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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.11.2016

Pronounced on : 24.05.2017

CORAM :

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P. (MD) No.17268 of 2016
& W.M.P. (MD) Nos.12538 & 12539 of 2016

P.Karuppiah

... Petitioner

vs.

1. The Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Rep. by its Managing Director, Kumbakonam
 2. The General Manager,
The Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Pudukottai Region, Pudukottai District
- ... Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Declaration to declare the action of the respondents in denying employment to the petitioner in the post of Driver as illegal and arbitrary and consequently to direct the respondents to reinstate the petitioner in service in the post of Driver with continuity of service, back wages and all other attendant benefits.

For Petitioner : Mr. A.Rahul

For Respondents : Mr. D.Sivaraman

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O R D E R

A person fit to drive with glasses is, whether fit to be appointed as a driver or not, is the issue raised in this writ petition.

	Right eye	Left eye
Near vision	$\bar{e} + 1.00$ NS	$\bar{e} + 1.00$ NS
Distance vision	6/6 P + 0.50 cyl x 18 6/6	6/6 $\bar{P}$ e+ 0.75 cyl x 18 6/6

1.1. According to Doctors, the petitioner herein, with this kind of vision, is fit enough to drive the vehicle with glasses.



1.2. When the technology provides glasses for the purpose of getting the problem in the eye cured, with no accompanying / additional problems, whether usage of technology to cure the defect can be described to be a disqualification, is the issue to be considered.

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2. This writ petition has been filed by the petitioner seeking to declare the action of the respondents in denying employment to the petitioner in the post of Driver is illegal and arbitrary and consequently, to direct the respondents to reinstate the petitioner in service in the post of Driver with continuity of service, back wages and all other attendant benefits.

Brief facts:-

3. The petitioner, who have passed eighth standard, had obtained a drive licence to drive Heavy Transport Vehicles with an endorsement to the effect that he is authorized to operate Heavy Passenger Transport Vehicles.

3.1. It was notified by the respondents that there was vacancy for the post of Reserve Drivers and that persons in the age group of 40-45 in the category of SC / ST / MBC were eligible for consideration. The petitioner applied for the post of Reserve Driver. He was called for an interview on 22.12.2014. After verification of the certificates and physical examination, the respondents offered appointment after due selection. He was sent to Pudukottai Government Hospital for verifying the vision capacity. The Pudukottai Government Hospital issued a certificate that the petitioner's vision is normal. Thereafter, the offer of appointment dated 25.03.2015, was issued to the petitioner. By a communication, the petitioner was directed to appear with uniform along with necessary certificates. In addition to that, he was directed to pay a sum of Rs.3,000/- towards training charges.

3.2. The petitioner was given training for 30 days from 27.04.2015. The training was over by 25.05.2015. On 30.05.2015, the petitioner was subjected to eye-examination in a Private Eye Hospital. From 01.06.2015, the petitioner was stopped from service. No reason was given. The petitioner made a representation to the respondents, by way of a Registered Post, seeking details regarding denial of employment. The petitioner subjected himself as a patient in a private eye hospital on 24.12.2015. He was certified 'fit' to drive the vehicles. The refractive error could have been the possible reason for denial of employment. It can be corrected by wearing spectacles and it is not a disease or vision defect, warranting denial of livelihood. It is the respondents, who have blindly denied employment to the petitioner. If persons with spectacles are treated as unfit to drive vehicles, then almost all persons above 40 years may have to



be sent out of employment. Therefore, the action of the respondents in denying the employment is irrational, unreasonable, arbitrary and contrary to Articles 14 and 21 of the Constitution of India.

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4. The claim of the petitioner is resisted by the respondents on the following grounds:-

(a) The petitioner did not have physical qualification, with reference to the capacity of the vision, as per the requirement in S.Nos.6 to 14 of the notification. Under clause 10 of the notification, the candidates shall be free from defective vision and under clause 11, the petitioner must possess distance vision without glasses.

(b) The petitioner was not fit for driving heavy vehicles, as per the medical report of the Private Eye Hospital. The petitioner produced a Certificate from the same hospital stating that he was fit to drive. This certificate, having been obtained privately, appeared to be a manipulated document.

