



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.08.2018

CORAM:

THE HONOURABLE Mr.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.18631 of 2018

and

W.M.P (MD) Nos.16499 to 16501 of 2018

S.Karuppasamy

... Petitioner

Vs.

1.The Secretary to the Government,
Transport Department,
Government of Tamil Nadu,
Fort St.George,
Chennai - 9.

2.The Managing Director,
Tamil Nadu State Transport Corporation
Tirunelveli Limited,
Tirunelveli.

3.The General Manager,
Tamil Nadu State Transport Corporation
(Tili Limited),
Tirunelveli Division
Tirunelveli.

4.The Chairman,
Senior Civil Surgeon,
Regional Medical Board,
Rajiv Gandhi Government General Hospital,
Chennai - 600 003.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the Certificate under Proc.No.003865/RMB/RGGGH/2018, dated 23.03.2018, on the file of the 4th respondent herein and its consequential order passed by the 3rd respondent in Ka.No.10012/Niya11/ThaAPoga/Thili/2016 dated 23.06.2018 and to quash the same as illegal and directing the respondents herein to re-examine the petitioner by sending the petitioner afresh for the Medical Board of the respondent Corporation and to provide alternative job.



For Petitioner : Mr.K.R.Laxman

For Respondents : Mr.Sathiya Singh
(R1 to R3) Standing Counsel

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For Respondent-4: Mr.M.Pandiyarajan
Addl.Govt.Pleader

O R D E R

The present Writ Petition has been filed praying for issuance of a Writ of Certiorarified Mandamus, to call for the Certificate under Proc.No.003865/RMB/RGGGH/2018, dated 23.03.2018, on the file of the 4th respondent herein and its consequential order passed by the 3rd respondent in Ka.No.10012/Niyall/ThaAPoga/Thili/2016 dated 23.06.2018 and to quash the same as illegal and directing the respondents herein to re-examine the petitioner by sending the petitioner afresh for the Medical Board of the respondent Corporation and to provide alternative job.

2. The case of the petitioner is that the he is suffering from ' Acromio Clancular arthrities' and temporarily unfit for driving for a period of one year, as the percentage of disability could not be decided. But, however, it is stated that he is fit for doing any unskilled work. The petitioner was referred to Regional Medical Board at Tirunelveli initially and the Medical Board gave an opinion that he is an unfit to the post of driver. Therefore, the petitioner was given an alternative unskilled work viz., painter, which he is discharging. Again, he was referred to Medical Board in the year 2016, wherein the petitioner was found unfit. The petitioner was sent to Chennai to discharge his work and at that time, the petitioner was referred to Regional Medical Board, attached with Rajiv Gandhi Government General Hospital, Chennai, the 4th respondent herein. According to the petitioner, even without examining him, a Certificate, dated 23.03.2018, was given to the effect that pain can be managed with physiotherapy and drugs and it 'does not make him unfit for this job of driver'. Pursuant to which, the petitioner was directed to report duty as driver, vide a communication, dated 23.06.2018. Immediately, the petitioner has approached a private scan viz., "Aarthi Scans & Labs" and the relevant portion from the report of the private scan, is extracted hereunder:-

"IMPRESSION:

* Loss of normal cervical lordosis -
Paraspinal muscle spasm.

* Cervical spondylosis

* C3-C4 diffuse disc bulge indenting thecal



sac with severe neural canal compromise on both sides.

*C4-C5 disc bulge indenting thecal sac with mild neural canal compromise on right side and moderate neural canal compromise on left side.

* C5-C6 diffuse disc bulge indenting thecal sac with severe neural canal compromise on right side and mild to moderate neural canal compromise on left side.

* C6-C7 disc bulge indenting thecal sac with mild neural canal compromise on both sides.

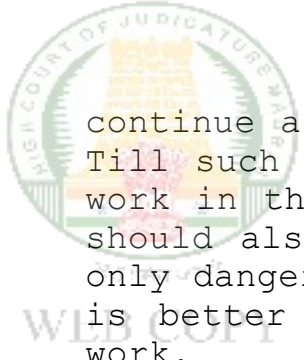
* Spinal canal dimension reduced at C3-C4, C4-C5, C5-C6 & C6-C7 levels."

3. The petitioner has submitted that he cannot drive the vehicle and for the best reasons known to respondents, the petitioner was sent to the Medical board and that the Medical Board at Chennai without examining him in person, but just by observing him, has given a certificate.

4. The learned standing counsel appearing for the respondents would submit that the disease viz., 'Acromio Clancular arthrities' is a curable one and it is not permanent in nature. On account of shortage of drivers, the service of the petitioner is very much required. He would further submit that, if the Court feels that the petitioner can be referred to Medical Board once again for examination, the respondents are willing to send him to Regional Medical Board, Aasaripallam Medical College Hospital, Nagercoil.

5. I have heard the submissions made on either side and perused the materials available on record.

6. It is not in dispute that the petitioner is suffering from 'Acromio Clancular arthrities', and the said disease has been identified as temporary phenomena. However, the recent report taken from a private scan clearly shows that the petitioner has not yet recovered from his illness. In order to give a finality to the issue, this Court is of the view that the petitioner shall be referred to Regional Medical Board, Aasaripallam Medical College Hospital, Nagercoil, for examination and a report can be obtained for the purpose of allowing the petitioner either to



continue as a driver or to work in an unskilled alternative post. Till such a decision is taken, the petitioner shall be allowed to work in the alternate unskilled post. The respondent Corporation should also know that continuing the petitioner as driver is not only dangerous to him, but also public at large and therefore, it is better to permit him to continue in the alternate unskilled work.

7. With the above direction, the Writ Petition stands disposed of. No costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (JUDICIAL)

// True Copy //

Sub Assistant Registrar(CS-I)

To

- 1.The Secretary to the Government, Transport Department,
Government of Tamil Nadu,
Fort St.George,
Chennai - 9.
- 2.The Managing Director, Tamil Nadu State Transport Corporation
Tirunelveli Limited,
Tirunelveli.
- 3.The General Manager, Tamil Nadu State Transport Corporation
(Tili Limited),
Tirunelveli Division
Tirunelveli.
- 4.The Chairman, Senior Civil Surgeon, Regional Medical Board,
Rajiv Gandhi Government General Hospital,
Chennai - 600 003.

- + 1 CC TO MR.MR.SATHIYA SINGH, ADVOCATE IN SR NO.80542
- + 1 CC TO MR.K.R.LAXMAN, ADVOCATE IN SR NO.80575
- + 1 CC TO SPECIAL GOVERNMENT PLEADER, IN SR NO.80611

mpk

BU/SKN/SAR-I :23.10.2018 : 4P/8C