



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE M. S. RAMESH

W.P. (MD) No.6771 of 2019

and W.M.P. (MD).No.5411 of 2019

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A. John Benedict Alexander

... Petitioner

Vs.

1. The State of Tamil Nadu,
represented by the Secretary,
School Education Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Director of School Education,
Directorate of School Education,
DPI Campus,
Chennai - 600 009.
3. The District Educational Officer,
Office of the District Educational Officer,
Dindigul District.
4. The Block Educational Officer,
T-Vadipatti Educational Block,
T-Vadipatti - 624 218,
Dindigul District.
5. The Correspondent,
R.C. Middle School, Sholavandhan,
Dindigul District.
6. The Dean,
Government Rajaji Hospital,
Madurai, Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus directing the respondent No.5 to keep the petitioner on a supernumerary post with the same pay scale and service benefits in accordance with the section 20 of the rights of persons with disabilities At 2016 after getting the medical examination report from the respondent No.6.

For Petitioner : Mr.S.Louis

For Respondents : Mr.N.Shanmuga Selvam for R1 to 4 & 6
Additional Government Pleader
Mr.S.Dayalan for R5
Government Advocate



ORDER

Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader and the learned Government Advocate appearing for the respondents.

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2.The petitioner herein was appointed as a B.T.Assistant (Maths) under the fifth respondent school on 04.01.2007, which is an aided minority school. It is stated that the petitioner had met with a major accident on 27.04.2015 and had suffered serious head injuries. For the purpose of re-accommodating the petitioner back into the service, the petitioner herein had filed a writ petition before this Court and by order dated 14.08.2019 in W.P.(MD).No.17952 of 2018, he was permitted to appear before the Medical Board Officer, Usilampatti, on 27.08.2018. Accordingly, the Medical Board had examined the petitioner on 12.02.2019 and the disability percentage was given as follows:

"Moderate intellectual impairment	75%
Right Hemiparesis	25%
Cumulative disability percentage	80%"

3.In this background, the present writ petition has been filed seeking for a direction to the fifth respondent to accommodate the petitioner on supernumerary post, in accordance with Section 20 of the Rights of the Persons with Disabilities Act, 2016 (herein after referred to as 'the Act').

4.While the learned counsel for the petitioner would submit that though the petitioner herein may not be in a position to render his service as a B.T.Assistant, an alternate employment could be considered by the fifth respondent in view of Section 20 of the Act. Mr.S.Dayalan, learned Government Advocate for the fifth respondent would submit that the fifth respondent is a minority school and even assuming that the petitioner is considered to be appointment, that would be subject to the availability of vacancy.

5.The learned Additional Government Pleader placed reliance on the counter affidavit and submitted that it is not possible for accommodating the petitioner in a teaching profession, in view of his medical condition and since the school is an aided school, creation of supernumerary post also is not permissible.

6.Section 20 of the Act reads hereunder.

"20.Non-discrimination in employment - (1) No Government establishment shall discriminate against any person with disability in any matter relating to employment.

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, exempt any establishment from the



provisions of this section.

(2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

(3) No promotion shall be denied to a person merely on the ground of disability.

(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:

Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall 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 employee 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.

(5) The appropriate Government may frame policies for posting and transfer of employees with disabilities."

7. The medical examination conducted by the Board, pursuant to the order of this Court in W.P.(MD).No.17952 of 2018, spells out the disability of the petitioner. However, it is claimed that the petitioner would be in a position to render service in some other suitable post other than teaching profession for the present. Section 20 prohibits discrimination in employment to any person with disability and provides that, if the disabled employee is not suitable for the post he was holding, he could be accommodated in some other post with the same pay scale and service benefits. Likewise, the last proviso to Section 20, meets situations, when the employer is unable to accommodate the disabled employee in any post, by creating a supernumerary post, until a suitable post is available or the employee attains the age of superannuation, whichever is earlier. The provision to Section 20 is mandatory in nature. As such, the medical condition of any employee cannot be quoted as a disqualification of her/his continuation in the service itself. With this object in mind, that the Act provides creation of a supernumerary post, even in cases when the posts are not available on the date of consideration.

8. With the above observations, it would be appropriate to direct the fifth respondent herein to comply with Section 20 of the Act, by either accommodating the petitioner in some other post other than B.T. Assistant with the same pay scale and service benefits or in case, the fifth respondent is of the view that there are no vacancy is available in any such posts, the petitioner's candidature shall be kept on a supernumerary post till such suitable post is available or he attains the age of superannuation, which ever is earlier.



9.It is also stated that the copy of the medical report has not been served either on the petitioner or on the fifth respondent school.

10.With the above observations, the petitioner is granted liberty to make an appropriate application, enclosing a copy of this order to the fifth respondent and on receipt of the same, the fifth respondent herein shall comply with the directions given in this order forthwith. The sixth respondent herein namely the Dean, Rajaji Government Hospital, shall also forthwith supply a copy of the medical report conducted on the petitioner in the medical examination held at the Government Hospital on 12.02.2019, to the petitioner, as well as the fifth respondent herein, in order to effectively implement the observations made in this order.

10.This writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)

TM

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The State of Tamil Nadu,
represented by the Secretary,
School Education Department,
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- 2.The Director of School Education,
Directorate of School Education,
DPI Campus,
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3.The District Educational Officer,
Office of the District Educational Officer,
Dindigul District.

4.The Block Educational Officer,
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Dindigul District.

5.The Correspondent,
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Dindigul District.

6.The Dean,
Government Rajaji Hospital,
Madurai, Madurai District.

+1 CC to M/s.S.LOUIS, Advocate (SR-13158[F] dated 24/03/2021)

W.P. (MD) No.6771 of 2019
23.03.2021

RK (23.04.2021) 5P 8C

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