



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.02.2020

DELIVERED ON : 08.12.2020

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.21506 of 2015

WEB COPY

D.Jaisankar

... Petitioner

Vs.

1.The Tamil Nadu State Transport
Corporation (Kumbakonam) Limited,
represented by its Managing Director,
Kumbakonam.

2.The General Manager,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Trichy Region,
Trichy.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the respondent No.2 in Ref:TNSTC/KUM/TRY/SM1/17507/2014, dated 21.05.2015, Office order passed by the 2nd respondent in Ref:Tha.Aa.Po.Ka./Trichy/Pa.Pi-B4/1522/2015, dated 26.05.2015 and office order of the 2nd respondent in Ref:TNSTC/KUM/TRY/SM1/17507/2014, dated 19.06.2015, quash the same, insofar as denying pay protection, continuity of service and backwages, etc. payable to the petitioner from 09.04.2002, consequently direct the respondents to regularize the period of the service of the petitioner from 09.04.2002 to 27.05.2015 as on duty with pay and also extend the benefit of pay protection, continuity of service and pay wages on par with one Mr.S.Ponnar, petitioner's co-appointee Driver Staff No.5841 of the Rockfort branch of the 1st respondent Corporation in accordance with Section 47(1) of Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

For petitioner	: Mr.A.Rahul
For respondents	: Mr.D.Sivaraman

ORDER

This writ petition has been filed by the petitioner challenging the orders denying pay protection, continuity of service and backwages and for a direction to the respondents to regularize the period of service of the petitioner from 09.04.2002 to 27.05.2015 as



on duty with pay and also extend the benefit of pay protection, continuity of service and pay wages on par with one Mr.S.Ponnar, co-appointee driver.

2. The learned counsel appearing for the petitioner submitted that the petitioner was appointed as Driver on daily wage basis on 26.07.1997. While he was on duty on 08.04.2002 an accident occurred, due to which the petitioner's right knee amputated and he suffered by 65% disability. The Medical Board certified that he cannot discharge his duty as driver. On 21.07.2004, the respondents issued a notice to the petitioner to show cause as to why he should not be discharged from service on medical grounds. Challenging that order, the petitioner has filed a writ petition in W.P.No.210 of 2004, but the said writ petition was dismissed, by order dated 01.02.2005, with a direction to submit his explanation to the show cause notice within 10 days. On 09.02.2005, the petitioner submitted a representation seeking to provide him an alternative employment, in terms of Section 47(1) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as "the Act"). As there was no response to the said representation, the petitioner filed W.P.(MD).No.7070 of 2005, seeking a direction to dispose of the representation dated 09.02.2005. Thereafter, the said representation was considered and rejected by the respondents on the ground that the above Act is not applicable to the petitioner.

3. The learned counsel for the petitioner would further submit that on 27.06.2014, the 2nd respondent referred the petitioner to the Medical Board in order to consider his claim of alternative employment. On 15.07.2014, the Medical Board certified that the petitioner is suffering from 65% disability. As there was no progress in the matter, the petitioner filed a writ petition in W.P.(MD).No.17507 of 2014 to provide him alternative employment with all attendant benefits. This Court, by order dated 30.10.2014, directed the respondents to provide alternative employment with continuity of service to the petitioner and to decide about payment of backwages to the petitioner. Though the petitioner was given an alternative employment on 08.11.2014, the first respondent denied backwages, by order dated 21.05.2015, on the ground that the petitioner did not report duty pursuant to the accident and that he was provided alternative employment only on 08.11.2014. On 26.05.2015, the 2nd respondent issued another order stating that the petitioner is reinstated in service with continuity of service and pay protection in the post of Helper. Aggrieved by the same, the petitioner has filed a contempt petition in Cont.P.(MD).No.611 of 2015. Thereafter, the petitioner was served with another order on 19.06.2015 stating that the period of non employment will be treated as leave on loss of pay. Aggrieved by the orders dated 21.05.2015, 26.05.2015 and 19.06.2015, the petitioner has filed the present writ petition.

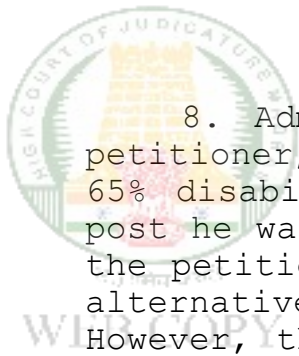


4. The learned counsel for the petitioner would next submit that this Court in W.P.(MD).No.17507 of 2014 had specifically directed the respondents to provide alternative employment with continuity of service, however, left it open to the respondents to pass suitable orders on the claim of backwages. The respondents denied backwages to the petitioner on the pretext that this Court had directed only to provide alternative employment with continuity of service and not backwages. As per Section 47(1) of the Act, it is the duty of the respondents to provide alternative employment with same pay scale and service benefits, and if it is not possible to adjust an employee in any post, he may be kept in supernumerary post until suitable post is available or he attains the age of superannuation whichever is earlier. Contrary to the said provision, the respondents reinstated the petitioner in service with continuity of service and pay protection in the post of Helper, not on par with his co-appointee by name S.Ponnar. Having failed to provide an alternative employment immediately after the claim petitioner and having denied to provide pay protection on par with his co-appointee in terms of Section 47(1) of the Act, the respondents now cannot deny the rights legally entitled to the petitioner.

