

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2018

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Writ Petition No.28682 of 2017
and
WMP Nos.30871 of 2017, 7844, 7846 & 7847 of 2018

The Management,
Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
Villupuram, Rep. by the General Manager ... Petitioner

versus

1. S.Haridoss
2. The Presiding Officer,
Labour Court, Cuddalore ... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari to call for the records of the second respondent made in I.D.No.3 of 2016 dated 19.07.2017 and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

For Petitioner : Mr. A.Antony Arockiaraj

For R-1 : Mr. R.Muralidharan

O R D E R

The second respondent, Thiru S.Haridoss, was appointed on daily wage basis, as Driver, on 09.10.1997 in the petitioner / Corporation. His services were confirmed as a monthly paid driver on 01.11.1998. Later he was permanently absorbed as Driver on 20.04.2007. The petitioner was posted as Regular driver at Tindivanam Branch. He made frequent requests stating that he was incapacitated from doing driving work due to "lumber disc prolapse" and that he was undergoing treatment at Apollo Hospitals, Chennai. He claimed that he was advised not to take up the driving work any further.

2. From 10.02.2010 to 20.04.2013, based on his request, on a temporary basis, the workman was provided with alternative

employment in the Tindivanam Depot diesel pump section and in Amma Drinking water depot. Subsequently, the Corporation referred the workman to Medical Board on 23.10.2013 for examining his suitability for the post. Thereafter, on 21.04.2015, the workman reported before the Branch Manager, Tindivanam, seeking alternative duty other than driver.

3. Subsequently, the workman did not report for duty from 21.04.2015 and he did not apply for any leave. The matter was taken by the workman before the Assistant Commissioner of Labour, Vellore, alleging that there was a denial of employment and disengagement. Conciliation was initiated and it ended in failure. Based on the failure report, the workman raised an Industrial Dispute in I.D.No.3 of 2016 before the Labour Court, Cuddalore, seeking reinstatement in an alternative post along with backwages, continuity of service and attendant benefits. The Labour Court set-aside the disengagement by the Management and allowed the Industrial Dispute. As against which, this writ petition has been filed by the Management.

4. Heard both sides.

5. The main contention raised by the learned counsel appearing for the Management is that the Labour Court, without taking note of the fact that there was no disengagement to the workman / second respondent, has allowed the Dispute, which is unsustainable.

6. The learned counsel appearing for the workman would submit that in order to avoid providing alternative employment, the Management did not provide employment to the petitioner which may amount to disengagement or even oral termination and therefore, the conduct of the Management is not justified.

7. It is not in dispute that the workman was initially provided in alternative employment and only subsequently he has been denied alternative employment on and from 21.04.2015. The workman has also filed the disability certificate. Despite that the Management claimed that if the percentage of disability is more than 40% as contemplated under Section 47 of the Persons with Disabilities (Equal Opportunities Protection of Rights and Participation) Act, 1955, (hereinafter referred to as "the Act") the Management would not hesitate to provide alternative employment. Thereafter, the workman was directed to appear before the Government Medical College and Hospital, Villupuram, for the purpose of examination and the report was directed to be filed on or before 01.11.2018. Even thereafter, the report was not filed till date, (i.e., 21.12.2018) even though orders were reserved on 02.11.2018.

8. Contending that what the law permits to the workman is no charity or largess, but towards their right as equal citizens of the country, the decision reported in AIR 2008 SC 990 (Bhagwan Dass and another v. Punjab State Electricity Board) is relied upon by the workman, whereunder, in paragraph 14, it is has been held as follows:-

"We understand that the concerned officers were acting in what they believed to be the best interests of the Board. Still under the old mind-set it would appear to them just not right that the Board should spend good money on someone who was no longer of any use. But they were quite wrong, seen from any angle. From the narrow point of view the officers were duty bound to follow the law and it was not open to them to allow their bias to defeat the lawful rights of the disabled employee. From the larger point of view the officers failed to realize that the disabled too are equal citizens of the country and have as much share in its resources as any other citizen. The denial of their rights would not only be unjust and unfair to them and their families but would create larger and graver problems for the society at large. What the law permits to them is no charity or largess but their right as equal citizens of the country."

9. Contending that it is not possible to assess the disability in all cases with mathematical accuracy and therefore the disability has to be considered in the light of nature of the job and not with reference to definition given under the Act, the decision reported in 2013 (1) C.L.T. 190 (J.Sekar v. Metropolitan Transport Corporation (Chennai Division) Ltd.,) is relied upon.

10. This Court in W.P.No.4464 of 2011, dated 07.06.2011 (P.Thirumaran v. The General Manager, TNSTC, Villupuram) has pointed out that it is an unfortunate situation, where the Management cannot play hide-and-seek game in the matter of grant of relief under Section 47 of the Disability Act and has given suggestion that Special Cell has to be constituted to consider the case of persons suffering from disablement and those persons should not be driven to the Court.

11. Despite the legal position, the Management has not provided alternative employment to the workman as contemplated under the said Act.

12. In the result, the award passed by the Labour Court directing the Management to provide the same light duty (along with continuity of service and backwages) and setting aside the order of disengagement are confirmed.

12.1. The period during which the workman was disengaged from his services till the date of his resuming duty shall not be treated as break-in-service and the workman is entitled to all service benefits for that period. The Management is directed to allow the workman to resume in the same duty which he was doing after suffering from disablement.

13. The writ petition is ordered accordingly. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

1. The Presiding Officer,
Labour Court,
Cuddalore.

+1cc to Mr.R.Muralidharan, Advocate, S.R.No.89578

Writ Petition No.28682 of 2017
and
WMP Nos.30871 of 2017 & 7844, 7846 & 7847 of 2018

VSNI- (C0)
KAK(07/02/2019)

WEB COPY