



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.11.2018
(Reserved on 10.10.2018)

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CORAM :
THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P(MD)No.8439 of 2011
and
M.P(MD)No.2 of 2011

K.Karuppasamy

... Petitioner

vs.

1)The Presiding Officer,
Labour Court,
Tirunelveli.

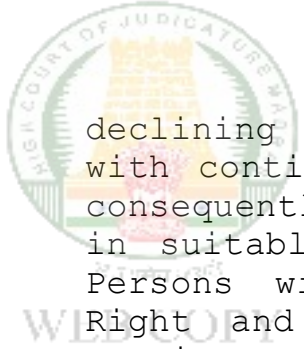
2)The Management of
Tamilnadu State Transport Corporation (Madurai Division-II)Ltd.,
Tirunelveli-3.
Now renamed as
Tamilnadu State Transport Corporation (Tirunelveli) Ltd.,
Tirunelveli-3. ... Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, after calling for the records from the 1st respondent relating to the impugned award dated 29.03.10 passed in I.D.No.111/2004, quash the same in so far as directing the 1st respondent to provide employment to the petitioner only as a fresh entrant after settling the account of his earlier service and declining him reinstatement in suitable alternative employment with continuity of service, attendant benefits and backwages and consequently direct the 2nd respondent to reinstate him in service in suitable alternative employment as per Section 47(1) of the Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995 with continuity of service, attendant benefits and backwages from 13.11.2003.

For Petitioner : Mr.S.Arunachalam
For R2 : Mr.K.Sathiya Singh

ORDER

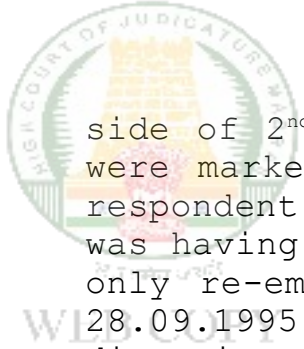
This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned award dated 29.03.10 passed in I.D.No.111/2004, in so far as directing the 2nd respondent to provide employment to the petitioner only as a fresh entrant after settling the account of his earlier service and



declining him reinstatement in suitable alternative employment with continuity of service, attendant benefits and backwages and consequently direct the 2nd respondent to reinstate him in service in suitable alternative employment as per Section 47(1) of the Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995 with continuity of service, attendant benefits and backwages from 13.11.2003.

2. Learned counsel for the petitioner would aver among other things that the petitioner was appointed as a permanent driver in the 2nd respondent corporation on 28.12.87. He was also given promotion as Senior Grade driver after 6 years of service as driver. He rendered more than 15 years of unblemished service. While he was working at Vilathikulam branch of the 2nd respondent corporation, he was sent for eye test to Aravind Eye Hospital at Tirunelveli to find out his eye fitness to continue to work as driver. The said hospital after examining the petitioner, alleged to have sent a report dated 30.09.2002 to the 2nd respondent stating that the petitioner was suffering from colour blindness. The Chief Medical Officer of the hospital also alleged to have given his report dated 02.09.2002 that the petitioner was unfit to work as driver. Based on the same, the 2nd respondent referred the petitioner to the Regional Medical Board, Tirunelveli. The Medical Board, after examining the petitioner sent a report dated 30.09.2002 to the 2nd respondent, stating that the petitioner is unfit to work as driver due to defective colour vision suffered by him. Based on the said report of the Medical Board, the 2nd respondent issued a show cause notice dated 16.10.2002, asking the petitioner as to why he should not be discharged from service. The petitioner disputed the report of the Medical Board and requested the 2nd respondent to again refer him to the Medical Board. Accepting the said request, the petitioner was again referred to the Medical Board and was once again subjected to eye test and the Medical Board sent a report dated 27.08.2003 confirming its earlier report dated 30.09.2002. Thereafter, the 2nd respondent passed an order dated 13.11.2003 discharging the petitioner from service on the reason that he was suffering from colour blindness.

