

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19 /12/2019

C O R A M

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.4706 of 2013

A. Anandaraja

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Petitioner

Vs

1. The Managing Director
Tamil Nadu Civil Supplies Corporation
Kilpauk
Chennai 600 010.

2. The Tamil Nadu Civil Supplies Corporation
rep. By its Regional Manager
South Arcot Region
Cuddalore.

...

Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, to call for the records subjecting the petitioner to be governed by the Standing Orders pertaining technical posts which is stated in para 10 of the order passed by the first respondent in Proceeding No.AE5/35203 of 2011, dated 31/7/2012 and quash the same in so far it relates to pay fixation thereon and subjecting the petitioner to standing order as stated in para 10 and consequently, direct the respondents to pass necessary orders on fixation of pay as applicable to the post of Junior Assistant, as per Rules pertaining to the post and as per Section 47 of the Act, as this Hon'ble Court deems it fit.

For petitioner ... Mr.K.Parthasarathy

For respondents... Mr.L.P. Shanmugasundaram
Special Government Pleader
(Co-operatives)

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O R D E R

Instant writ petition has been filed, to quash the order passed by the Managing Director, Tamil Nadu Civil Supplies Corporation, Chennai, first respondent, in Proceeding No.AE5/35203 of 2011, dated 31/7/2012 and consequently, direct

the respondents, to pass necessary orders, on fixation of pay, as applicable to the post of Junior Assistant, as per Rules pertaining to the post and as per Section 47 of the Act.

2. Petitioner joined the Tamil Nadu Civil Supplies Corporation, as a Helper. He was promoted as Technical Assistant Operator. In the year 2008, he suffered from humor rhoidectomy and hernioplasty for umbilical hernia. In 2009, he also underwent an operation for coronary artery disease. Petitioner has been advised not to do heavy work. The petitioner requested for a lighter work, but his request was denied. Petitioner, therefore, filed a writ petition being W.P.No.9899 of 2011, challenging the rejection of his request for a lighter job. The petitioner also prayed for a direction to the respondents to post him in a suitable job, by protecting his pay and other service conditions. Vide, order, dated 26/1/2011, this Court, after going through the decisions found that the petitioner was entitled to the benefit of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995. This Court allowed the writ petition and directed the respondents to provide an alternate employment to the petitioner equal to the cadre of Technical Assistant Operator in the Tamil Nadu Civil Supplies Corporation Limited.

3. Petitioner's prayer was that he should be transferred from the technical side to the administrative side, but the respondents did not accede to his request and continued him on the technical side itself. Petitioner, therefore, filed Contempt Petition No.749 of 2012. By an order, dated 1/8/2012, this Court, closed the contempt petition by observing as under:-

"3. The petitioner is aggrieved about paragraph 10 of the order, which states that the petitioner will be ordered to work as Junior Assistant in the Modern Rice Mill, Neyveli subject to Modern Rice Mill Standing Orders, as per Hon'ble Court order as a special case. He further submits that the petitioner is suffering from disability. The standing order cannot be complied and the provisions of the Person of the Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 will prevail. There can be no doubt regarding the said aspect. The petitioner shall be allowed to continue in the Modern Rice Mill, Neyveli, as a Junior Assistant so long as his disabilities continue. The petitioner shall be given all benefits as per Section 47 of the Person of the Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995."

4. It is the contention of the petitioner that he has not given any benefit as Junior Assistant. His pay is not in the scale of Junior Assistant. Hence, the petitioner has come forward with the instant writ petition praying for the relief as stated therein.

5. Heard Mr.K.Parthasarathy, learned counsel for the petitioner and Mr.L.P.Shanmugasundaram, learned Special Government Pleader for the respondents.

6. Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (hereinafter call as the "Act") reads thus:-

"Non-discrimination in government employment
- (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."

7. This Court has held that benefit of Section 47 of the said Act has to be given to the petitioner. The issue as to whether the petitioner is entitled to Section 47 of the said Act or not has attained finality. Petitioner states that he has to be shifted from the technical side to the administrative side. In the Contempt Petition, directions have been given by this Court to ensure that petitioner is continuing as Junior Assistant and was given all benefits, as per Section 47 of the Act.

