

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2019

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.33820 of 2018
and
WMP.No.39286 of 2018

R.Srinivasan

...Petitioner

vs

1. The Managing Director,
Metropolitan Transport Corporation Limited,
Pallavan Illam, Pallavan Salai,
Chennai - 600 002.
2. The Senior Deputy Manager (HRD),
Pallavan Illam, Pallavan Salai,
Chennai - 600 002.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ or order or orders or direction particularly in the nature of Writ of Mandamus, directing the 1st respondent to refer the petitioner to the Regional Medical Board, Rajiv Gandhi Government General Hospital, Chennai - 600 003 for re-assessment of petitioner's case for medical fitness or suitability to the post of Driver by disposing of petitioner's representation dated 23.11.2018, pending on the file of the 1st respondent.

For Petitioner : Mr.K.Shanmugam

For Respondents : Mrs.S.Rajeni Ramadoss
for R1 & R2

ORDER

The relief sought for in the present writ petition is to direct the 1st respondent to refer the petitioner to the Regional Medical Board, Rajiv Gandhi Government General Hospital, Chennai - 600 003 for re-assessment of petitioner's case for medical fitness or suitability to the post of Driver by disposing of petitioner's representation dated 23.11.2018, pending on the file of the 1st respondent.

2. The grievances of the writ petitioner is that, he underwent heart surgery on 09.01.2015. He was discharged from the hospital on 17.01.2015. Thus, the writ petitioner submitted an application to provide alternate job and accordingly, the case of the writ petitioner was considered by the Competent Authorities and the alternate job was provided for six months by the respondents during the year 2015. The period expired and subsequently, the request of the writ petitioner was also considered and two extensions were given to the writ petitioner and for the past about 3 years, the writ petitioner is performing the light duty.

3. Under these circumstances, the writ petitioner is now directed to join duty to the post of driver. The writ petitioner submitted a representation to reconsider his case, for the purpose of his continuance in the light job. Since, the respondent has not considered the representation, the writ petitioner is constrained to move the present writ petition.

4. The learned counsel for the respondent states that, the provisions of the rights of persons with Disabilities Act is followed by the authorities by constituting a committee in order to assess the nature of the ailments and eligibility to provide alternate job to the drivers and conductors, working in Transport Corporations. In this regard, the Government orders and the Corporation guidelines are followed strictly, so as to avoid any misuse by the employees for the purpose of getting alternate employment.

5. The writ petitioner has already been given two extensions and he is performing the light duty for about 3 years. The writ petitioner underwent heart surgery during the year 2015 and the authorities arrived a conclusion that the writ petitioner is fit for performing the duties and responsibilities attached to the post of driver. Thus, the writ petitioner was directed to join duty as driver. It is not as if, the alternate employment to be provided for an indefinite period and that is not the spirit of the statute also.

6. This Court is of the considered opinion that, large number of writ petitions are now filed before the High Court seeking for a direction to such transport corporations to provide alternate employment (light duty). If more number of employees working in the cadre of drivers and conductors have applied for light duty, then it would be difficult for the corporation to accommodate all those persons by providing light

duty. It may not be administratively possible to provide such alternate employment to many number of candidates. Undoubtedly, the Act provides in the event of non-availability of posts, such employees are to be kept in supernumerary post. However, the facts and circumstances are to be considered by the properly constituted committee and accordingly, the decisions are to be taken.

7. In this regard, the learned counsel for the respondent referred G.O.Ms.No.746, Transport Department, dated 02.07.1981, which reads as under:-

"2. The Government accordingly direct that the workers in State Transport undertakings who are declared unfit for continuance in the same posts, by doctors, while in service, because of eye defect or any other ailment be discharged on medical grounds and their service benefits, settled. They should be subsequently provided with alternative employment in posts like "Helpers" depending upon their qualification and experience and suitability for the new posts, without consulting the Employment Exchange. They should be appointed as fresh entrants only in the scale of pay or consolidated pay admissible to the new posts and their services terminated on the date on which they attain the age of superannuation."

8. A committee was constituted in proceeding dated 16.03.2013, as far as the respondent Corporation is concerned. The General Manager is the Chairman of the committee and the Medical Officer, Assistant Manager Legal & Court actions and the Assistant Manager Personnel are the members of the committee. The committee is bound to scrutinize the medical certificates produced by the respective employees and examine the genuity or otherwise and accordingly, recommend for providing alternate employment.

9. Thus, the mechanism is available within the administration to ensure the implementation of the Disabilities Act in its letter and spirit. The scope of judicial review in respect of the facts to be adjudicated are undoubtedly limited. The power of judicial review in such disputed facts can never be adjudicated under Article 226 of the Constitution of India. Such disputed facts and circumstances are to be adjudicated by the Competent Authorities, with reference to the original records and by adducing evidences if required.