(c) When the petitioner was sent for medical examination, the Medical Board's remark is that he is fit to drive with glasses.

(d) The common Service Rules applicable for Public Sector Transport Corporations contemplate the eligibility conditions and qualifications for all the posts available in the Transport corporation including the drivers. As per the conditions, the candidate must have a clear eye-sight and free from physical deformity. The candidate shall be free from defective vision. He must have distant vision without glasses. Therefore, he is disqualified.

(e) The selection for interview is only provisional and the selection was subject to verification of genuineness of the records. Therefore, the petitioner cannot claim employment as a matter of right. The petitioner is not entitled to invoke the provisions of The Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995 (in short "the Act").

5. The contention of the learned counsel for the petitioner is that the vision in the eye is fit enough for him to get himself appointed as a driver; the petitioner relies upon the medical report of a Private Eye Hospital, dated 24.12.2015, where-under the report states that he is fit to drive; there was yet another



report of the same hospital, dated 30.05.2015, where-under it has been stated that he is not fit to drive, as per new regulations.

6. The petitioner was sent for medical examination to Government Ophthalmology Hospital, Egmore, Chennai, and the Special Medical Board, by a Certificate, dated 29.09.2016 certified that the petitioner is fit to drive the vehicles, with glasses.

7. The contention of the learned counsel for the respondents is that the petitioner is ineligible to be appointed as a driver.

8. The learned counsel appearing for the petitioner submitted that prescription of the condition, that wearing the spectacle itself is a disqualification (unless it is shown to be risky to the passengers or road users), is illegal and therefore, the respondents must be directed to provide employment to the petitioner herein.

9. In order to appreciate this contention, it is necessary to understand the nature and seriousness of the problem and the measures available for correction.

9.1. The Article referred to in 'https://cbsscience.wordpress.com/2007/01/02/defects-of-vision-and-their-correction/', is reproduced hereunder, for better understanding of the conditions imposed:-

"There are four types of defect of the Eye: Myopia, Hypermetropia, Presbyopia and Astigmatism. Below are given the nature of the defect, its causes and corrective measures:-

Myopia:

Nearsightedness, also called myopia is common name for impaired vision in which a person sees near objects clearly while distant objects appear blurred. In such a defective eye, the image of a distant object is formed in front of the retina and not at the retina itself. Consequently, a nearsighted person cannot focus clearly on an object farther away than the far point for the defective eye.

Causes:

This defect arises because the power of the eye is too great due to the decrease in focal length of the crystalline lens. This may arise due to either

- (i) excessive curvature of the cornea, or
- (ii) elongation of the eyeball.



Correction :-

This defect can be corrected by using a concave (diverging) lens. A concave lens of appropriate power or focal length is able to bring the image of the object back on the retina itself.

Method for calculating the power of the corrective lens: -

For calculating the required power of a corrective lens, the Doctor first find the power of the eye at its far point. Then, one can select a corrective lens of appropriate power to move the far point to infinity. The Ophthalmologists use the thin lens formula, written in terms of power P of the lens as the image distance v of the eye can be taken as 0.02 m approximately.

Hypermetropia:

Farsightedness, also called hypermetropia, common name for a defect in vision in which a person sees near objects with blurred vision, while distant objects appear in sharp focus. In this case, the image is formed behind the retina.

Causes:

This defect arises because either

- (i) the focal length of the eyelens is too great, or
- (ii) the eyeball becomes too short, so that light rays from the nearby object, say at point N , cannot be brought to focus on the retina to give a distinct image.

Correction:-

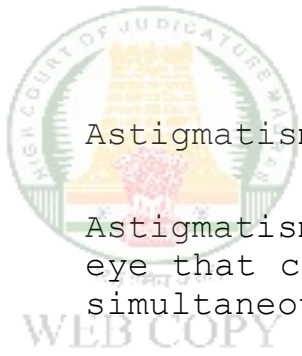
This defect can be corrected by using a convex (converging) lens of appropriate focal length. When the object is at N' , the eye exerts its maximum power of accommodation. Eyeglasses with converging lenses supply the additional focusing power required for forming the image on the retina.

