

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.1398 of 2012

S.Raju (Deceased)

1.Prema

2.R.Mukesh

3.R.Nithya

...Petitioners

Vs.

1.The Managing Director,
State Express Transport Corporation,
TamilNadu Limited,
Corporation, Head Quarters,
Chennai - 2.

2.The Branch Manager,
State Express Transport Corporation,
TamilNadu Ltd.,
Salem - 2.

....Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India praying to issue a writ of certiorarified mandamus calling for the records pertaining to order bearing No.29143/m7/mtpnghf (jehnfhl)/96 dated 02.03.1999 of the first respondent and quash the same and consequently direct the respondents to consider the petitioner's in reinstating him in the alternative post and grant all consequential and attendant benefits.

For Petitioners : No Appearance

For Respondents : Mr.K.Kathiresan

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O R D E R

The petitioner was appointed as driver under the control of the second respondent in the year 1981. He has put in 18 years of unblemished service. During 1995, he fell down at his residence and spinal bone got dislocated. After treatment, he joined back duty and worked till 1998 and on 28.12.1998 he met with a road accident and the medical team found him

medically unfit. Pursuant to the medical opinion, he was terminated from service on 02.03.1999. He requested for alternative employment, which was under consideration. By letter dated 07.09.1999, the 1st respondent informed the petitioner that steps were being taken for providing alternative employment. On 07.07.2008 he was directed to be present with medical certificate before the committee for considering him for alternative employment. He was medically examined and the Doctor had opined that he is fit for appointment for the post of Diesel operator.

2. Despite the repeated representations nothing came forward and therefore, seeks to quash the order of removal from service dated 02.03.1999 and seek for alternative employment.

3. Per contra, the averments made by the petitioner was denied by the respondents by way of counter affidavit. The learned counsel for the respondent would contend that the petitioner was found unfit to drive the bus. However, he was advised to take alternate employment, but he wanted him to be discharged on medical grounds. Accordingly, he was discharged from service and therefore, the writ petition is not maintainable.

4. Heard the submissions of both sides.

5. Facts are admitted to the extent that the petitioner was found medically unfit to drive the bus by the Medical Board. On the basis of the recommendation of the Medical Board, the respondents issued a show cause notice dated 07.01.1999 as to why the petitioner shall not be removed from service. His explanation being not satisfactory, he was removed from service by impugned order dated 02.03.1999, with an option to apply for alternative employment. He immediately made an application dated 11.03.1999 seeking alternative employment. The respondents by their communication dated 21.05.1999 directed him to appear before the General Manager (Administration) on 07.06.1999. Thereafter, the respondents were communicating the petitioner that his request was under consideration by letters dated 07.09.1999 and 25.07.2000, but in vain. Hence, the petitioner made a representation to Chief Minister's cell. It was forwarded to the respondents by letter dated 22.09.2002. He continued to make representations, in response to one of his representations dated 18.02.1999, he was directed to appear before the committee on 16.07.2008 for the purpose of considering him for alternative employment along with medical / fitness certificate. A Senior Civil Surgeon of Government Hospital, Salem gave an opinion that the petitioner was fit for appointment for the post of Diesel operator. With that Medical Certificate, he appeared before the Committee, but no orders were issued.

6. As per Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (herein after referred to as the "Act") if an employee acquires disability, he shall not be terminated but shall be adjusted against any other post with pay protection till he attains the age of Superannuation. If no alternative employment is available, a supernumerary post shall be created for this purpose. But in the instant case, the respondents proceeded to remove or terminate the petitioner from service and gave an option to seek alternative employment. Eventhough, the petitioner applied for the same he was called to appear before the committee but not given any employment till his death. The procedure adopted by the respondents to seek employment after removing him from service is contrary to Section 47 of the Act. The respondents should not have removed the petitioner from service and ought to have given alternative employment. It is not in dispute that he was recommended medically fit to hold the post of Diesel operator by a competent Medical Officer, which certificate was also verified by them. Hence, removal of the petitioner from service is illegal.

