

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2019

CORAM

THE HON'BLE Mr. JUSTICE S.VAIDYANATHAN

W.P.No.32946 of 2013
and
M.P.No.1 of 2013

The Management
Tamil Nadu State Transport Corporation Ltd
Villupuram,
rep.by its Managing Director ... Petitioner

Vs

1.The Presiding Officer,
Labour Court,
Cuddalore.

2.Chittybabu ... Respondents

PRAYER: Writ Petition filed under Article 226 of The Constitution of India praying to issue a writ or order or direction, particularly in the nature of writ of Certiorari to call for the records of the 1st respondent made in I.D.No.72 of 2009 dated 06.05.2013 and to quash as illegal.

For Petitioner: Mr.A.Antony Arockiaraja

For Respondents: Ms.L.S.M.Hasan Fizal

सत्यमेव जयते
O R D E R

Challenging the award of the Labour Court, the Management has come forward with the present writ petition. The Workman was discharged from service on the ground of colour blindness and that he is not entitled to any benefits and that the 2 Government Orders referred to by the Workman viz., G.O.Ms.No.746, Transport Department dated 02.07.1981 and G.O.Ms.No.1387, Transport Department dated 11.11.1989 will not be applicable to the facts of this case. The Labour Court had taken note of the two Government Orders and held that the benefit need to be extended to the petitioner and that he should be granted the relief of reinstatement as fresh entrant in terms of the Government Orders. The Government Orders makes it very

clear that it will be applicable only to the Government Departments, more particularly to the State Transport undertakings.

2. The contention of the workman that in terms of the Persons with Disability Act 1995, more particularly in the light of Section 47, the workman ought to have been granted benefits and that supernumerary post should be created and he should have been granted all benefits, is not tenable, in the light of the decision in Union of India Vs. Devendra Kumar Pant and others in Civil Appeal No.4668 of 2007 and it is relevant to extract Paragraph no.13 of the same:

13. 'Blindness' is a disability defined in clause (b) of section 2 and refers to (i) total absence of sight or (ii) visual acuity not exceeding 6/60 or 20/200 (snellen) in the better eye with correcting lenses; or (iii) limitation of the field of vision subtending an angle of 20 degree or worse. 40% disability referred to in Section 2 (t) to identify persons with disabilities, will apply to categories (ii) and (iii) of section 2(b) but will be irrelevant in regard to persons with total absence of sight falling under category (i) of section 2 (b). Section 2(u) defines a "person with low vision" as "a person with impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device". Lack of colour perception is neither blindness nor low vision and is therefore apparently not a disability under the Act. It is therefore, doubtful whether a person lacking colour perception can claim to be a person entitled to any benefit under the Act. Be that as it may. We will examine the issue assuming that respondent is a person with disability.

3. The petitioner would not be entitled to relief on account of colour blindness. Both parties never had addressed arguments before the Labour Court with regard to the applicability of Persons with Disabilities Act 1995. This Court is empowered to go into the question regarding applicability of 1995 Act, as the writ petitioner is a State Transport Corporation, amenable to the writ jurisdiction of this Court.

4. Taking note of the fact that the Apex Court has rendered decision, which extracted supra, the petitioner would not be entitled to the benefits of the Persons with Disabilities Act 1995. However as rightly observed by the Labour Court, based on Government Orders, the relief has been granted and hence, I am of the view that in terms of the two Government orders, mentioned supra, the petitioner needs to be given the benefits

as fresh entrant and he should be reinstated with effect from the date of discharge ie., 08.05.2002 and be paid wages that is applicable to the fresher upto the date of superannuation i.e, 31.01.2010.

5. It is represented by Mr.Antony Arokiaraja, the learned counsel that the terminal benefits and other benefits including pensionary benefits have already been given to the employee, taking into account the date of original discharge, which fact has been disputed by the learned counsel appearing for the Workman. If the terminal benefits have not been settled upto the date of termination, all the benefits including terminal benefits shall be settled within a period of two months from the date of receipt of a copy of this order.

6. The writ petition is ordered with the above directions. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

The Presiding Officer,
Labour Court,
Cuddalore.

+1cc to Mr.K.Arunagiri, Advocate, S.R.No. 75096

सत्यमेव जयते

W.P.No.32946 of 2013

RR(CO)
GN(01/11/2019)

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