Presbyopia:

Presbyopia, progressive form of farsightedness that affects most people by their early 60s. The power of accommodation of the eye decreases with aging. Most people find that the near point gradually recedes.

Cause and cure:

It arises due to the gradual weakening of the ciliary muscles and diminishing flexibility of the crystalline lens. Simple reading eyeglasses with convex lenses correct most cases of presbyopia. Sometimes, a person may suffer from both myopia and hypermetropia. Such people often require bi-focal lenses. In the bi-focal lens, the upper portion of the bi-focal lens is a concave lens, used for distant vision. The lower part of the bi-focal lens is a convex lens, used for reading purposes.

**Astigmatism:**

Astigmatism, a defect in the outer curvature on the surface of the eye that causes distorted vision. In astigmatism, a person cannot simultaneously focus on both horizontal and vertical lines.

Causes:

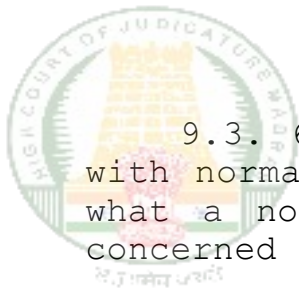
This defect is usually due to the cornea that is not perfectly spherical. Consequently, it has different curvatures in different directions in vertical and horizontal planes. This results in objects in one direction being well-focused, while those in a perpendicular direction not well focused

Correction:-

This defect can be corrected by using eyeglasses with cylindrical lenses oriented to compensate for the irregularities in the cornea."

9.2. At this stage, it is appropriate to consider the effect of this vision defect, upon driving when the defect can be rectified by using glasses.

	Right eye	Left eye
Distant Vision	6/9 P	6/9
Distant Vision with glasses	6/6	6/6
Nature of defect and amount of correction	+0.50/180 :	+0.75/180 :
Near vision (BE-S+1.25)	N6	N6
Squint or any morbid conditions of the eyes or the eye lids	-	-
Binocular vision	Present	
Field of vision	Normal	Normal
Colour vision	Normal	Normal
Fundus appearance	Normal	
Standard of vision	Go on	



9.3. 6/6 means the eyesight is as accurate as any individual with normal eyesight. 6 stands for distance in meters. 6/6 means what a normal person can read clearly at 6 meter distance the concerned can also read with similar accuracy at similar distance.

9.4. 6/9 means a normal person can read the alphabets at 9 meter distance clearly and the concerned will be not able read them being 9 meters away and the concerned can read them clearly at 6 meters distance that means the eyesight is week.

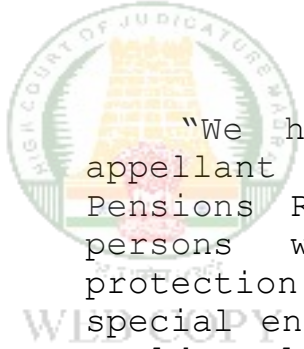
9.5. The defect, that is curable, can never be said to be a disqualification. The nature of the defect and the nature of the cure available would go to show that there can be no failure in the vision after wearing glasses and therefore, being able to drive, with glasses, can never be a disqualification. Therefore, the condition prescribed is not valid and even though the condition is not directly challenged, it is indirectly challenged and the challenge made is accepted.

9.6. It is nowhere pointed out that the problem in vision would give difficulty for the petitioner to drive or it is risky / dangerous to drive from the point of view of the public. In fact, it was pointed out by the learned counsel appearing for the petitioner that with advancement in age and when the recruitment is made at the age of 40, this kind of vision defect is bound to occur, which is normal and natural for any human-being and therefore, it cannot be considered as a disqualification. It is further pointed out that, if this test is applied to the drivers employed in the Transport Corporation, more than 50% of the drivers have to be sent out as the disqualified drivers.

