

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.12.2017

CORAM

THE HONOURABLE Mr. JUSTICE V.PARTHIBAN

W.P.No.34951 of 2006 and
M.P.No.1 of 2006

K.Govardanan

... Petitioner

Vs.

The Management of
Metropolitan Transport Corporation
Pallavan Illam, Anna Salai,
Chennai - 600 002.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondent to give backwages with continuity of service and service benefits for the non employment period from 23.05.2006 to 31.01.2011 to the petitioner.(Prayer amended as per Order dated 24/11/2017 in WMP.No.32243/2017)

For Petitioner : Mr.S.T.Varadarajulu
For Respondents : Mr.P.Paramasiva Doss

ORDER

The petitioner has approached this Court for seeking the following reliefs:

to issue a Writ of Mandamus directing the respondent to give backwages with continuity of service and service benefits for the non employment period from 23.05.2006 to 31.01.2011 to the petitioner.

2.The petitioner joined the service of the Transport Corporation as Driver in 1986 and continued the service as such for 19 years. On 22.05.2005, while he was on duty, had developed irritation in his left eye and therefore, he had gone to the eye hospital, Egmore for diagnosis. The Doctor, who examined the petitioner, diagnosed him that there was a problem in his vision and recommended for further treatment. On 23.05.2005, he entered on medical leave and forwarded the leave letter along with medical certificate.

3.According to the petitioner, despite the treatment, his

vision had not improved, hence, by a letter dated 30.06.2005, he requested the Corporation to offer him alternative employment. However, on his request for alternative employment, there was no response from the Corporation for some time. Therefore, the petitioner had sent a notice on 21.01.2006 to refer his case to the Medical Board for the purpose of grant of alternative employment. The respondent, by letter dated 13.03.2006, directed the petitioner to appear before the Chief Medical Officer and the General Manager. As per the direction, the petitioner approached the Chief Medical Officer and the General Manager. The Chief Medical Officer, who examined the petitioner, had opined that his loss of vision cannot be restored. According to the petitioner, the General Manager was aware of the diagnosis from the medical officer and in that regard, the General Manager asked the petitioner to await further orders in the matter. Since no communication was coming from the Corporation, the petitioner also issued a legal notice on 11.07.2006 to the respondent. In the legal notice, all the above facts have been mentioned.

4. Since no alternative employment was offered to the petitioner, he is before this Court seeking the issue of writ of mandamus directing the respondent to offer alternative suitable employment, by giving protection to him, in terms of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 [hereinafter referred to as "PWD Act"]. During the pendency of the writ petition, the petitioner attained the age of superannuation on 31.01.2011.

5. Upon notice, Mr. P. Paramasiva Doss, learned Standing Counsel has entered appearance on behalf of the respondent/ Corporation and filed a detailed counter affidavit.

6. In the counter affidavit, it is stated that as per the direction by the Corporation, the petitioner did not report before the Chief Medical Officer or before the General Manager and on his own, the petitioner remained absent without subjecting himself to medical examination. According to the counter affidavit, the petitioner was not discharged from service on medical grounds and therefore, the question of grant of alternative employment did not arise, in the first place.

7. According to the counter affidavit, the petitioner remained absent without proper permission and therefore, the disciplinary action was set in motion. According to the Corporation, charge memo was also issued, but subsequently, it appears that the disciplinary action was dropped, which fact has not been disputed.

8. Though there are certain factual disputes in regard to

whether the petitioner had responded to the direction by the Corporation for subjecting himself before the Medical Board, nevertheless the fact remains that the petitioner was not granted any alternative employment as mandated under the provisions of the PWD Act particularly, Section 47 of the Act.

9.Mr.P.Paramasiva Doss, learned standing counsel appearing for the Corporation would contend that no relief is required to be granted in this case, in view of the long absence by the petitioner himself and not responding to the Corporation. On the other hand, the learned counsel appearing for the petitioner would submit that it was a fault of the Corporation not to offer alternative employment to the petitioner, in spite of the petitioner responding to the call of the General Manager and reported before the Chief Medical Officer. According to the learned counsel, these facts were clearly recorded in the legal notice sent on 11.07.2006. According to him, only when there was no response from the authorities concerned, the petitioner was constrained to approach this Court seeking the relief as stated supra.

10.This Court has considered the rival submissions of the counsels appearing for the parties, perused the materials and pleadings placed on record.

11.It is not disputed that the petitioner had rendered continued service without blemish. However, the dispute is whether the petitioner had absented himself voluntarily or he was forced to remain absent by the act of the Corporation in the aforesaid circumstances. From the records, it is seen that although notices were issued to the Corporation requesting for alternative employment under the PWD Act, there was no response from the authorities by way of any communication in respect of the regret of petitioner. Only in the counter affidavit, certain details were furnished which were factually not borne out by the supporting records. In the said circumstances, this Court has to necessarily infer that the petitioner had been making genuine attempts to get himself referred to the Medical Board and be discharged on medical grounds.

12.Since the petitioner has attained the age of superannuation on 31.01.2011, no relief of reinstatement can be granted by this Court as on date. However, in view of the mandatory provisions of the PWD Act and also in the absence of conclusion of any disciplinary action against the petitioner, it must be taken that the petitioner is deemed to have been employed alternatively in any suitable post in the Corporation under Section 47 of the PWD Act with pay protection from the date of his non-employment and till the date of his superannuation.

13.However, it is made clear that the petitioner is not entitled to any backwages for the period of his non-employment and till date the date of his superannuation on the principle of 'No Work No Pay'.

14.In the light of the above, there shall be a direction to the respondent to pass necessary orders to the effect that the petitioner is deemed to have been employed from the date of his non-employment till the date of his superannuation i.e. on 31.01.2011. in any other alternative post with pay protection in terms of Section 47 of the PWD Act. On such order being passed, the petitioner is also entitled to all admissible pensionary benefits except backwages, as indicated above. The authorities are also directed to pass orders within a period of twelve weeks from the date of receipt of a copy of this order.

15.The learned counsel for the Corporation would submit that the Corporation may be permitted to make adjustment of certain amounts towards Pension Fund from the pensionary benefits payable to the employee. Since the request made by the respondent is fair, this Court permits the Corporation to deduct admissible amounts towards Pension Fund from the pensionary benefits payable to the petitioner.

16.With the above observations and directions, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

Sgl

To
The Managing Director,
Metropolitan Transport Corporation
Pallavan Illam, Anna Salai,
Chennai - 600 002.

+1cc to Mr.S.T.Varadarajulu, Advocate SR.No.88866
+1cc to Mr.P.Paramasiva Doss, Advocate SR.No.89219

W.P.No.34951 of 2006

VGI (CO)
GN(09/01/2018)