8. Material on record discloses that the petitioner is working as Junior Assistant. Petitioner cannot claim that he should be transferred from the technical side and given a job

in the administrative side. Section 47 of the Act requires is that establishment shall not dispense with or reduce in rank the employee who acquires a disability during service. Petitioner is entitled to be appointed as Junior Assistant and would be entitled to all benefits to the same scale and service benefits. The claim of the petitioner that since he is to be shifted to the administrative side, he should be governed by Standing Orders. This Court cannot pass a mandamus, directing that the petitioner should not to be governed by the Standing Order pertaining to technical post.

9. Proceeding, dated 31/7/2012, of the Chairman and Managing Director states that petitioner should be provided whether an alternate employment which is equal to that of Technical Assistant Operator, in the Tamil Nadu Civil Supplies Corporation, on working arrangement with pay protection without affecting the service conditions of the MRM Standing Orders, based on the medical certificate issued by the Vijaya Heart Foundation, Chennai and in pursuant to the direction of the Hon'ble High Court, vide, W.P.No.9889 of 2011. Relevant portion of the order reads as under:-

"3. Therefore, the services of Thiru.S.S.Anandaraja, Technical Assistant Operator, Cuddalore Region is ordered to be utilised to provide alternate employment to the petitioner, equal to the cadre of Technical Assistant Operator in Tamil Nadu Civil Supplies Corporation MRM side on working arrangement with pay protection without affecting the service conditions of the MRM Standing Orders based on the Medical certificate issued by the Vijaya Heart Foundation, Chennai, and in pursuant to the direction of the Hon'ble High Court vide W.P.No.9889 of 2011."

This order is in compliance with Section 47 of the Act. This order does not require any interference.

10. In view of the above, there is no merit in the writ petition and accordingly, the same is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mvs/pkn.

To

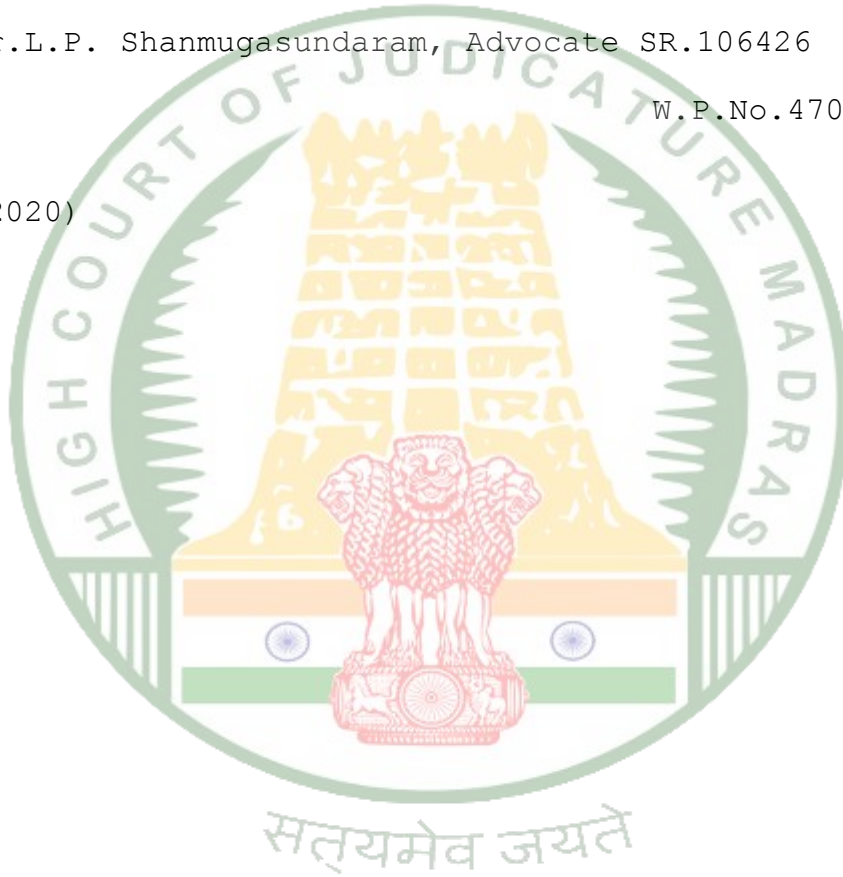
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2.The Regional Manager
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South Arcot Region
Cuddalore.

+lcc to Mr.L.P. Shanmugasundaram, Advocate SR.106426

W.P.No.4706 of 2013

RSV(CO)
CB(11/02/2020)



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