5. He would further submit that the respondents denied backwages and other benefits on the ground that the petitioner had not challenged the order denying the alternative employment dated 25.10.2005 and that he kept silent for about 9 years. The respondents have not raised the plea of delay in W.P.(MD).No.17507 of 2014 and it is only an afterthought. Merely because the petitioner did not challenge the order dated 25.10.2005, he cannot be denied backwages. Thus, he prayed to allow this writ petition.

6. The learned counsel appearing for the respondents submitted that though the respondents, by order dated 25.10.2005, rejected the claim of alternative employment, the petitioner had not challenged that order and kept silent for about 9 years and thereafter only fought for alternative employment. In W.P.No.17507 of 2014, this Court, by order dated 30.10.2014, directed the respondents to provide alternative employment with continuity of service to the petitioner and accordingly, the petitioner was reinstated in service as Helper with continuity of service and pay protection. This Court left the question of payment of backwages to be decided by the respondents Corporation primarily on the reason that the petitioner has not challenged the proceedings of the 2nd respondent dated 25.10.2005. The petitioner has not assigned any reason justifying his silence for more than nine years for not taking any steps to get alternative employment. Therefore, the claim of backwages is liable to be rejected on the sole ground of delay and latches.

7. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents and perused the materials available on record.



8. Admittedly, in this case, it is not in dispute that the petitioner, while on duty, had met with an accident and suffered by 65% disability, due to which he was declared to be unfit for the post he was holding. It is also not in dispute that on 09.02.2005, the petitioner submitted a representation seeking to provide him an alternative employment with pay protection in terms of the Act. However, the respondents, by proceedings dated 25.10.2005, rejected the said representation holding that the Act is not applicable to the case of the petitioner.

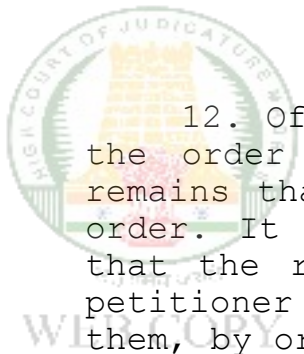
9. The provision of Section 47(1) of the Act reads as follows:
"47.Non-discrimination in Government Employments:

(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits: provided further that if it is not possible to adjust the employees against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability: provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

10. A bare reading of the above provision makes it clear that it is the duty of the employer to provide an alternative employment to an employee, who acquired disability during his service and became not suitable for the post he was holding, with the same pay scale and service benefit.

11. When it is the duty of the respondents to provide alternative employment to the petitioner, the respondents ought not to have refused to provide alternative employment by rejecting his representation as early as on 25.10.2005. In W.P.(MD).No.17507 of 2014, this Court has already held that there is no reason to reject his request for alternative employment in view of the mandatory provision contained in Section 47(1) of the Act and left it open to the respondents to decide about the backwages. Having failed to do their legal obligation, now the respondents refused to provide backwages only on the reason that the petitioner kept silent about 9 years without challenging the order, dated 25.10.2005, rejecting the claim of alternative employment.



12. Of-course, it is true that the petitioner did not challenge the order dated 25.10.2005 for about nine years. But, the fact remains that even thereafter the petitioner did not challenge that order. It is seen that the respondents themselves having realized that the rejection of the claim of alternative employment of the petitioner was not correct, called the petitioner to appear before them, by order dated 28.12.2013 and as such, the petitioner appeared before them. Thereafter, as there was no progress in considering his request, the petitioner had filed W.P.(MD).No.17507 of 2014 and as per the order of this Court, he was provided with alternative employment with continuity of service. When it is not in dispute that the petitioner had suffered fractures, underwent surgeries and sustained 65% disability, he would have definitely faced difficulties physically and financially. In that circumstances, he could not have challenged the rejection order. Therefore, the act of the petitioner not challenging the rejection order dated 25.10.2005 cannot be taken serious note of. As stated earlier, having failed in their duty, now the respondents cannot refuse to pay backwages stating that the petitioner kept silent.

13. Though this Court, by order dated 30.10.2014, left it open to the respondents to decide about backwages, the reason for rejection of backwages to the petitioner cannot be accepted for the simple reason that it is only the respondents who failed to provide alternative employment by considering the request of the petitioner then and there, and provided alternative employment belatedly to the petitioner having realized that their earlier stand is not legally correct. Therefore, this Court is inclined to set aside the impugned orders.

14. In the result, this Writ Petition is allowed and the impugned orders are set aside only in respect of denying backwages, pay protection and continuity of service to the petitioner. The respondents are directed to regularize the service of the petitioner from 09.04.2002 to 27.05.2015 as on duty, provide pay protection, continuity of service and backwages on par with his immediate junior or co-appointee by name S.Ponnar within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gcg



TO:

1.The Tamil Nadu State Transport Corporation (Kumbakonam) Limited,
represented by its Managing Director,
Kumbakonam.

2.The General Manager,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Trichy Region,
Trichy.

+1 CC to M/s.A.RAHUL, Advocate (SR-24499[F] dated 08/12/2020)

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-24509[F] dated 08/12/2020)

order made in
W.P(MD)No.21506 of 2015

08.12.2020

ARK(CO)
NR (17/12/2020) 6P : 5C