



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**
AND
THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

W.A.[MD].No.1316 of 2013

V.Kandasamy : Appellant

Vs.

1.Tamil Nadu State Transport Corporation, Madurai (Limited),
Through its Managing Director,
Bye Pass Road, Madurai.

2.The Secretary to Government,
Transport Department, Fort.St.George,
Chennai - 600 009.

3.Government of Tamil Nadu,
Special Secretary to Government,
Social Welfare and Nutritious
Meal Programme Department,
Fort.St.George, Chennai - 600 009.

: Respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent Act, praying to set aside the order of the Hon'ble Single Judge, dated 11.03.2008 and direct the respondents to consider the claim of the appellant for appointment as conductor under the 3% handicapped quota as per Section 33 of the Disabled Persons (Equal Right Opportunity and Protection of Rights and Full Participation) Act 1995.

Prayer in WP(MD). 1534/ 2008 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Mandamus, directing the respondents 1 and 2 to consider petitioner's claim for the appointment to the post of Conductor under the handicapped quota as per section 33 of the Disabled Persons (Equal opportunities and Protection of Rights and Full Participation) Act, 1995.

For Appellant

For R1

For R2 & 3

: Mr.P.Jeyapaul,

: Mr. M. Prakash

: Mr.V.Muruganantham

Additional Government Pleader

**JUDGMENT**

[Judgment of the Court was made **T.S.SIVAGNANAM, J.**]

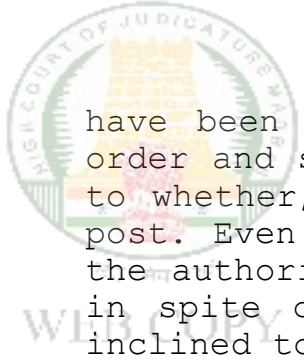
This Writ Appeal is directed against an order dated 11.03.2008 in W.P.(MD)No.1534 of 2008 filed by the appellant praying for a direction to the respondents to consider his claim for appointment to the post of Conductor.

2.Heard Mr.P.Jeyapaul, learned counsel appearing for the petitioner, Mr.M.Prakash, learned counsel appearing for the first respondent and Mr.V.Muruganantham, learned Additional Government Pleader appearing for the respondents 2 and 3.

3.The appellant is a physically challenged person, suffering from 65% physical disability, namely, Residual Polio of left lower limb from the lower hip. The appellant had been granted a Conductors licence and was working as a Conductor in a private bus. The appellant applied for being appointed to the post of Conductor in the respondent Corporation. The application was not considered. Therefore, the petitioner has filed W.P.4756 of 2007 to consider his application in terms of Section 33 of Persons with Disability Act, 1995. The writ petition was disposed of on 22.05.2007, with a direction to the first respondent to consider the petitioner's representation. The respondent did not comply with the order and the application was not considered.

4.Thereafter, the petitioner obtained information under the Right to Information Act, from which, he came to know that the post of conductor is not one of the posts identified under the Persons with Disability Act, 1995 for accommodating persons with disability. Therefore, the petitioner filed the present writ petition in W.P.(MD)No.1534 of 2008, stating that the petitioner is entitled for being considered for appointment as Conductor under the 3% quota reserved for physically challenged persons under Section 33 of the said Act.

5.Further, it is submitted that the disability suffered by the petitioner will not curtail the petitioner from discharging his duties as Conductor. The writ petition was dismissed by the impugned order, following an earlier order dated 13.12.2005 in W.P.(MD)No.11019 of 2005, in which, it was held that the post of bus Drivers and Conductors have not been identified as one of the post where, persons suffering from physical disability could be accommodated. This order, is put to challenge before us. The reason assigned by the Writ Court is perfectly in order. If the post is not identified to be suitable for persons with physical disability, the employer cannot be compelled to accommodate a person with physical disability to the said post. But, exercise of identifying whether the post would be suitable for a person with physical disability is a technical exercise to be done by the competent authorities. As of 2007, the post of Drivers and Conductors was not one of the identified post for persons with physical disability. We



have been informed that recently, the Government have revised the order and several new posts have been included. It is not known as to whether, the post of Conductor have been identified as one such post. Even though, the appellant has been consistently representing the authorities, the respondent did not consider his representation in spite of direction issued by the Court and therefore, we are inclined to issue necessary directions to the respondent.

6. At this juncture, it is relevant to take note of the judgment of the Hon'ble First Bench of this Court in the case of **P. Mahavishnu Vs. The General Manager, Tamil Nadu State Government Transport Corporation (Madurai) at Tirunelveli 2008-4-L.W.661**. The said case also pertains to the person seeking employment as Bus Conductor, who was suffering from a deformity on the left hip. The division pointed out that the petitioner therein is not to be appointed as a Conductor but only as a Conductor or any post and since he satisfied all other requirements, appropriate directions were issued.

7. Thus, considering all the above facts, the Writ Appeal is allowed and the order passed in W.P (MD).No.1534 of 2008 is set aside and the respondents are directed to consider the appellants candidature for the post of Conductor, if otherwise, suitable and eligible. Taking note of the decision of the Division Bench in the case of **P. Mahavishnu (supra)** and in the event that the post of Conductor is not one of the identified posts for accommodating persons with disability, the respondent Corporation shall consider the case of the appellant for any other suitable post which has been identified for persons with physical disability. The above exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Managing Director,
Tamil Nadu State Transport Corporation, Madurai (Limited),
Bye Pass Road, Madurai.
2. The Secretary to Government,
Transport Department, Fort.St.George,
Chennai - 600 009.
3. The Special Secretary to Government,
Government of Tamil Nadu,
Social Welfare and Nutritious Meal Programme Department,
Fort.St.George, Chennai - 600 009.

+1cc to THE SPECIAL GOVERNMENT PLEADER in SR. No.59359

+1cc to M/s.M.PRAKASH Advocate in SR. No.59136

+1cc to M/s.J.ASHOK Advocate in SR. No.59467

KM/MR

<https://hcservices.ecourts.gov.in/hcservices/>

JS/SKN.RSK/SAR.2/27.06.2017/3P-7C

JUDGMENT MADE IN

W.A. [MD] .No.1316 of 2013

08.06.2017