be decided by the Managing Director whose order or clarification shall be final and binding on the workman.

10. According to the learned counsel for the Corporation, as per one of the conditions of settlement that the petitioner would not claim any benefit of past service or for the non-employment period and he had also agreed to be a fresh entrant in the post of Helper. Such an argument advanced on behalf of the respondent does not carry much conviction in law for the simple reason that there cannot be a plea of estoppel against the statutory right conferred on the petitioner under the provisions of the Disability Act.

11. In this case, as rightly contended by the learned counsel for the petitioner that the Management ought to have invoked Section 47 of the Disability Act and offered alternative employment to the petitioner, instead of removing him from service on medical grounds. Even though, the Management was fair in offering a fresh appointment to the petitioner and withdrawn the appeal filed against the decree and judgment passed by the District Munsif Court in O.S.No.227 of 2001, yet, such relief granted to the petitioner cannot be ultimately countenanced in law and on facts. This is for the reason that the entire past service rendered by the petitioner from the date of his initial appointment and till the date of his fresh appointment in service was completely ignored. The effect of which that the petitioner would be left high and dry without any pensionary benefits.

12. This Court is in full agreement with the learned counsel for the petitioner that the re-employment for the petitioner as a fresh entrant under Section 18(1) Settlement dated 05.01.2007, has no legal basis or sanction in the facts and circumstances of the case. Therefore, the same has to be ignored for the purpose of grant of relief to the petitioner as under.

13. In the light of the above, the second respondent's order in Letter No.43/075259/Ma.Wa.4/Aa.Vi.Po.Ka.Tha.Na/2000, dated 01.12.2008, rejecting the claim of the petitioner, seeking alternative employment from the date of removal from service is set aside. There shall be consequential direction to the respondents to extend all attendant benefits as provided under Section 47 of the Disability Act, by notional appointment of the petitioner from the date of his removal from service and grant him all other service benefits, as he is otherwise entitled by treating the entire service of the petitioner as continuous one, till the date of his superannuation. It is also made clear that the petitioner is entitled to all service benefits as admissible to other employees in his cadre. The consequential direction shall be complied with by the Corporation within a period of eight weeks from the date of receipt of a copy of this order.

14. With the above direction, the writ petition is allowed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary,
The State of Tamil Nadu
Transport Department,
Fort St.George, Chennai-9.
- 2.The Managing Director,
State Express Transport Corporation Ltd.,
Pallavan House, Chennai 600 002.

+1 cc to Mr.L.Chandrakumar Advocate sr 84912
+1 cc to Mr.V.R.Kamalanathan Advocate sr 84804
+1 cc to Government Pleader sr 85450

W.P.No.29752 of 2008

aa02/01/2018