

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.08.2018

CORAM

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

WP.No.19864 of 2018 and WMP Nos.23311 to 23313 of 2018.

V.Rajendran

... Petitioner

Versus

Metropolitan Transport Corporation,
Rep by its Senior Deputy Manager (HR),
Pallavan Salai,
Chennai 600 002.

... Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to call for the records pertaining to the order dated 26.10.2015 in Memo No.25243/Pa Pi (Ni) 2/MTC/2012 and the order dated 19.07.2018 in proceedings No.25243/PaPi (Admin) 2/MTC/2012 both orders passed by the Respondent, insofar as not treating the period from 01.02.2011 as duty with pay for all purposes and asking the petitioner to go on line as Driver quash the same and consequently direct the Respondent to refer him to the Medical Board to ascertain his fitness before compelling the petitioner to go online as a Driver and to fix his pay on par with the petitioner Juniors, by regularizing his services w.e.f 01.02.2011 as duty with pay for all purposes in all manner.

For Petitioner : Mr.R.Krishnaswamy
For Respondents :M/S.Rajeni
Ramadoss, sc

ORDER

The grievance expressed by the petitioner is that while he was working as a Driver suffered with paralytic attack and his entire body became numb and dysfunctional and he lost his speech and memory. The petitioner's wife intimated about the incident to the respondent Management. The petitioner was advised to take continuous rest and not to go online as a Driver and in this regard, as such he submitted a representation to the respondent to give alternative employment. The respondent issued a memo dated 12.07.2012 invoking certified Standing order No.11(c) and proposed to terminate the petitioner from service

and aggrieved by the same, the petitioner filed WP No.21097 of 2012 before this Court wherein an interim order was passed and finally this Hon'ble Court disposed of the matter with a direction to the petitioner to appear before the respondent, so also, issued a direction to the respondent to consider the request of petitioner with regard to alternative employment, based on his health condition. Accordingly, the respondent sent the petitioner for Regional Medical Board to find out his medical fitness and suitability for the post of Driver and based on the medical report, the respondent provided him the alternative/ Light job vide order dated 26.10.2015 with a condition that the petitioner shall be put to medical reassessment and medical examination once in six months and thereafter, the petitioner made a representation dated 22.02.2016 to fix his salary on par with his juniors and the respondent without considering his request, asked the medical board to reassess the medical fitness of the petitioner. Accordingly, the medical board has called for medical examination and based on the report, the petitioner was continued to do light duty work. But to his shock and surprise, the 1st respondent issued an order on 19.07.2018 directed the petitioner to go on-line as Driver from 02.08.2018 without referring him to Medical board. Aggrieved by the said order of the respondent, the petitioner has come forward to file this writ petition.

2. The learned counsel appearing for the petitioner submits that since the petitioner is physically incapable even though his alternative posting was subjected to renewal in every six months, he could not have been directed to work as on-line Driver un-expiry of the present spell of six months without obtaining medical certification from the Board regarding his physical fitness for the said job. Hence, the order being illegal, the same is liable to be quashed and the respondent be directed to refer him to the Medical Board to ascertain his physical fitness before compelling the petitioner to go on-line as a driver and fix his pay on par with his Juniors by regularizing his service with effect from 01.02.2011 as duty with pay for all purposes.

3. The learned counsel appearing for the respondent submits that soon before the expiry of the aforesaid period of six month, the petitioner had not made any representation to the respondent that he continues to be in the state of inability to the on-line job of Driver and as such, he be sent for medical examination to reassess his physical disability and allow him to continue in the light job as alternative appointment. Hence, the impugned order passed asking him to join after expiry of the aforesaid period of six months cannot be found fault with. So far as the other prayer of the petitioner is concerned, the

same shall be considered on filing of fresh representation in accordance with law.

4. However, in its rejoinder the learned counsel appearing for the petitioner would submit that it is incumbent on the part of the respondent to send him for reassessment soon before the expiry of the aforesaid period and then passed an order with regard to his continuance in the alternative light job and submits that he will file a representation with regard to his other prayer and the respondents be directed to dispose of such representation.

5. Be that as it may, considering the fact that the petitioner is continuing in an alternative light job due to his physical inability by extending such order of continuance taking note of the certification of the Board and before expiry of the aforesaid period, the petitioner has not been sent for medical examination as according to the respondent he has not applied, but the petitioner states that he continued to remain in a physical state of inability to discharge the duty of a line job of driver, this Court dispose of this writ petition with a direction to the respondent to file such a representation to allow him to continue in the said light duty by getting his physical condition reassessed by the medical board within ten days hence and if the same is filed, the respondents shall send him to the Medical Board for reassessment of his health condition and on receipt of such certification pass an order with regard to alternative light job of employment of the petitioner in which he is continuing now. However, till a decision in this regard is taken on the medical certification, the petitioner should be allowed to continue in his present alternative job employment. Further more, the medical board is also directed to furnish such report soon after the reassessment of the petitioner i.e preferably within a week of such examination. The petitioner is also directed to comply with the direction of the respondent to appear before the medical board on the date to be fixed. So far as the other relief sought for, the petitioner shall make a representation to the appropriate respondent, on receipt of such representation the respondent shall take an informed and considered decision on the same in accordance with law within a period of eight weeks thereof.

6. With the aforesaid direction, this writ petition stands disposed of. Consequently, the connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

Metropolitan Transport Corporation,
Rep by its Senior Deputy Manager (HR),
Pallavan Salai, Chennai 600 002.

+1cc to Mr.V.Ajoy Khose, Advocate, S.R.No.53361

+1cc to Mr.S.Rajeni Ramadoss, Advocate, S.R.No.54395

WP.No.19864 of 2018

NRL (CO)
GSP (28/08/2018)



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