3. It is further submitted that despite the requests of the petitioner, the 2nd respondent did not come forward to provide him suitable alternative employment and therefore, the petitioner raised an industrial dispute claiming reinstatement before the Labour Officer, Tirunelveli. The 2nd respondent participated in the conciliation proceedings, but failed to provide him alternative employment and that the dispute ended in failure. Based on the failure report dated 04.06.2004 of the Labour Officer, the petitioner filed a case in I.D.No.111/2004 before the 1st respondent. Before the Labour Court, the petitioner examined himself as witness and marked 4 documents on his side. On the



side of 2nd respondent, one witness was examined and 21 documents were marked. After hearing the arguments of both sides, the 1st respondent passed the impugned award holding that the petitioner was having defective colour vision and that he was entitled to get only re-employment as fresh entrant as per the settlement dated 28.09.1995 after settling account of his earlier service and directing the 2nd respondent to provide him re-employment as fresh entrant. Aggrieved by the said award of the 1st respondent, the petitioner has filed this writ petition challenging the award on the following grounds:-

(i) The impugned award is opposed to Section 47(1) of the Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995 under which, the 2nd respondent is bound to provide him suitable alternative employment with pay protection with all benefits and the 1st respondent/Labour Court failed to take note of the provisions of law before passing the impugned award and therefore, the same is illegal to the above stated extent.

(ii) The 1st respondent failed to note that Clause 83 of the settlement made under Section 12(3) of the Industrial Disputes Act 1947 cannot prevail over the provision of Section 47(1) of the Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995 and therefore, the 1st respondent ought not to have relied on the above clause of the settlement and ought to have granted the relief under Section 47 (1) of the Act.

4. In support of his contentions, learned counsel for the petitioner relied on the following judgments:-

(i) Bhagwan Dass and another vs. Punjab State Electricity Board reported in 2008 (2) LLN 1.

(ii) The State vs. K. Mohammed Mustafa reported in 2007 Writ L.R 256.

(iii) Metropolitan Transport Corporation vs. The Presiding Officer, Principal Labour Court and another reported in 2004 Writ L.R 398.

5. Learned standing counsel for the 2nd respondent would submit that the Labour Court after hearing both sides has rightly held that the petitioner who is having defective colour vision, is entitled to get alternative employment only as fresh entrant as per the settlement dated 28.09.1995 after settling account of his earlier service which does not require interference by this Court.

6. Heard the learned counsel for the petitioner as well as the 2nd respondent and perused the materials available on record.

7. Perusal of the impugned order shows that the Labour Court has considered Ex.R16-G.O.No.746 marked by the 2nd respondent corporation, wherein, it has been stated that when the employee of



the transport corporation becomes unfit to hold the post, alternative employment can be granted in a suitable post only as a fresh entrant, after settling the account of his earlier service. The Labour Court has also considered Ex.R18-G.O.No.32 marked by the corporation which would state that alternative employment can be granted suitable to the physical condition and qualification of the disabled employee, for which, the employee should have worked for 6 years and when he suffered disablement, he should be aged below 50 years and only on seniority basis, he will be given alternative employment. The Labour Court has also considered 12 (3) settlement dated 28.09.1995 marked as Ex.P21 and clause 83 of the said settlement would state that the employees who were discharged from service on medical grounds and thereafter given alternative employment, shall be entitled to receive only the starting pay applicable to that post. Considering the above documents, the Labour Court has directed the 2nd respondent to provide employment to the petitioner as a fresh entrant after settling the account of his earlier service thereby declined reinstatement of the petitioner in suitable alternative employment with continuity of service, attendant benefits and backwages.

8.The only grievance of the petitioner is that the 1st respondent/Labour Court has erroneously held that the petitioner is entitled to get alternative employment only as fresh entrant as per the settlement dated 28.09.1995 after settling account of his earlier service. The said approach in the opinion of this Court is against Section 47(1) of the Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995. In this context, it is relevant to extract below Section 47 of the Act:-

''47. Non-discrimination in Government employments.-

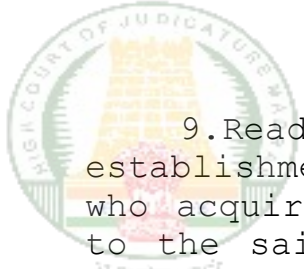
(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service;

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, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability;

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.'



9. Reading of Section 47(1) of the Act would show that no establishment shall dispense with or reduce in rank, an employee who acquires a disability during his service. The first proviso to the said Section states that if an employee, after acquiring disability is not suitable for the post he was holding, he could be shifted to some other post with the same pay scale and service benefits. The second proviso to Section 47(1) states 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, whichever is earlier.

