

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.02.2018

Coram

THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

W.A.No.1372 of 2016 &
C.M.P.No.17845 of 2016

The Managing Director
Metropolitan Transport Corporation
(Chennai) Ltd.
Pallavan Illam
Anna Salai
Chennai 600 002.

Appellant

Vs.

B.V.Lakshmanan

Respondent

Prayer : Writ Appeal filed under Clause 15 of Letters Patent to set-aside the order dated 04.06.2014 made in W.P.No.2927 of 2012, on the file of this Court.

W.P.No.2927 of 2012:-

Writ Petition filed under Article 226 of the Constitution of India for a Writ of Mandamus to direct the respondent management to grant pay protection with continuity of service back wages and other attend and benefits from 27.8.1997, the date of re-appointment as per Section 47 of Persons with Disabilities (Equal opportunities protection of Rights and Full participation) Act 1995

For Appellant : Ms.Rajani Ramadoss

For Respondent : Mr.S.T.Varadharajulu

J U D G M E N T

[Order of the Court was made by K.K.SASIDHARAN, J.]

This intra court appeal is directed against the order dated 04 June, 2014 in W.P.No.2927 of 2012, whereby and whereunder, the learned Single Judge directed the appellant to re-fix the wages payable to the respondent retrospectively taking into account his alternative employment.

2. The respondent was initially appointed as a Driver in the Metropolitan Transport Corporation. The appellant was incapacitated on account of brain tumour. He was referred to the Medical Board constituted by the Kilpauk Medical College. The Medical Board examined the respondent and opined that he was unfit to hold the post of driver. The Medical Board recommended the appellant to provide him alternative employment.

3. The appellant, based on the Medical reports, discharged the respondent from the post of driver and employed him as Helper Non - ITI as a fresh entrant by order dated 27 August, 1997. However, the respondent was not given the benefit of the pay scale which he was drawing prior to his discharge from the post of driver.

3. The respondent appears to have submitted series of representations to the Management to re-fix his scale of pay. However, there was no follow up action taken by the appellant.

4. The respondent filed a writ petition in W.P.No.2927 of 2012 before the writ court for issuance of a writ of mandamus to direct the appellant to grant him pay protection with continuity of service, back wages and all other attendant benefits with effect from 27 August, 1997 as per Section 47 of the Persons with Disabilities (Equal opportunities, protection of Rights and Full participation) Act, 1995 [hereinafter referred to as "the Act"]

5. Before the writ court, the appellant contended that the respondent accepted the terms and conditions of the new appointment and there was no representation submitted by him to re-fix his pay scale at any point of time. The appellant further contended that the writ petition is liable to be dismissed on the ground of delay and laches.

6. The learned Single Judge having found that the respondent is entitled to the benefit of Section 47 of the Act, allowed the writ petition and a Mandamus was issued directing the appellant to re-fix the pay scale and disburse the back wages. The order is under challenge at the instance of the Management.

7. The learned Standing Counsel for the appellant contended that the respondent accepted the terms and conditions of his subsequent employment. There was no opposition from him at any point of time to the revised scale of pay. The learned Single Judge was therefore, not justified in directing the appellant to pay the back wages instead of dismissing the writ petition on the ground of delay and laches.

8. The learned counsel for the respondent contended that the

appellant was legally bound to pay the erstwhile scale drawn by the respondent while he was given alternative employment. Since no such effort was taken by the appellant, the writ court was correct in directing the Management to pay the very same wages to the respondent which he was drawing before his discharge from the post of driver.

9. The factual matrix indicates that while functioning as driver, the respondent was referred to the Medical Board. The Medical Board constituted by the Kilpauk Medical College, on examination, arrived at a finding that the respondent is unfit to hold the post of driver. The Management, pursuant to the recommendation given by the Medical Board for alternative employment, discharged the respondent from the post of driver and appointed him as Helper-Non - ITI. The appointment was made as a fresh entrant in the Time Scale of Pay Rs.1690-20-2170. The respondent was getting pay scale Rs.1795-25-2495 prior to his discharge from the post of driver.

10. Though the respondent in his affidavit filed in support of the writ petition contended that he has been submitting series of representations to the Management to re-fix his salary, the fact remains that no proof was produced by him before the writ court to substantiate the contention.

11. There is no dispute that the respondent is entitled to the very same scale he was receiving earlier, taking into account the spirit of Section 47 of the Act. In fact, it is the responsibility of the Management to pay the very same salary to the employee, after giving re-employment. There was no need for a demand from the employee to pay the very same wages to the employee after his discharge from the original post and re-employment on account of medical disability. We are, therefore, of the view that the learned Single Judge was justified in directing the appellant to pay the very same scale to the respondent.

12. The other question is as to whether the learned Single Judge was justified in directing the appellant to pay the back wages for the entire period, in spite of the fact that the writ petition was filed only in 2012.

13. There are no documents produced by the respondent to prove that he took up the matter with the Management for the purpose of giving him the very same scale which he was drawing prior to his discharge from the post of driver. We are, therefore, of the view that the learned Single Judge was not correct in directing the appellant to pay back wages for the entire period. We modify the order passed by the learned Single Judge by directing the appellant to pay the differential wages

for the period from 03 February, 2012, instead of paying it from the date of re-appointment, viz., 27 August, 1997. The arrears shall be paid within a period of two months from the date of receipt of a copy of this judgment. The order would stand in all the other aspects.

The intra court appeal is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gms

To

The Managing Director
Metropolitan Transport Corporation
(Chennai) Ltd.
Pallavan Illam
Anna Salai, Chennai 600 002.

+1cc to Mr.S.T.Varadharajulu, Advocate, S.R.No.13340
+1cc to Ms.Rajani Ramadoss, Advocate, S.R.No.13640

W.A.No.1372 of 2016

GMR (CO)
CS/28/02/18

सत्यमेव जयते
WEB COPY