



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated: 22.03.2017

Coram

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THE HON'BLE MR.JUSTICE S.S.SUNDAR

Writ Petition (MD)No.24922 of 2016
and
W.M.P.(MD).No.18024 of 2016

S.Selvaraj

... Petitioner

-Vs-

1. Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd.,
Represented by its Managing Director,
Kumbakonam.
2. The General Manager,
Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd.,
Trichy Region,
Periyamilaguparai, Trichy.
3. The Branch Manager,
Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd.,
Ariyalur Branch,
Ariyalur.
4. The Chairman,
Regional Medical Board and Joint Director of
Health Services,
Perambalur District - 621 212.
5. The Chairman,
Regional Medical Board,
Rajiv Gandhi Government General Hospital,
Chennai - 600 003.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to provide alternative light duty to the petitioner on permanent basis at Ariyalur Branch of the 1st respondent Services courts.gov.in/hcservicesh pay protection, continuity of service and back wages from the date on which the petitioner was denied in the post of Conductor on account of crush injury on his left foot and



further to pay arrears of wages payable to him within the time limit that may be stipulated by this Hon'ble Court in terms of Section 47(1) of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

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For petitioner
For Respondents

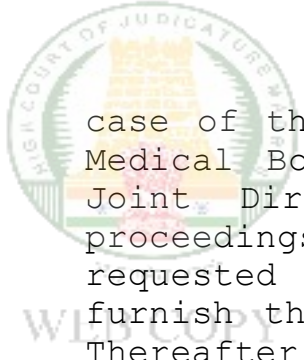
: Mr.A.Rahul
: Mr.D.Sivaraman,
Standing Counsel for TNSTC

O R D E R

The writ petition has been filed for a Writ of Mandamus directing the respondents to provide alternative light duty to the petitioner on permanent basis at Ariyalur Branch of the first respondent Corporation with pay protection, continuity of service and back wages from the date on which the petitioner was denied in the post of Conductor on account of crush injury on his left foot and further to pay arrears of wages payable to him within the time limit that may be stipulated by this Hon'ble Court in terms of Section 47(1) of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

2. The facts in brief are as follows:

The petitioner, while he was on duty as a conductor of bus suffered an injury on 06.10.2009. He submits that the driver of the bus, without observing that the petitioner was standing behind the bus to give signal, took the bus in reverse direction and caused an injury. Since the petitioner's left foot was crushed, he sustained serious injuries viz., multiple fractures. His disability was arrived at 52% and hence, he could not work as a conductor. The petitioner further states that was continuously taking treatment for almost one year and that he is not able to walk. Though the petitioner was given duty in the post of cashier with effect from 16.11.2010, he worked till 05.12.2011, the petitioner states that he was not provided with duty thereafter. According to the petitioner, even in the year 2012, the petitioner was given light duty only for about three months and thereafter, he was given duty as a cashier only for a limited period between 27.07.2013 to 11.08.2013 at Ariyalur Branch of the first respondent Corporation. Thereafter, even the said duty was refused by an oral order passed by the third respondent. Though the petitioner has been repeatedly requesting the respondents to provide him light duty on various dates, the respondents neither considered the petitioner's grievance nor provided him light duty on permanent basis. According to the petitioner, even the designation as conductor was not changed. It is also the case of the petitioner that the petitioner was referred to District Medical Board, Government Headquarters Hospital, Perambalur. The petitioner appeared before the Medical Board on 13.07.2012 and the Medical Board also certified that the petitioner is unfit for the post of conductor. Further, the Medical Board also opined that the petitioner can be given less laborious work. It is the further



case of the petitioner that despite the fact that the opinion of Medical Board was communicated to the second respondent by the Joint Director of Health Services, Perambalur District, by proceedings dated 01.08.2012, the first respondent has once again requested the Joint Director of Health Services, Perambalur to furnish the certificate mentioning the percentage of disability. Thereafter, the Joint Director of Health Services, by communication dated 27.02.2014, informed the Assistant Manager of the Corporation stating that the petitioner is suffering from 52 % of disability. It is the specific case of the petitioner that the percentage of disability may not have much relevance after the opinion of the Medical Board as per the communication, dated 01.08.2012. The grievance of the petitioner is not only for the in-action of respondents in not providing light duty after the report of the Medical Board but also the further proceedings of the second respondent dated 03.07.2014 referring the petitioner to the Medical Board of Rajiv Gandhi Government General Hospital, Chennai, which according to him, is not warranted.

3. Earlier, the petitioner filed Writ Petition in W.P.(MD). No.11706 of 2014 seeking to quash the proceedings of the second respondent, dated 03.07.2014 and to direct the respondents to provide alternative light duty with attendant benefits in terms of Section 47(1) of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. However, this Court, by order dated 24.07.2014, directed the petitioner to appear before the Medical Board of 5th respondent with the further direction to reimburse the expenses borne by the petitioner towards medical and travel expenses by the first respondent. Even after the petitioner appeared before the Medical Board of 5th respondent on 05.09.2014 and examination of the petitioner, the outcome of such examination was not intimated to the petitioner. Thereafter, the petitioner has repeatedly making representations either to get the medical examination report of the fifth respondent hospital or to provide alternative employment. In the above circumstances, the petitioner has come by way of the above writ petition to direct the respondents to provide alternative light duty to the petitioner on permanent basis at Ariyalur Branch of the first respondent Corporation with the other consequential benefits in terms of Section 47(1) of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

4. The learned counsel for the petitioner relied upon the judgment of this Court, dated 19.12.2011 in W.P.(MD).No.5858 of 2011, wherein, in para-4, this Court has held as follows.

