

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.11.2019

CORAM :

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.31686 of 2013

1.P.Balakrishnan(died)

2.Andal

3.Keerthana

4.Banupriya

5.Selvaganapathi

... Petitioners

(petitioners 2 to 5 substituted as LRS
of deceased sole petitioner vide Order
in W.M.P.2821/19 by SVNJ on 18/7/19)

Vs

The Tamil Nadu State Transport Corporation,
Villuppuram Division-I,
Rep by its General Manager,
Villuppuram.

... Respondent

Prayer : Writ Petition is filed under Article 226 of the
Constitution of India, to issue a Writ of Mandamus, directing
the respondent to give alternate employment with continuity of
service and pay protection as per Section 47 of the Persons with
Disabilities (Equal Opportunities Protection of Rights and full
participation) Act-1995 and as per the direction given by this
Hon'ble Court in W.P.No.16024/2003 dated 05.09.2003.

For Petitioners : Ms.N.Valliamma

For Respondent : Ms.S.Rajeni Ramadoss

O R D E R

The instant writ petition is for a writ of Mandamus,
directing the respondent to give alternate employment with
continuity of service and pay protection as per Section 47 of
the Persons with Disabilities (Equal Opportunities Protection of
Rights and full participation) Act-1995 and as per the direction
given by this Hon'ble Court in W.P.No.16024 of 2003 dated
05.09.2003.

2.The petitioner joined the services of the respondent Corporation as a driver in the year 1997. Due to an accident, the petitioner suffered from colour blindness. The petitioner was discharged from service on 06.05.2003 on medical grounds. The petitioner filed a writ petition being W.P.No.16024 of 2003, calling for the records pertaining to the order in Ka.Ku.No.12149/Ni7/TNSTC/(Vi.Ko.1)/2002 dated 06.05.2003, passed by the respondent and to quash the same and consequently, direct the respondent to continue the petitioner services in suitable alternative post, with pay protection and continuity of service. This Court by an order dated 05.09.2003 directed the respondent to give a suitable alternate employment to the petitioner. The petitioner was appointed as a helper. It is pertinent to mention that the basic salary of a driver at the relevant time was Rs.3350 and that of a helper was Rs.2052. The petitioner was therefore given a basic salary of Rs.2052, with all other allowances as payable to a helper. The petitioner has therefore filed the instant writ petition stating that the benefits given under Section 47 of the Persons with Disabilities (Equal Opportunities Protection of Rights and full participation) Act-1995 has been denied.

3.No counter has been filed by the respondent.

4.Heard, the learned counsel for the parties.

5.Admittedly, this Court by its order dated 05.09.2003 has passed an order directing the respondent to give a suitable alternate employment to the petitioner. The said alternate employment which has to be given to the petitioner should be in line with the mandate of Section 47 of the Persons with Disabilities (Equal Opportunities Protection of Rights and full participation) Act-1995. Section 47 of the said Act reads as under:

"(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."

6.The learned counsel for the petitioners would state that the fact that the petitioner has been appointed as a helper is in violation of the mandate in Section 47 of the Persons with Disabilities (Equal Opportunities Protection of Rights and full participation) Act-1995 . The petitioner no.1 is therefore entitled to a salary of a Driver and all other benefits from 12.07.2004 till the petitioner passed away.

7.On the other hand, the learned counsel for the Transport Corporation would state that colour blindness is not a disability which would entail the benefit under Section 47 of the Act. She would further argue that the petitioner has approached this Court after nine years and therefore, the writ petition should be dismissed on the ground of laches.

8.The facts are not in dispute. The petitioner suffered colour blindness. This Court has directed the petitioner to be given suitable appointment. The petitioner cannot be reduced in rank and therefore, the petitioner cannot be placed at a lower level and get a lower salary. The petitioner is therefore entitled to a basic salary of Rs.3300.

9.On the question as to whether the petitioner would be entitled to the difference of salary for a period of nine years, ie., from 12.07.2004 till the filing of the writ petition in November, 2013, the learned counsel for the respondent relies on a Judgment of this Court in W.P.No.18227 of 2012 dated 08.03.2018, wherein, in an identical issue, this Court observed as under:

"12.The learned counsel appearing for the respondents would also raised an objection of delay in filing the writ petition by the petitioner. In fact, the learned Judge in the above said decision, has also dealt with the delay in that case, wherein, the petitioners therein had approached this Court after 17 years and had ultimately held that the employees therein were not entitled to differential back wages, however, entitled to other benefits which are otherwise admissible to them. Therefore, the objections regarding

the delay has to be rejected outright, particularly, in view of the fact that the payment of proper pensionary benefit is the continuous cause of action and therefore the delay is not fatal to the issues raised by the petitioner herein. However, the delay can be considered in respect of denial of differential back wages to the petitioner as held by this Court in the aforesaid decision.