10. Thus, the High Court has to ensure the process through which the decisions are taken by the Competent Authorities. If there are violations of statute or if the process contemplated are not followed by the authorities, then alone the power of judicial review can be exercised for the purpose of grant of relief and not decision itself. Therefore, it is not the case where the High Court can issue direction to provide alternate employment. Providing an alternate employment is within the domain of the employer concerned and the endeavour of the High Court is to ensure that the provisions of the Disabilities Act is properly followed by the Competent Authorities, while considering the cases for the purpose of grant of alternate employment.

11. During those process, the authorities are bound to act uniformly and without causing any discrimination. In the event of large number of employees coming out for alternate employment, then the authorities are bound to provide an option to opt voluntary retirement or in acute cases, they can go for medical invalidation by following the procedures. Therefore, even for performing the alternate employment, assessments are to be made by the committee constituted for this purpose. The options are wide enough to decide an employee who is unable to perform the duties and responsibilities and he can be provided with an alternate employment for a specific period or he can be advised to go for voluntary retirement or in acute cases, the procedure for medical invalidation can be adopted. However, the decision in this regard are to be taken on case to case basis and by following the procedures contemplated.

12. In view of the fact that, the transport corporations are facing these issues on many occasions and further, it is brought to the notice of this Court that, the medical certificates produced by these employees are not genuine on many occasions. This Court is of the considered opinion that, all such medical certificates produced by the employees are to be scrutinized and the genuinity was also to be verified with the concerned medical Board or the Doctors who issued the certificates. If at all any doubt arises, an independent medical team can be constituted to identify the authenticity and genuinity of the reports submitted by the medical officers concerned. These process can be followed only in the event of doubts raised in the minds of the Competent Authority, while entertaining the application from the employees seeking alternate employment on account of the illness or disability.

13. This Court is of the considered opinion that, sufficient mechanism is available within the administration of the transport corporation to check the genuinity of the claim made by these employees, more specifically, drivers, conductors and technical staffs. Therefore, the Competent Authority should follow all such procedures scrupulously in order to consider the genuine cases and further to reject the fake cases.

14. As far as the present writ petition is concerned, the writ petitioner underwent a heart surgery during the year 2015 and three years alternate employment was provided to him. The writ petitioner was performing the light duty for about three years. Thus, the further request of the writ petitioner is also to be considered strictly in accordance with the procedures contemplated under the Rules, as per the decisions to be taken by the committee, with reference to the provisions of the Act and the Government orders.

15. In this regard, the learned counsel for the respondent states that, the case of the writ petitioner had considered by the Competent Review Committee and the review committee has taken a decision and the final extension was given in the sub-committee meeting held on 27.07.2017. Accordingly, six months extension was given to the writ petitioner and the period of six months already expired. This being the factum, on expiry of the extended period, the writ petitioner submitted an application and the said application was also considered. In view of the fact that, the review committee had not decided to continue the alternate employment to the writ petitioner, they have passed an order in proceeding dated 19.07.2018, directing the Branch Manager to issue posting orders to the writ petitioner in his original post and accordingly, directed the writ petitioner to join duty and perform his duties and responsibilities.

16. After passing of the order on 19.07.2018, once again the writ petitioner submitted an application to consider his case for providing alternate employment. Thus, under these circumstances, this Court is of the considered opinion that, it should not be practising to encourage such applications frequently. Once the Competent Committee arrived a conclusion that the writ petitioner is fit to perform his duties and responsibilities based, on the medical records as well as the verification of facts and circumstances, the same cannot be interfered with by the Courts.

17. The Court not being a medical expert, the Competent Authorities on verification of medical records, if arrived a conclusion, the same cannot be interfered with by the Court in a routine manner. If at all the writ petitioner is not interested in performing the duties of the driver, it is left open to him to opt the other options as per the Rules in force.

18. Under these circumstances, this court has no hesitation in coming to the conclusion that, the writ petitioner has not made out any acceptable grounds for the purpose of considering the relief as such sought for in the present writ petition. Accordingly, the writ petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Pkn

To

1. The Managing Director,
Metropolitan Transport Corporation Limited,
Pallavan Iilam, Pallavan Salai,
Chennai - 600 002.
2. The Senior Deputy Manager (HRD),
Pallavan Iilam, Pallavan Salai,
Chennai - 600 002.

+1 cc to Mr.K.Shanmugam, Advocate, S.R.No.41511

EV(CO)
SSM(19/06/2019)

W.P.No.33820 of 2018

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