10. In ***State vs. K. Mohammed Mustafa reported in 2007 Writ L.R 256***, relied on by the counsel for the petitioner, a bus conductor who had to undergo hip replacement and hence unable to perform the duty as Conductor, was issued notice by the Management to show cause as to why he should not be discharged from service on account of disability. Notice was challenged by the employee and under the impugned judgment, the learned single Judge extended the benefits available under Section 47 of the Act, and quashed the notice issued by the appellant and directed the appellants therein to provide some other post with same pay scale and if such other posts are not available, directed to keep the employee on a supernumerary post until a suitable post is available or until a person attains superannuation.

11. In ***Metropolitan Transport Corporation vs. The Presiding Officer, Principal Labour Court and another reported in 2004 Writ L.R 398***, relied on by the counsel for the petitioner, it has been held as follows:-

"In this case, there is no dispute about the fact that the disability was the result of an accident which had occurred when he was attending to his duty. A nail in the bus has pierced into his leg. It was claimed that the Government Order of 1981 cannot be relied on as it was made at a time when Parliament had not legislated with reference to persons who suffer from disabilities. Parliament having taken note of the plight of the disabled either born disabled or those who acquired it later, has legislated a special enactment for their benefit.

That Act was enacted in year 1995. Most of the agencies of the Government as also public at large appear to have remained quite ignorant of it's beneficial provisions and not enough care has been taken by those concerned to ensure the benefits conferred by that Act are in fact extended to those entitled thereto.

The word establishment referred to in S.47 need not necessarily be a department or a wing of Government, but could be an establishment which is owned by or is under the control of the Government. The employees of the



Transport Corporation which is wholly owned by the Government therefore come within the scope of the term establishment under in section 47(1).''

12. In **Bhagwan Dass and another vs. Punjab State Electricity Board reported in 2008 (2) LLN 1**, relied on by the counsel for the petitioner, it has been held as follows:-

''Appellant 1 was a Class IV employee, a lineman. He completely lost his vision. He was not aware of any protection that the law afforded him and apparently believed that the blindness would cause him to lose his job, the source of livelihood of his family. The enormous mental pressure under which he would have been at that time, is not difficult to imagine. In those circumstances it was the duty of the superior officers to explain to him the correct legal position and to tell him about his legal rights. Instead of doing that they threw him out of service by picking up a sentence from his letter, completely out of context. The action of the officers concerned of the Board was deprecable.

The officers concerned were acting in what they believed to be the best interests of the Board. Still under the old mindset 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 realise 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 largesse but their right as equal citizens of the country.

In the light of the discussion, made above the action of the Board in terminating the service of the disabled employee (appellant 1) with effect from 21 March 1997 must be held to be bad and illegal. In view of the provisions of S. 47 of the Act, the appellant must be deemed to be in service and he would be entitled to all service benefits including annual increments and promotions, etc., till the date of his retirement. The amount of terminal benefits paid to him should be adjusted against the amount of his salary from 22 March 1997 till date. If any balance remains, that should be adjusted in easy monthly instalments from his future salary. The appellant shall continue in service till his



date of superannuation according to the service records. He should be reinstated and all due payments after adjustments as directed, should be made to him within six weeks from the date of presentation of a copy of the judgment before the Secretary of the Board.''

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13. Section 47(1) of the Act is very clear that if an employee, after acquiring disability is not suitable for the post he was holding, he could be shifted to some other post with the same pay scale and service benefits. The above judgments are also on the same lines. Therefore, in my considered opinion, though the Labour Court ordered reinstatement, it has erred in directing reinstatement of the petitioner only as a fresh entrant thereby declining him reinstatement in suitable alternative employment with continuity of service, attendant benefits and backwages.

14. Therefore, the impugned award dated 29.03.10 passed in I.D.No.111/2004 is set aside in so far as directing the 1st respondent to provide employment to the petitioner only as a fresh entrant after settling the account of his earlier service. Consequently, the 2nd respondent is directed to reinstate the petitioner in service in suitable alternative employment as per Section 47(1) of the Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995 with continuity of service, attendant benefits and backwages from 13.11.2003, the date of which the petitioner was discharged from service. The said exercise shall be carried out within a period of four weeks from the date of receipt of a copy of this order.

With the above direction, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS-III)

To

The Presiding Officer,
Labour Court, Tirunelveli.

+1cc to Mr.S.Arunachalam, Advocate, SR.No.94047.

+1cc to Mr.K.Sathiya Singh, Advocate, SR.No.93814.

W.P(MD) No.8439 of 2011

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