13. In view of the above, this Court has not hesitation in allowing the writ petition and the impugned orders in Memo.No.E5/9548/STC/94, dated 07.09.1994, Proc.No.E1/00173/STC/95, dated 28.01.1995 and Proc.No.E1/25124/STC(Salem)/2012, dated 19.03.2012, are hereby set aside. The respondents are directed to count the service of the petitioner rendered by him as Conductor from 09.08.1973, for all benefits including grant of notional increment etc., and recalculate the pension as admissible as such to the petitioner and pay the same to the petitioner. It is made clear that the petitioner is not entitled to differential back wages during the relevant period, in view of the delay on the part of the petitioner in approaching this Court. It is also represented by the learned counsel for the petitioner that the contribution of the employee towards Provident Fund may also be adjusted with above direction passed by this Court. The respondents are directed to comply with the directions passed by this Court within a period of eight weeks from the date of receipt of a copy of this order. "

10. In view of the said Judgment, the writ petition is not being dismissed on the ground of delay. However, the petitioner cannot be granted the difference in wages from 12.07.2004 till the filing of the writ petition on 14.11.2013. The petitioner will be entitled to all the benefits, fixing the basic salary at Rs.3300 with all the allowances there on. This figure would be reckoned for the purpose of calculation of the pensional benefits and other benefits, which the family of the petitioner would be entitled to.

11. The writ petition is disposed of. No costs. The respondent is directed to pass the necessary orders within a period of 16 weeks from the date of receipt of a copy of this order.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

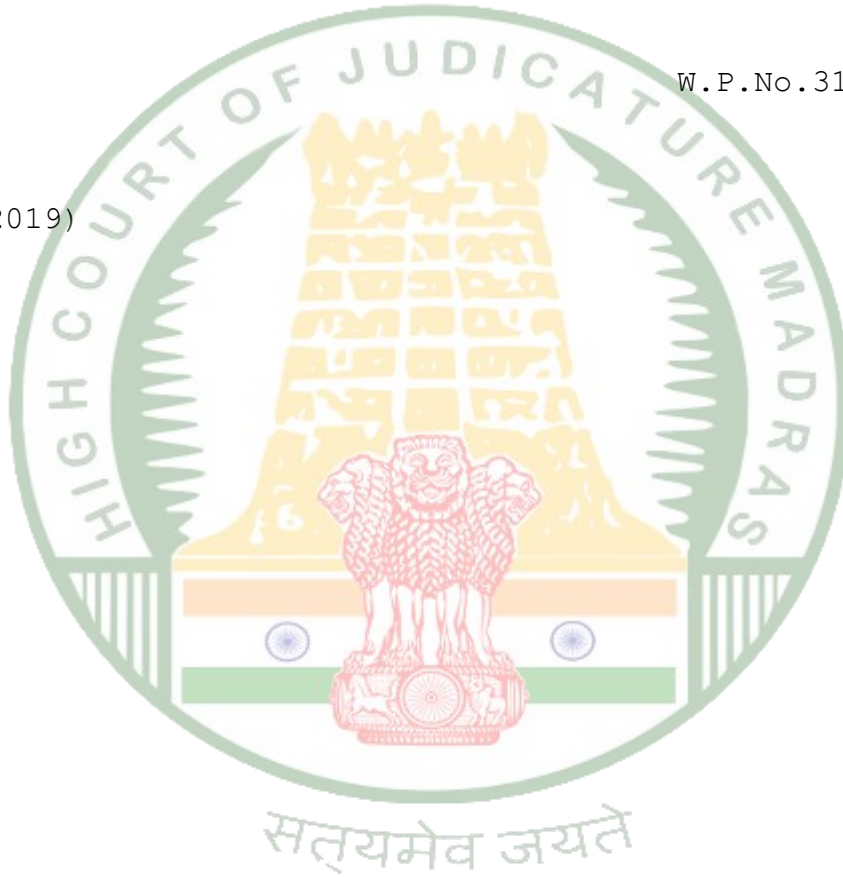
The General Manager,
Tamil Nadu State Transport Corporation,
Villuppuram Division-I,
Villuppuram.

+1 CC to Mr.S. Rajeni Ramadoss, Advocate sr 92430.

+1 CC to Mrs.N. Valliamma, Advocate sr 92803.

W.P.No.31686 of 2013

CA(CO)
SP(30/12/2019)



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