

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.03.2019

Coram

The Honourable DR.JUSTICE ANITA SUMANTH

W.P. No.21390 of 2017
& W.M.P.Nos.22361 & 22362 of 2017
& W.M.P.No.30150 of 2018

K.Anbazhagan

....Petitioner

--Vs--

1.The Metropolitan Transport Corporation (Chennai),
Rep by its Senior Deputy Manager
Pallavan House,
Pallavan Salai, Chennai-600002

2.The Assistant Manager,
Chromepet Depot,
Metropolitan Transport Corporation (Chennai),
Chennai-600044

...Respondents

P R A Y E R: WRIT PETITIONs under Article 226 of the Constitution in the nature of Certiorarified Mandamus, calling for the records and quash the transfer order Ref.No.25070/PB(A) 2/M.T.C./2012 dated 05.06.2017 issued by the 1st respondent and connected relieving order Memo.No.381/A.M.(Stores)CR/MTC/2017 dated 12.06.2017 issued by the 2nd respondent and direct the 1st respondent Corporation to give on a permanent basis any light work job without insisting on the production of further certification of disability, pay the salary and all other attendant benefits for the period he was unjustly denied employment i.e. from 12.06.2017 till the date he is provided light work.

For Petitioner : Mr.N.S.Tanvi

For Respondents : Mr.Rajani Ramadass

O R D E R

Heard Ms.N.S.Tanvi, learned counsel for the petitioner and Ms.Rajani Ramadass, learned counsel for the respondents.

2. The writ petition seeks issuance of a writ of certiorarified mandamus, seeking quash of transfer order dated 05.06.2017, issued by the Metropolitan Transport Corporation, Chennai and connected relieving order dated 12.06.2017, issued by the Assistant Manager of the Chromepet Depot of the Corporation and a direction to the 1st respondent/Corporation to give, on a permanent basis, light work without insisting upon the production of further certification of disability, paying all salary and all attendant benefits for the period 12.06.2017 till date.

3. The petitioner was employed as a conductor in the Metropolitan Transport Corporation in 1998. In 2011, he was diagnosed with C-5, C-6 Disc Prolapse with right exiting nerve root compression and was admitted to undergo spinal surgery. The petitioner was also advised to undergo other medical procedures, such as, C-5, C-6 Anterior Cervical Discectomy with fusion. In the course of surgery, a plate was inserted in the spine. Within a month of the aforesaid surgeries, the petitioner had suffered burn injuries upon his right hand and leg on account of a fire cracker accident.

4. According to him, on account of the treatment taken, he has lost the complete use of his right hand along with grip. Thus, he has difficulty in carrying out the functions of a conductor, since he could not hold the conductor bag and issue tickets. Moreover, due to spinal surgery, he is unable to stand and maintain balance in a moving bus.

5. A representation was made to the Corporation for an alternate job. Since there was no response, the petitioner filed a Writ Petition No.35054 of 2012, praying for a direction along with the lines of his request in representation. This Court, vide order dated 30.01.2013, passed orders, condemning the attitude of the Corporation and directing the Corporation to constitute a special cell comprising of its own officers to deal with representations made by employees with similar requests.

6. According to Mr.Rajani Ramadass, appearing for the respondents, in compliance of order of this Court dated 30.01.2013, a special cell has been constituted to deal with the grievances raised by the employees.

7. While this is so, the petitioner had subjected himself for medical examination. He has produced a certificate dated 29.12.2015, issued by Dr.P.R.Dhanasekaran, M.S.Orth, D.Orth, authorised signatory, Civil Assistant Surgeon, Government Peripheral Hospital, who has certified locomotor disability by 50%, classifying his condition as a permanent physical impairment. The Certificate extracted is in full below:

Disabilities Certificate

(In cases other than those mentioned in Forms II and III)

NAME AND ADDRESS OF THE

MEDICAL AUTHORITY

(PHOTO)

ISSUING THE CERTIFICATE
Dr.)

(STAMP OF SRTC)

(Stamp of

Certificate No.

Date:29/12/2015

This is to certify that I have carefully examined Shri/Smt.Kum.K.Anbazhagan son/wife/daughter of Shri E.Kannayiraam date of birth DD/MM/YY Age 43 years, male. Registration No.KPM/LD/62641 permanent resident of House No.22/A Ward/Village/Street Ram Nagar, 4th Street, Post Office-Periya Panicherr, District _____ State Tamilnadu whose photograph is affixed above, and am satisfied that he is a case of Post Burn Contraceptive Rt hand and Sequalac ex Disability. His/her extent of permanent physical impairment/disability has been evaluated as per guidelines (to be specified) and show against the relevant disability in the table below:-

S.No	Diability	Affected part of Body	Diagnosis	Permanent Physical impairment/mental disability (in %)
1.	Locomotor Disability	@	50 %	Fifty Percent
2.	Low Vision	#		
3.	Blindness	Both Eyes		
4.	Hearing Impaired	£		
5.	Mental Retardation	X		
6.	Mental Illness	X		

(Please strike out the disabilities which are not applicable)

2. The above condition is progressive/non-progressive/likely to improve/not likely to improve.

3. Reassessment of disability is

(i) not necessary

Or

(ii) is recommended/after _____ years _____ months, and therefore this certificate shall be valid till DD MM YY .

