



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.10.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) No.5024 of 2018

and

W.P. (MD) No.20284 of 2019

WEB COPY

S.Gunasekaran

... Petitioner
in both Writ Petitions

-Vs-

1.The Secretary to Government,
Transport Department,
Government of Tamil Nadu,
Fort St. George, Chennai-9.

2.The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Kumbakonam Division-II,
Railway Junction Road, Kumbakonam.

3.The General Manager,
Tamil Nadu State Transport Corporation
(Kumbakonam Division-II) Limited,
Peiyamilagu Parai, Trichy-1.

... Respondents 1 to 3
in both Writ Petitions

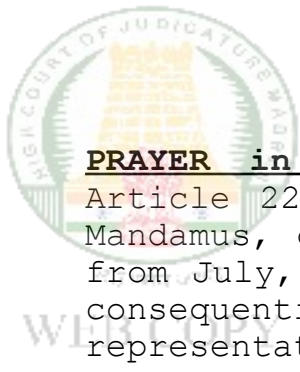
4.The Branch Manager,
Tamil Nadu State Transport Corporation
(Kumbakonam Division-II) Limited,
Theeran Nagar Branch, Trichy.

... 4th Respondent
in W.P.(MD)No.5024 of 2018

4.The Administrator,
Tamil Nadu State Transport Corporation
Employees' Pension Fund Trust,
Thiruvalluvar Illam,
Anna Salai, Chennai-2.

... 4th Respondent
in W.P.(MD)No.20284 of 2019

PRAYER in W.P. (MD) No.5024 of 2018: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to pay protection to the petitioner with continuity of service, back wages and other attendant benefits from the date of 15.06.1998 in terms of Section 47(1) of Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995 and consider the petitioner's representation dated 26.02.2018.



PRAYER in W.P. (MD)No.20284 of 2019: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to pay the petitioner's pension from July, 2019 to the petitioner along with 12% interest and other consequential benefits on the basis of the petitioner's representation dated 07.08.2019.

For Petitioner : Mr.A.MU.Sharavanan
(in both Writ Petitions)

For R1 : Mr.C.Ramar,
(in both Writ Petitions) Additional Government Pleader.

For R2 to R4 : Mr.D.Sivaraman
(in both Writ Petitions)

COMMON ORDER

The Writ Petition in W.P.(MD)No.5024 of 2018 is filed to direct the respondents to pay protection to the petitioner with continuity of service, back wages and other attendant benefits from the date of 15.06.1998 in terms of Section 47(1) of Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995 (hereinafter referred to as 'the Act') and consider the petitioner's representation dated 26.02.2018.

2.The Writ Petition in W.P.(MD)No.20284 of 2019 is filed to direct the respondents to pay the petitioner's pension from July, 2019 to the petitioner along with 12% interest and other consequential benefits, on the basis of the petitioner's representation dated 07.08.2019.

3.The petitioner was appointed as Conductor on 15.04.1986 and he was working under the respondents. While so, he met with an accident on 28.03.1997. Due to the bone injury, he was referred to the Medical Board on 23.04.1998. The Medical Board has certified that the petitioner is unfit to continue in the post of Conductor. Based on the said report, the petitioner was discharged from the service, by the order dated 15.06.1998. Subsequently, on 19.02.2000, the petitioner was appointed as Helper as a fresh entrant. The petitioner gave a representation dated 26.02.2018 to the respondents to pay protection as per Section 47(1) of the Act. However, the same has not been considered by the respondents. Hence, the petitioner has come out with the Writ Petition in W.P. (MD)No.5024 of 2018.

4.The petitioner retired from service on attaining the age of superannuation on 30.06.2019. According to the petitioner, the respondents have not paid terminal benefits and pension on the



ground of pendency of the Writ Petition in W.P.(MD)No.5024 of 2018 and they are threatening the petitioner to withdraw the said Writ Petition. In such circumstances, the petitioner has filed W.P.(MD) No.20284 of 2019.

5.The respondents 2 to 4 have filed counter affidavit. The learned counsel appearing for the respondents 2 to 4 submitted that as per G.O.Ms.No.746, dated 02.07.1981 and Government Letter No.2894/C1/84-C, dated 03.01.1986, the petitioner was appointed as Helper as a fresh entrant with other usual allowances as applicable with effect from the date of joining, by the order dated 19.02.2000. The petitioner has accepted the discharge from service as per the certificate issued by the Medical Board and after 18 years, the petitioner has filed W.P.(MD)No.5024 of 2018. The respondents have never threatened the petitioner to withdraw the said Writ Petition and prayed for dismissal of both the Writ Petitions.

6.Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the first respondent, the learned counsel appearing for the respondents 2 to 4 and perused the materials available on record carefully.

7.From the materials on record, it is seen that the petitioner was working as Conductor from 15.04.1986 and due to an accident and bone injury, he was certified by the Medical Board as unfit to work as Conductor. In such circumstances, the respondents ought to have given an alternative employment with pay protection and continuity of service as per Section 47(1) of the Act. The respondents erred in discharging the petitioner from service. Subsequently, again, the respondents erred in appointing the petitioner as Helper as a fresh entrant. The respondents have not followed the statutory provisions, containing under Section 47 (1) of the Act. The petitioner is entitled for pay protection and continuity of service as per the beneficial legislation, which came into force to give pay protection to the persons like the petitioner, who became disabled during service. In the present case, the petitioner has given a representation dated 26.02.2018 and approached this Court after 18 years of appointment as Helper as a fresh entrant. Therefore, he will not be entitled for any monetary benefits, but, he is entitled to continuity of service and pay protection, as the respondents have failed to provide suitable alternative employment with pay protection as per the Act. It is made clear that the petitioner is not entitled to the salary for the period from 15.06.1998 to 28.02.2000 and difference of salary from 28.02.2000 to the date of his retirement i.e, on 30.06.2019. The respondents are directed to calculate the terminal benefits and grant continuity of service, within a period twelve weeks from the date of receipt of a copy of this order.



8. With the above direction, these Writ Petitions are allowed.
No costs.

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// True Copy //

Sd/-

Assistant Registrar (co)

Sub Assistant Registrar (CS)

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To

1. The Secretary to Government,
Transport Department,
Government of Tamil Nadu,
Fort St. George, Chennai-9.
2. The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Kumbakonam Division-II,
Railway Junction Road, Kumbakonam.
3. The General Manager,
Tamil Nadu State Transport Corporation
(Kumbakonam Division-II) Limited,
Peiyamilagu Parai, Trichy-1.

+1 CC to SPL GP (SR-51336[F] dated 04/03/2019)

+2 CC to Mr.A.MU.SHARAVANAN, Advocate(SR-92813[F] dated
18/10/2019)

+1cc to MR. D.SIVARAMAN, Advocate Sr.No.93068

W.P. (MD) No. 5024 of 2018
and

W.P. (MD) No. 20284 of 2019
18.10.2019

VB(04.11.2019) 4P 8C