

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.06.2019

CORAM

THE HONOURABLE Mr. JUSTICE V.PARTHIBAN

W.P.No.27 of 2018 and
W.M.P.No.33 of 2018

G.Jayaraman

... Petitioner

Vs.

1.The State of Tamil Nadu
Rep. By its Secretary,
Home (Police) Department,
Fort St. George, Chennai - 600 009.

2.The Director General of Police,
Mylapore, Chennai - 600 004.

3.The Commissioner of Police,
Trichy City, Trichy.

.... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to first respondent's order made in G.O.(Ms)No.920 Home (Police) VI Department dated 20.12.2016, and the third respondent's order made in Na.Ka.No.K2/20093/2017 dated 31.10.2017, to quash it in so far as the 3rd respondent's proceedings is concerned and consequently direct the respondents 1 to 3 to forthwith revise and re-fix the pay scale and other benefits as per G.O.Ms.No.920 Home (Police) VI Department dated 20.12.2016 and in accordance with Section 47 of Persons with Disability (Equal Pay Protection of Rights and Full Participation) Act, 1995 which protects all service benefits, including creation of supernumerary post as well as pay protection, and to continue to pay the same.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.J.Pothiraj
Special Government Pleader

ORDER

The petitioner was employed as Grade II Constable and was promoted as Grade I Constable and thereafter, he was further promoted as Head Constable. While in service, he met with an

accident on 10.09.2008 resulting in head injury. Consequent upon the injuries suffered by the petitioner, he was referred to the Medical Board and initially the Medical Board recommended leave on medical grounds. However, since the petitioner could not recover from the serious injuries suffered by him, he could not discharge his duty as Head Constable effectively. Therefore, his case was further referred to Medical Board on 11.02.2009 and the duly constituted Medical Board declared him as 'invalid' and gave its opinion that he was fit to work in desk job.

2.The respondent, however, despite the opinion of the Medical Board, did not give alternate employment in terms of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. As per Section 47 of the Act, any person suffers disability during the period of his employment is entitled to be provided with a suitable alternate employment with same pay scale and other service benefits and even if no post is available to accommodate him, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Therefore, a statutory right is conferred on the citizens of this Country who suffered disability during the period of employment.

3.Since the request for providing him alternative employment was not considered, the petitioner was constrained to approach this Court by filing W.P.No.12345 of 2015 and this Court disposed of the Writ Petition on 27.04.2015 with the following observation.

"In these circumstances, it is also useful to refer to a judgment of the Honourable Supreme Court in KUNAL SINGH Vs. UNION OF INDIA AND ANOTHER (2003 (4) SCC 524). That case relates to a Police Constable in Special Service Bureau. The Supreme Court held that the Government shall provide alternate employment, if an employee acquired disability, while in service, as per Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. In my view, this case squarely applies to the facts and circumstances of the case on hand. Hence, a direction is issued to the first respondent to provide desk job by passing orders on the petitioner's representation dated 18.09.2014 based on the report of the Medical Board and also in the light of the judgment of the Supreme Court cited supra, within a period of four weeks from the date of receipt of a copy of this order and communicate the result to the petitioner. The writ petition is disposed of in the above terms. No costs."

4. In pursuance of the above direction, the Government passed G.O.(Ms).No.920 Home (Police VI) Department dated 20.12.2016 and in compliance of the G.O., the 1st respondent appointed the petitioner as Junior Assistant in the Police Department by relaxing Rule 3(g) of the Special Rules for Tamil Nadu Ministerial Service in favour of the petitioner. Pursuant thereto, further order was passed by the 3rd respondent on 16.02.2017 posting the petitioner as Junior Assistant in the City Police Office, Tiruchirappalli in the existing vacancy. Thereafter, the petitioner has approached the 2nd respondent and submitted a representation on 13.09.2017 seeking for pay protection and other monetary benefits, when he worked last as Head Constable. At this, an order was passed on 31.10.2017 considering the representation and it appears that pay protection was also given to him by proceedings of the 3rd respondent on 15.09.2017. Subsequently, an order was passed on 31.10.2017, which is impugned in the present writ petition, stating that the period of non-employment i.e. from 31.01.2009 to 17.02.2017 could not be counted as duty period and thereby the petitioner is not entitled to any pay on the principle of 'No Work - No Pay'. The said order is put to challenge in the present writ petition.

