



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.10.2018

CORAM:
THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.(MD) No.21728 of 2018

WEB COPY

S.Varatha Rajan
(working as Driver),
EDPNo.4896, TNSTC.,
Son of Selvarajan.
4/89,Sasthankovil Vilai,
Swamythopu,
Kanyakumari District.

... Petitioner

-VS-

1. The Managing Director,
Tamil Nadu State Transport Corporation
(Tirunelveli) Ltd., Kattabomman Nagar,
Tirunelveli.

2. The General Manager,
Tamil Nadu State Transport Corporation
(Tirunelveli) Ltd., Nagercoil Region,
Kanyakumari District.

... Respondents

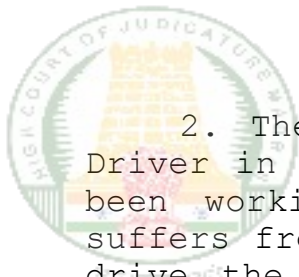
Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Mandamus, directing the respondents to provide the Petitioner suitable permanent alternative employment with pay protection, continuity of service to the Petitioner on duty in the post of Driver cum conductor due to the Petitioner's disability as per Section 47(1) of Persons with Disabilities(Equal Opportunities, Protection of Rights and Full Participation Act, 1995).

For Petitioner : Mr.L.Prabakaran

For Respondents : Mr.K.Sathiya Singh
Standing Counsel

ORDER

This writ petition has been filed, seeking to direct the respondents to provide the Petitioner suitable permanent alternative employment with pay protection, continuity of service to the Petitioner on duty in the post of Driver cum conductor due to the Petitioner's disability as per Section 47(1) of Persons with Disabilities(Equal Opportunities, Protection of Rights and Full Participation Act, 1995).



2. The case of the petitioner is that he was appointed as a Driver in the respondents Corporation in the year 1994 and has now been working under the control of second respondent; that he suffers from coronary Artery Disease, due to which, he is unable to drive the vehicle and the Doctor also advised him not to drive vehicle hereafter; that he sent a representation dated 1.9.2018 to the respondents, requesting to provide alternate employment, pursuant to which, he was referred to the Medical Board at the Kanyakumari Medical College Hospital; that the Medical Board, after examining him and verifying his past medical records, opined that he suffers from coronary Artery Disease and therefore, he is not fit to continue as Driver as per the report, dated 6.12.2017 and that despite sending several representations to the respondents, his request has not yet been considered and hence, the petitioner is before this Court with the relief stated supra.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

4. It is not in dispute that the petitioner was referred to the Medical Board and the petitioner also appeared before it on 29.6.2016 and 6.12.2017 along with all medical records. The Medical Board, after thoroughly examining him, has submitted a report dated 6.12.2017 to the 2nd respondent, which is annexed in the typeset of papers to the effect that the petitioner is unfit for the Driver job on account of Coronary Artery disease.

5. This Court, ever after perusal of the medical report, cannot simply brush aside the request of the petitioner, namely, to provide light work, because allowing the petitioner to continue as Driver is not only hazardous to his health, but also to several passengers, who travel in the bus and also to the pedestrians on the road and there may be possibility of losing their precious life too. Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short "the Act") clearly stipulates as under:

"47 Non-discrimination in Government employments -

(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, which is earlier."



6. Considering all the above factors, a direction is issued to the 1st and 2nd respondents to provide alternate employment in the form of Light Duty to the petitioner forthwith, bearing in mind the provisions of Section 47 of the Act extracted supra and also by taking into account the medical report submitted by the Medical Board dated 6.12.2017.

With the above direction, this Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-I)

To:

1. The Managing Director,
Tamil Nadu State Transport Corporation
(Tirunelveli) Ltd., Kattabomman Nagar,
Tirunelveli.
2. The General Manager,
Tamil Nadu State Transport Corporation
(Tirunelveli) Ltd., Nagercoil Region,
Kanyakumari District.

+1CC to Mr.L.Prabakaran, Advocate, SR.No.91938
+1CC to Mr.K.Sathiya Singh, Advocate, SR.No.91936

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VSN
ES/SKN/RSK/SAR 1/26.11.2018/3P/5C