7. The contention of the respondents on the technical issue of delay that the petitioner had approached this Court in the year 2012, for the removal which had taken place in the year 1999, is not sustainable for the reason, the delay is attributable to them. The petitioner's representation dated 18.02.1999 was taken up for consideration and he was called to appear before the committee only on 16.07.2008. There is no explanation for the delay caused by the respondents. Even otherwise, the order of removal is void ab-initio in the light of the Act. The illegal removal was a continuing wrong and recurred every month as and when salary fell due to him, hence the right to sue continued till his death or till the date of superannuation. In view of the same, the writ petition is not hit by delay and laches.

8. As discussed above, the removal of the petitioner contrary to Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and as per Section 47 of the above Act, the respondents were duty bound to make the payment till the date of his superannuation or death and all other terminal benefits. It is submitted by the petitioners that the petitioner is no more and his legal heirs are substituted in his place. Considering the above, the impugned order of removal in proceeding no.29143/m7/mtpnghf (jehnfhl)/96 dated 02.03.1999 of the respondents is set aside and a direction is issued to disburse all monetary benefits due to him to his legal heirs within a period of 3 months from the date of receipt of a copy of this order.

In fine, writ petition is allowed with the above direction.
No costs.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

bri

To

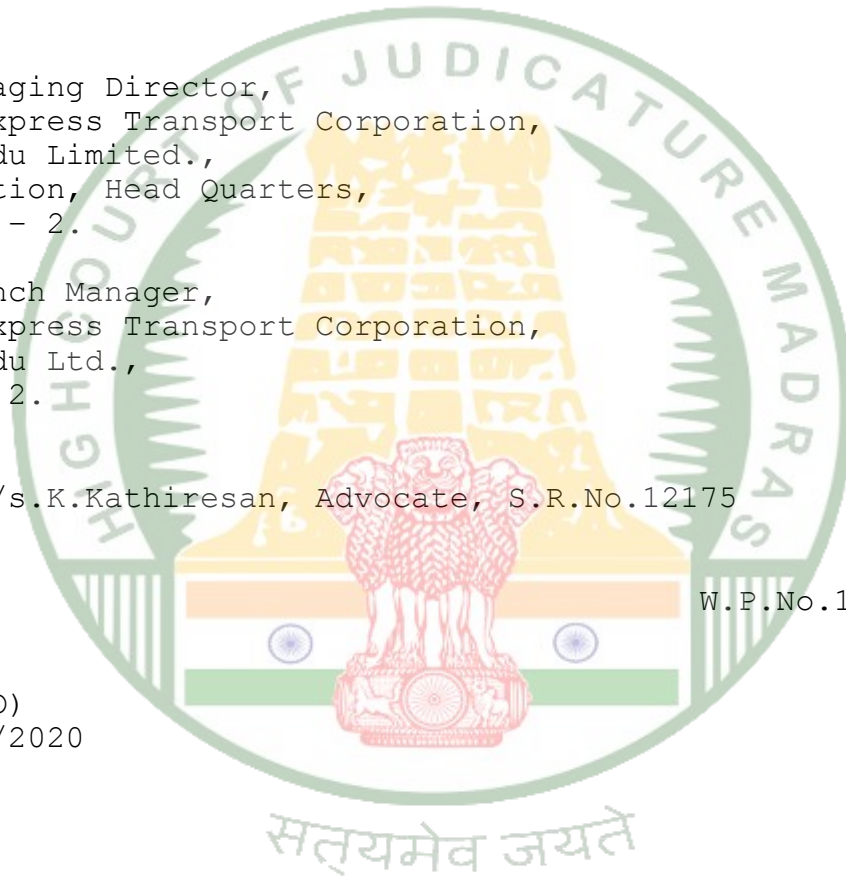
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+1cc to M/s.K.Kathiresan, Advocate, S.R.No.12175

W.P.No.1398 of 2012

VSN II (CO)
KKV/23/10/2020



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