5. Mr. L. Chandrakumar, learned counsel for the petitioner would submit that by providing alternate employment to a person suffering from disability is a statutory right as conferred on such persons and therefore, under no circumstances, it can be construed as a matter of concession that could be extended by the Government to such employees. In this case, firstly, for a period of eight years, the petitioner was not offered alternate employment though he was entitled to such alternate employment under the provisions of the Disabilities Act, 1995. In fact, for enforcing his right under the Act, the petitioner has to approach this Court earlier in W.P.No.12345 of 2015 and only after the directions of this Court on 27.04.2015 in the said writ petition, the respondents had acted and implemented the provisions of the Disabilities Act in favour of the petitioner by appointing him as a Junior Assistant. While appointing him, the respondents have unfortunately not granted him pay protection initially, but subsequently granted pay protection. But, however, for the period of non-employment, the respondents passed an order on 31.10.2017 stating that the petitioner would not be entitled to pay and the period would also not to be counted during the period of his non-employment.

6. The learned counsel would submit that once the petitioner is entitled to alternate employment under the scheme of Disabilities Act, all the benefits must naturally accrue to his credit. Unfortunately, it is the fault of the respondents in not

offering alternate employment to the petitioner over a period of eight years and such fault being on the part of the respondents, cannot result in the petitioner being put to suffering hardship and considerable monetary loss.

7. On behalf of the respondents, Mr. J. Pothiraj, learned Special Government Pleader has entered appearance. A counter affidavit has also been filed. According to the learned Special Government Pleader, the petitioner, having not worked from 31.01.2009 to 17.02.2017, is not entitled to pay and even notional fixation also since he was not employed at all under the respondents. Once the petitioner was not in service, the question of claim of any benefit for such period cannot be countenanced both in law and on facts.

8. This Court has considered the rival submissions of the learned counsels, perused the materials and the pleadings placed on record.

9. As rightly contended by the learned counsel for the petitioner that it is not a matter of concession or charity that the respondents have extended the offer of alternative employment to the petitioner. It is, in fact, a statutory right conferred on the petitioner to be accommodated in an alternate employment. Such a right is well recognised under the provisions of the Disabilities Act, 1995 and also supported by various decisions of this Court and also the decisions of the Hon'ble Supreme Court of India.

10. Once such right is established in favour of person suffered disability and under no circumstances, the person who suffered disability like the petitioner, can be denied all consequential benefits if there is any gap between the period of his/her erstwhile employment and till the date when he/she was offered alternate employment under the Disabilities Act. In this case, it appears that there was delay of eight long years in providing alternate employment, and this Court had intervened and gave a direction to the respondents and only thereupon the respondents have acted upon and offered alternate employment to the petitioner. Therefore, the fault is entirely on the part of the respondents in not offering alternate employment to the petitioner promptly and immediately in terms of the provisions of the Disabilities Act, 1995.

11. While so, the fact of the matter is that the petitioner was not employed during the period in question and therefore, not discharged any duties. At the same time, the petitioner cannot be denied due notional fixation of his pay for the period of his non-employment since that would help him to realise whatever is due and payable to him particularly for no fault of

his having been kept out of employment from 31.01.2009 to 17.02.2017. Therefore, this Court is of the view that the petitioner would be granted notional fixation of pay and allowances as admissible and also entitled to pay protection during the period of his non-employment and such notional fixation must be calculated and be paid to the petitioner during the period of his employment as Junior Assistant with the respondents.

12.In the above circumstances, the impugned order dated 31.10.2017 in Na.Ka.No.K2/20093/2017 passed by the 3rd respondent is hereby quashed. There shall be a consequential direction to the respondents to notionally fix the pay of the petitioner, by counting the service of the petitioner from 31.01.2009 to 17.02.2017 and grant all other attendant benefits on such notional benefit given to him during the said period. It is also made clear that the counting of service during the period of non-employment, the benefits will also accrue to him for consideration of his promotion to the next higher grade. The respondents are directed to pass appropriate orders, as indicated above, within a period of four weeks from the date of receipt of a copy of this order.

13.With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sgl

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Secretary,
The State of Tamil Nadu
Home (Police) Department,
Fort St. George, Chennai - 600 009.

2.The Director General of Police,
Mylapore, Chennai - 600 004.

3.The Commissioner of Police,
Trichy City, Trichy.

+lcc to Mr.L.Chandrakumar, Advocate, SR.No.53586
+lcc to the Govt.Pleader, Vide Sr.No.54022

W.P.No.27 of 2018

Kak(03/09/2019)