10. It is worthwhile to consider the article published in 'http://www.bbc.com/future/story/20140513-do-glasses-weaken-your-eyesight':-

".... how few trials have been conducted on the prolonged effect of wearing glasses. And from what we know there's no persuasive evidence that wearing reading glasses affects your eyesight. Why then do so many people become convinced, anecdotally, that glasses have made their eyesight worse? People may gradually find themselves more and more dependent on their specs, but it's because their lenses have continued to deteriorate with age. So people find themselves needing their glasses more often, leading them to conclude that the glasses must have made their sight worse, where in fact, there's no causal relationship."

11. The learned counsel for the petitioner would submit that the petitioner, even assuming to be a disqualified person, is entitled to reservation under the Act and hence, he must be considered and in support of the said contention, the decision reported in AIR 2003 SC 1623 (Kunal Singh v. Union of India) is relied upon:-



"We have to notice one more aspect in relation to the appellant getting invalidity pension as per Rule 38 of the CCS Pensions Rules. The Act is a special Legislation dealing with persons with disabilities to provide equal opportunities, protection of rights and full participation to them. It being a special enactment, doctrine of generalia specialibus non derogant would apply. Hence Rule 38 of the Central Civil Services (Pension) Rules cannot override Section 47 of the Act. Further Section 72 of the Act also supports the case of the appellant, which reads:-

"72. Act to be in addition to and not in derogation of any other law. - The provisions of this Act, or the rules made thereunder shall be in addition to, and not in derogation of any other law for the time being in force or any rules, order or any instructions issued thereunder, enacted or issued for the benefits of persons with disabilities."

Merely because under Rule 38 of CCS Pension Rules, 1972, the appellant got invalidity pension is no ground to deny the protection, mandatorily made available to the appellant under Section 47 of the Act. Once it is held that the appellant has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay-scale and service benefits; if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation, whichever is earlier. It appears no such efforts were made by the respondents. They have proceeded to hold that he was permanently incapacitated to continue in service without considering the effect of other provisions of Section 47 of the Act."

11.1. In the said case, it was held that Section 72 of the Act would prevail over Rule 38 of the Central Civil Service (Pension) Rules. Section 72 of the Act reads as under:-

"Section 72 - Act to be in addition to and not in derogation of any other law:

The provisions of this Act, or the rules made thereunder shall be in addition to, and not in derogation of any other law for the time being in force or any rules, order or any instructions issued thereunder, enacted or issued for the benefits of persons with disabilities."

12. The learned counsel for the petitioner would submit that the common service Rules relied upon by the respondents would not be applicable to the workman, who are governed by the Standing Orders; it would be applicable only to managerial or supervisory cadre staff; even assuming that, it is applicable, it cannot override the provisions of the Act, especially, Section 72 of the Act. Therefore, it is contended that the petitioner is entitled to benefits under the Act and he cannot be disqualified by invoking the Common Service Rules.



12.1. The applicability of Section 72 of the Act cannot be declined. But the problem is the appropriate Government ought to have made reservations in respect of the post for which the person with disability is aspiring and having regard to the type of work, by notification, the Government may exempt the establishment from the provisions of the Section, requiring reservation. It is not known whether reservation has been made in respect of the post of driver by the Corporation. In the absence of such evidence, the contention that the Disability Act would be applicable to the petitioner cannot be accepted.

12.2. But, it is relevant to point out that under Section 28 of the Act, the appropriate Government is expected to initiate research for the purpose of designing and developing new assistive devices / teaching aid / materials, as are necessary for giving the disabled an equal opportunity and the provision reads as under:-

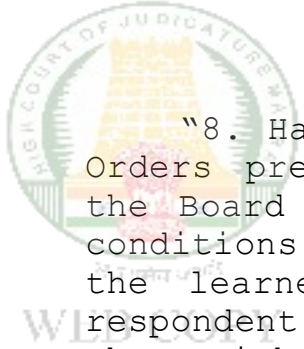
Section 28 - Research for designing and developing new assistive devices, teaching aids, etc.-

The appropriate Governments shall initiate or cause to be initiated research by official and non-Governmental agencies for the purpose of designing and developing new assistive devices, teaching aids, special teaching materials or such other items as are necessary to give a child with disability equal opportunities in education.

