



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.10.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD) No.4342 of 2018

and

W.M.P.(MD) Nos.4454 and 4455 of 2018 and 182 of 2019

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C.Babu Rajan

... Petitioner

-Vs-

1.The Secretary,
Transport Department,
Fort St. George, Chennai-600 009.

2.The Managing Director,
State Express Transport Corporation,
Pallavan Street, Chennai-2.

3.The General Manager (Administration),
State Express Transport Corporation,
Pallavan Street, Chennai-600 002.

4.Ponmudi

5.The Senior Grade Superintendent (Ma.Va),
O/o. The General Manager (Administration),
State Express Transport Corporation,
Pallavan Street, Chennai-600 002.

6.The Branch Manager,
State Express Transport Corporation Limited,
Kanyakumari Branch, Kanyakumari,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Order No.047122/Ma.Va.4/A.Vi.Po.Ka./2013-1, dated 17.11.2017 on the file of the respondent No.3 signed by the respondent No.5 and quash the same as illegal to the extent of re-designating the post of the petitioner as Helper(Non-ITI) with the new staff number to the petitioner and consequently, to direct the respondents to permit the petitioner / a person with disability to continue in the same cadre of selection grade senior conductor with the same staff number of 30006 while doing the alternate job of Time Keeper at the 6th respondent Branch within the time stipulated by this Court.



For Petitioner : Mr.S.Louis
For R1 : Mr.C.Ramar,
Additional Government Pleader.
For R2 and R3 : Mr.K.Sathya Singh
For R4 to R6 : No Appearance

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ORDER

This Writ Petition is filed to quash the order of the third respondent, dated 17.11.2017 and to direct the respondents to permit the petitioner / a person with disability to continue in the same cadre of selection grade senior conductor with the same Staff No.30006, while doing the alternative job of Time Keeper at the 6th respondent Branch, within the time stipulated by this Court.

2.The petitioner was appointed as Conductor under the category of disability and posted in the Nesamani Transport Corporation on 01.11.1988. Subsequently, he was transferred to the State Express Transport Corporation, Kanyakumari District and from 01.11.2012, he was posted as Controller at the Control Section in the office of the 6th respondent. The petitioner is a 50% of physically challenged person. While so, from 27.07.2016, he was not permitted to serve as Controller at the Control Section in the office of the 6th respondent. Therefore, he has given a representation dated 30.07.2016 to all the respondents herein, to permit him to work as Controller in the Control Section in the office of the 6th respondent. However, no order has been passed on the representation of the petitioner. Therefore, he has filed W.P. (MD)No.15655 of 2016, for a direction to dispose of the representation of the petitioner, dated 30.07.2016. This Court, by the order dated 27.09.2016, directed the respondents to consider the representation of the petitioner, dated 30.07.2016 and pass appropriate orders thereon, within a period of four weeks from the date of receipt of a copy of the order. However, the petitioner was not allowed to join duty as Controller at the Control Section in the office of the 6th respondent and he was directed to give a leave letter. Therefore, he has given a representation dated 24.09.2016, seeking for leave from 21.08.2016 to 20.09.2016, as he had several days of earned leave. While so, the third respondent has passed an order dated 01.10.2016, posting the petitioner as Conductor. Therefore, the petitioner has filed another Writ Petition in W.P. (MD)No.22210 of 2016, challenging the said order of the third respondent dated 01.10.2016. This Court, by the order dated 21.11.2016, held that till the medical opinion is obtained, suitable alternative employment is not provided to the petitioner, then, the third respondent shall be responsible for providing salary to the petitioner. Subsequently, the petitioner was permitted to join duty on 15.03.2017, as Time Keeper at Kanyakumari Branch and by the communication dated 23.03.2017, the petitioner was directed to appear before the Medical Board. The Medical Board, after examining



the petitioner, gave a report, mentioning the disability of the petitioner at 50%. Based on the report of the Medical Board, the third respondent, by the impugned order dated 17.11.2017, has posted the petitioner as Helper (Non ITI). Therefore, the petitioner has come out with the present Writ Petition.

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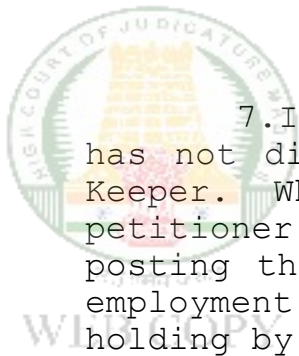
3.The learned counsel appearing for the petitioner submitted that when alternative employment is available to the category of the Conductor, he should not be posted to a lower post, by redesignating as Helper (Non-ITI). Therefore, his promotional opportunity is affected and his annual increment is not provided and therefore, prayed for allowing the Writ Petition.

4.The respondents 2 to 6 have filed counter affidavit along with vacate stay petition. The learned counsel appearing for the respondents 2 and 3 submitted that as per the order of this Court, the petitioner was referred to Medical Board. Based on the report of the Medical Board, the petitioner was provided with alternative employment as Helper (Non-ITI). The pay and promotion of the petitioner are protected and the impugned order is passed based on the provision under Section 47(1) of Persons with Disability Equal Opportunities Act, 1985 and by the proceedings dated 01.07.2019, the petitioner's earlier service number 30006 is also restored, subject to the outcome of the present Writ Petition and prayed for dismissal of the Writ Petition.

5.Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the first respondent and the learned counsel appearing for the respondents 2 and 3 and perused the materials available on record carefully.

6.From the materials on record, it is seen that while the petitioner was working Senior Conductor, due to his disability, he was posted as Controller. Subsequently, without assigning any reason, the petitioner was posted as Conductor, after the order of this Court, the petitioner was posted as Time Keeper and referred to Medical Board. After receiving the report from the Medical Board, the petitioner was posted as Helper (Non-ITI) by the impugned order dated 17.11.2017. The petitioner has impleaded the third respondent in his personal capacity as fourth respondent, as due to his improper action, the petitioner is posted to a lower cadre with different employment number. From the impugned order of the third respondent, it is seen that the third respondent has not given any reason for re-designating the petitioner and posted him as Helper (Non-ITI). It is also seen that the pay of the petitioner is protected and there is no mentioning about the petitioner's promotion to be protected. In view of the same, the contention of the learned counsel appearing for the respondents 2 and 3 that the promotion of the petitioner to the higher post is protected, is contrary to the impugned order. Further, the promotion of the

<https://hccourtservices.com/lostfiles/> cannot be equated with promotion of Helper.



7.It is not the case of the respondents that the petitioner has not discharged the duty assigned to him as Controller or Time Keeper. When an alternative employment equal to the category of the petitioner viz., Senior Conductor is available, the impugned order, posting the petitioner as Helper, is invalid. When an alternative employment is provided, it must be approximately equal to the post holding by the said person.

8.For the above reason, this Writ Petition is allowed. The respondents are directed to permit the petitioner to continue in the same cadre of Selection Grade Senior Conductor with same staff number viz., 30006. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

The Secretary,
Transport Department,
Fort St. George, Chennai-600 009.

+1 CC to Mr.K.SATHIYA SINGH, Advocate (SR-92285[F] dated 16/10/2019)

+1 CC to M/s.S.LOUIS, Advocate (SR-92385[F] dated 17/10/2019)

+1 CC to SPL GP (SR-92453[F] dated 17/10/2019)

W.P. (MD)No.4342 of 2018

16.10.2019

(1/2)

MYR

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