@ e.g.Left/Right/both arms legs

e.g.Single eye/both eyes

£ e.g.Left/Right/both ears

4. The applicant has submitted the following document as proof of residence.

Nature of Document	Date of Issue	Details of authority issuing certificate

Signature/Thumb Impression (Authorized Signatory of notified of the person in whose Favour Medical Authority (name and seal) disability Certificate is issued

(Counter signature and seal of the

Government Hospital, in case the

certificate is issued by a medical

authority who is not a government

servant (with seal).

8. Thereafter the Corporation, vide communication dated 02.05.2017 called upon the petitioner to appear before the Medical Board for assessment of his medical conditions and suitability to continue with the job of conductor and to determine the percentage of disability.

9. The petitioner has, admittedly, not complied with the aforesaid communication and has continued writing to the Corporation repeatedly, relying upon the disability certificate obtained by him earlier. According to him, stating that once he has been certified to be 'permanent disabled', there is no further necessity to subject himself to medical examination and he thus pray that he may be permanently allotted only an alternate light job.

10. Learned counsel for the petitioner relies also heavily on a 'National Identity Card and Pass Book with Disability Certificate' that has been issued by the Department of Rehabilitation of the Disabled. According to which, the card is a permanent one and testifies to the effect that the disability of the petitioner was permanent in nature.

11. Heard learned counsels.

12. A perusal of the certificate makes it abundantly clear that the petitioner was, at the time of issuance of the certificate, assessed to have locomotor disability of 50%. However, this Court, though not an expert on medical matters believes that periodic assessment of the petitioner is required to test/conclude whether his condition was progressive or likely to improve. The disability certificate provides for such parameters in columns 2 and 3, that have unfortunately been left blank by the medical expert, who issued the certificate dated 29.12.2015.

13. In the aforesaid circumstances, it is unclear as to whether, there is any necessity for re-assessment of the disability and whether the condition was progressive or likely to have improved. I thus, direct the petitioner to subject himself to a medical test by the Medical Board for the aforesaid purposes.

14. The Corporation is directed to fix a date for the appearance of the petitioner before the Medical Board for assessment of his disability. A certificate will be issued by the Medical Board after examination as required and the entire process shall be completed within a period of four(4) weeks from the date of receipt of a copy of this order.

15. Reference is made to the Rules under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Needless to state, if the petitioner is found to be permanent disabled, the petitioner is entitled to salary and all attendant benefits that have not been received by him from June 2017 till date and a representation may be made in this regard by the petitioner, which will be considered by the Corporation in the light of the observations and direction as aforesaid.

16. This writ petition is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

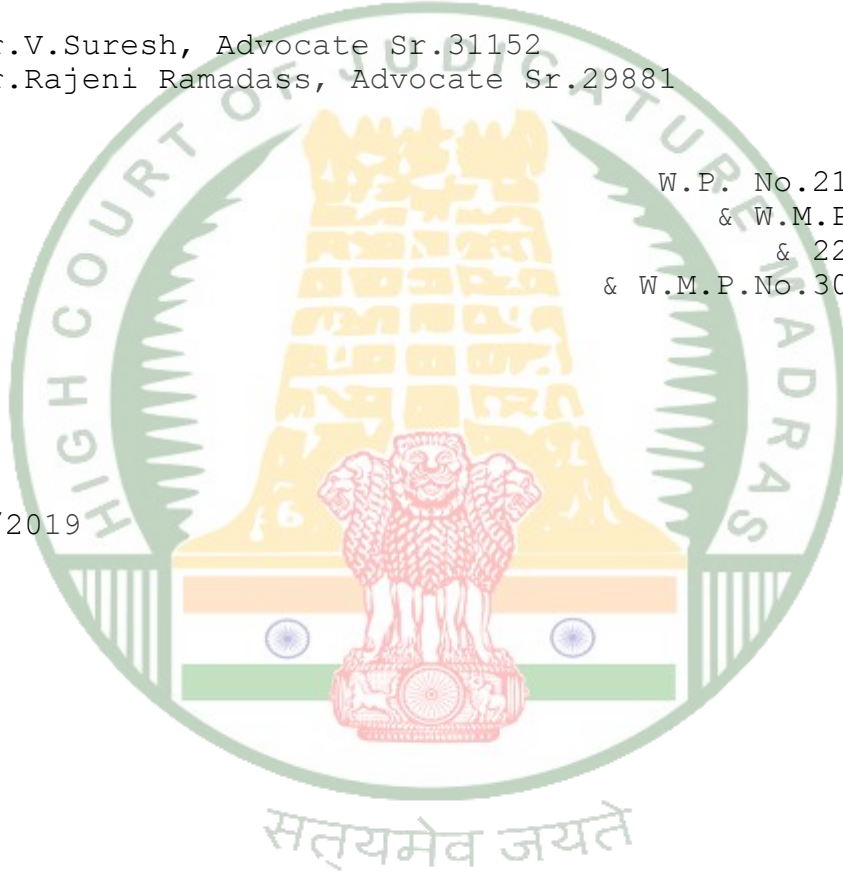
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+1cc to Mr.V.Suresh, Advocate Sr.31152
+1cc to Mr.Rajeni Ramadass, Advocate Sr.29881

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