12.3. The learned counsel appearing for the respondents relied upon the following decisions:-

(i) 2006 (3) CTC 449 (Dr. M.Vennila v. Tamil Nadu Public Service Commission):-

"25. In the earlier part of our order, we have extracted relevant provision, viz., Instructions, etc. to Candidates as well as the Information Brochure of the Tamil Nadu Public Service Commission, we hold that the terms and conditions of Instructions, etc. to Candidates and Information Brochure have the force of law and have to be strictly complied with. We are also of the view that no modification / relaxation can be made by the Court in exercise of powers under Article 226 of the Constitution of India and application filed in violation of the Instructions, etc. to Candidates and the terms of the Information Brochure is liable to be rejected. We are also of the view that strict adherence to the terms and conditions is paramount consideration and the same cannot be relaxed unless such power is specifically provided to a named authority by the use of clear language."



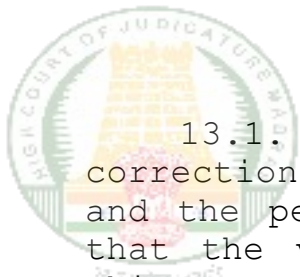
"8. Having issued the prospectus based on the said Government Orders prescribing weightage marks for the academic excellence, the Board as well as the candidates are bound by the terms and conditions of the prospectus. When yet another query was made to the learned Additional Advocate General as to how the first respondent can overlook the Government Order by doing away with the weightage marks for academic excellence, she has got no explanation to offer. In our considered opinion, when the prospectus provides for weightage marks for academic excellence on the basis of said examination marks, it is not within the power of the Board to deviate from the same and to do away with the weightage marks. This exercise made by the first respondent is wholly without jurisdiction. It is needless to point out, as we have already stated, the prospectus binds not only the candidates, but also the first respondent. It is settled law that rules of the game cannot be changed after the game has started."

(iii) 2012 (5) CTC 577 (Indian Oil Corporation Ltd., V. J.Ranjith):-

"22. When the selection is made on the basis of a prescribed procedure made known to the candidates sufficiently earlier it is not open to the Corporation to make a deviation at a later point of time."

12.4. All these decisions relied upon by the learned counsel for the respondents dealing with Rules, instructions, etc., having the force of law admittedly cannot override the provisions of Section 72 of the Act, however, in this case, the benefit of the Disablement Act cannot be considered, in the absence of evidence to show that in the establishment of Transport reservation has been made permissible for appointment of disabled persons in the post of Driver.

13. Medical revolution has gone to the extent of replacement of any organ for a living person. It is not a case where the disablement is considered at the age of 25. But it is considered at the age of 45. The power of the vision is bound to decrease as age advances. Yet the petitioner having maintained the vision to the extent possible, it has made the Doctors to certify that the petitioner can drive the vehicle using the glasses. It is not the case of the respondents that driving by the petitioner by using the glasses is dangerous to the public or that he was not able to drive the vehicle while using glasses. Therefore, the contention that just because the petitioner can drive the vehicle only by using the glasses, it is a disqualification and therefore, the petitioner cannot be appointed as a driver, cannot be accepted.



13.1. In the laws of UK and USA, using a spectacle to have a correction in the vision is not considered as a disqualification and the person with a defect in the vision is permitted to show that the vision could be corrected by wearing a spectacle. In this case also, initially the respondents have admitted the petitioner as a Trainee Driver and has given training. If really any untoward incident had happened during the training period, there would not have been any excuse from the liability. Therefore, when a person who was originally found qualified during training, how became disqualified after training is not made clear to the Transport Corporation itself.

14. In the result, the action of the respondents in denying employment to the petitioner in the post of Driver is declared illegal and arbitrary and consequently, the respondents are directed to reinstate the petitioner in the post of Driver, but without continuity of service and back wages.

15. The writ petition stands disposed of, on the above terms. No costs. Consequently, the connected WMPs are closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub-Assistant Registrar

+One cc to Mr.A.Rahul, Advocate, SR.No.57246

srk

RL/2C/11P/GT/SAR1/11/9/2017

Order in

W.P. (MD) No.17268 of 2016
& W.M.P. (MD) Nos.12538 & 12539 of 2016
24.05.2017