"4. The learned counsel for the petitioner has been given a copy of the said order. However, the learned counsel for the petitioner stated that this order did not talk about any back wages. It is needless to state that already this Court in more than one writ petition



emphasized that Section 47(1) is an injunction against the employer from dispensing with the service of a person who has become disabled. The disability has to be considered under the provisions of the Act. Therefore, it is needless to state that such person, if the services were dispensed with or discontinued or denial of alternative employment, is also entitled for wages, as if, there was no denial of employment. Taking note of this direction issued by this Court, since the respondents offered the alternative employment, it is for the petitioner to make any representation in case the wages are not paid and the respondents have positively response to such representation."

5. The learned counsel for the petitioner also relied upon another judgment of the learned Single Judge of this Court, dated 23.09.2013 in W.P.(MD).No.1720 of 2013, wherein, in para-4, it is stated as follows:

"As of now, the fact remains that the petitioner has not been dismissed from service and no disciplinary action has been taken against him, if at all it is true that the petitioner was absent unauthorisedly. Be that as it may, the fact remains that the petitioner has been declared unfit even by the Medical Board constituted by the respondent-Corporation. Therefore, he cannot be allowed to work as driver. Despite the said finding of the Medical Board, if the petitioner is forced to work as driver, it is not only the life of the petitioner, the life of several passengers and pedestrians would be at stake. That is the reason why the petitioner did not join the duty. This cannot be taken as a misconduct at all. As per the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the petitioner is entitled for alternative employment with pay protection."

6. Again, this Court, in W.P.(MD).No.247 of 2013, by order dated 18.04.2013, has ruled as follows:

" In view of the findings of the Medical Board, the petitioner is entitled to get alternative employment as provided under Section 47(1) of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, from the date on which he was denied employment. As per Section 47 of the Act, the petitioner should have been shifted to some other post without being denied employment. Hence, the respondents 1 and 2 are directed to provide him suitable alternative post protecting the scale and other service benefits of the post which he held before the disability. The respondents shall provide alternative employment with pay protection and also other back wages from the date of



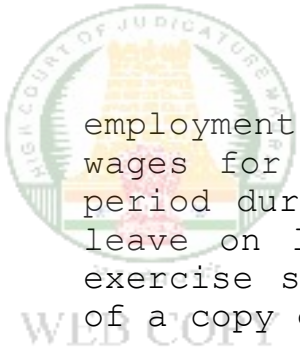
denial of employment within a period of four weeks from the date of receipt of a copy of this order."

7. The facts narrated by the petitioner in the affidavit filed in support of the petition are not seriously in dispute. This Court is unable to justify the conduct of the respondents in seeking second opinion from the Medical Board to ascertain the disability or nature of injury, so as to consider the case of the petitioner in terms of Section 47(1) of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. This Court is not inclined to approve the stand taken by the respondents after the opinion was furnished to the respondents by the Medical Board, Government Headquarters Hospital, Perambalur, vide their proceedings dated 01.08.2012. Even after getting the disability certificate from the Medical Board, once again the respondent wanted the petitioner to submit himself to the fifth respondent hospital. The circumstances due to which, the respondents sought for second opinion from another Medical Board is not explained in the present case.

8. The learned counsel for the petitioner also referred to the various guidelines/instructions to Medical Board as seen from Tamil Nadu Medical code. Though the applicability of the Regulations found in Tamil Nadu Medical code is not seriously disputed, this Court is not inclined to decide this case purely on the basis of the instructions and regulations found in Tamil Nadu Medical code. However, in terms of Section 47(1) of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, as it has been interpreted by this Court in the judgment first cited, it is mandatory on the part of the respondents to provide employment to the petitioner in case he is medically unfit to perform his duty as a conductor. This Court has also interpreted Section 47(1) of the Act as mandatory. In such circumstances, upon getting opinion from the Medical Board, dated 01.08.2012, the in-action on the part of the respondents in not providing alternative employment to the petitioner by giving him light work cannot be justified.

9. Considering the admitted facts in this case and the judgments relied upon by the learned counsel for the petitioner in this case, this Court is inclined to dispose of the writ petition with the following directions:

The respondents are directed to provide alternative employment to the petitioner with light duty, on permanent basis in any one of the branches of the first respondent Corporation within Trichy Region with pay protection, continuity of service and other service benefits, in terms of Section 47(1) of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The petitioner is entitled to 50% of the back wages during which he was not given / provided any



employment from 01.08.2012 and the petitioner is entitled to full wages for the days during which he was given employment. If any period during which the petitioner was hospitalised is treated as leave on loss of pay, that period will be excluded. The whole exercise shall be done within two weeks from the date of receipt of a copy of this order.

10. This writ petition is disposed of accordingly. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (AE)

/True Copy/

Sub-Assistant Registrar

To

1. Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd.,
Represented by its Managing Director,
Kumbakonam.
 2. The General Manager,
Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd.,
Trichy Region,
Periyamilaguparai, Trichy.
 3. The Branch Manager,
Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd.,
Ariyalur Branch,
Ariyalur.
 4. The Chairman,
Regional Medical Board and Joint Director of
Health Services,
Perambalur District - 621 212.
 5. The Chairman,
Regional Medical Board,
Rajiv Gandhi Government General Hospital, Chennai - 600 003.
- +One cc to Mr.A.Rahul, Advocate, SR.No.16783
+One cc to Mr.D.Sivaraman, Advocate, SR.No.17279

akv

RL/8C/6P/MR/SAR3/17.5.2017

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