



WEB COPY

W.A.(MD).No.213 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

and

THE HONOURABLE MS.JUSTICE R.THARANI

W.A. (MD) .No.213 of 2018

and

C.M.P. (MD) .No.1120 of 2018

Tamil Nadu State Transport Corporation

(Kumbakonam) Limited,

Rep. by its Managing Director,

Tamil Nadu State Transport Corporation

Kumbakonam Division I,

Railway Station New Road,

Kumbakonam 612 001

... Appellant/Respondent

Vs

A.Sambantham,

S/o.Arumugam,

Keezha Theru,

26, Sethur Post - 609 112

Mayiladuthurai Taluk,

Nagapattinam District.

... Respondent/Petitioner

PRAYER : Writ Appeal filed under Clause 15 of Letters Patent against the order dated 02.01.2017 passed in W.P.No.4034 of 2009.

Prayer in WP(MD). 4034/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the respondent in Ref. த.அ.பொ.க/கும்ப/ச2/10/2008, dated 11.3.2009 and quash the same and consequently direct the respondent to pay regular pensionary benefits to the petitioner together with the arrears and all consequential benefits.

For Appellant :Mr.D.Sivaraman
Standing counsel

For Respondents :Mr.T.Antony Arulraj

J U D G M E N T

(Judgment of the Court was delivered by **N.KIRUBAKARAN, J**)

Workman lost his vision;

Is it due to his invitation?

<https://hcservices.tn.gov.in/hcservices/> Vision is due to medical reason:



The employer should have exhibited responsibility by providing alternate duty. However, the instant case demonstrates appellant's irresponsibility.

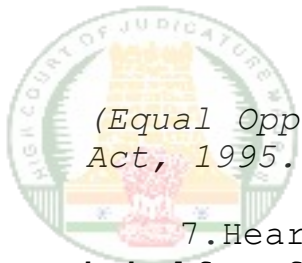
2.The present Appeal has been preferred by the Transport Corporation against the order of the learned Single Judge quashing the order passed by the appellant by which the appellant denied statutory rights as well as pensionary benefits to the respondent.

3.The facts of the case is that the respondent/workman was appointed as a driver in the Tamil Nadu State Transport Corporation, Kumbakonam in the year 1980. During his tenure of service, the respondent lost his vision. Thereafter, based on the medical ground, the respondent was discharged from duty on 05.01.1998. Though the respondent has been approaching the appellant time and again seeking for an alternate employment and he was sent to medical board by the appellant, no employment was given to the respondent and in the meanwhile, the respondent attained the age of superannuation on 31.12.2008.

4.Prior to attaining the age of superannuation, the respondent filed a writ petition in W.P.(MD).No.9560 of 2008 and the same came to be dismissed on 04.11.2008. Since the respondent did not enclose the copy of the representation or acknowledgement sent to the appellant, this Court dismissed the Writ Petition with liberty to the respondent to make a fresh representation to the appellant and on such representation, the appellant was directed to consider the same in the light of the provisions made in The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 without any delay and pass orders.

5.Pursuant to the said order, the appellant passed an order dated 11.03.2009, rejecting the respondent's request for alternate employment. The said order of rejection was challenged before this Court before the learned Single Judge in W.P.(MD).No.4034 of 2009. The learned Single Judge vide order dated 02.01.2017 quashed the order passed by the appellant against which the present Writ Appeal has been filed.

6.Mr.D.Sivaraman, learned Standing Counsel would submit that when the respondent/workman sustained loss of vision, he cannot be given an alternate employment as he was a driver in the appellant/Transport Corporation. Therefore, based on the medical advice only, the respondent was rightly discharged from service on 05.01.1998. Hence, the order passed by the learned Single Judge has to be set aside. However, Mr.Antony Arulraj, learned Counsel for respondent would justify that the impugned order is in consonance with the provisions of *The Persons With Disabilities*



(Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

7. Heard Mr.D.Sivaraman, learned Standing Counsel appearing on behalf of the appellant/Transport Corporation and Mr.Antony Arulraj, learned counsel appearing on behalf of the respondent/workman.

8. There is no dispute with regard to the fact that the respondent was employed as a driver in the appellant/Transport Corporation from the year 1980 onwards. While serving as a driver, the respondent lost his vision. Nobody would like to lose the vision voluntarily. There are numerous medical and physiological reasons for losing the vision, for that matter any disease. When such is the position, the respondent/workman cannot be held responsible for loss of his vision. Unless there is negligence or misdeed on the part of the workman for the reasons stated in the service conditions, the workman cannot be discharged or terminated from service.

9. It is admitted by the appellant that the respondent lost his vision during his service. When such is the position, it is the onerous duty of the appellant/Transport Corporation to take care of the workman and consequently, his family by giving all benefits including alternate employment in the appellant/Transport Corporation.

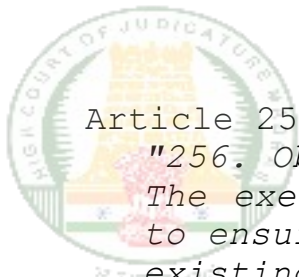
10. The Parliament thought it fit to enact a statute to protect the interest of the workman like the respondent herein and passed a beneficial legislation called "*The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995*". The rights of the disabled are protected under the Act. The Act has been passed based on the international proclamation and it has been categorically stated in the preamble of the Act, which is extracted as follows:

"An Act to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region.

WHEREAS the Meeting to Launch the Asian and Pacific Decade of Disabled Persons 1993-2002 convened by the Economic and Social Commission for Asia and Pacific held at Beijing on 1st to 5th December, 1992, adopted the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region;

AND WHEREAS India is a signatory to the said Proclamation;

AND WHEREAS it is considered necessary to implement the Proclamation aforesaid."



Article 256 of the Constitution of India reads as follows:

"256. Obligation of States and the Union :

The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose."

The Government is bound by the aforesaid international covenants and proclamation.

11. In view of that, to give full effect to the proclamation on the full participation and equality of people with disabilities in Asian and Pacific region, the Act has been passed and has been given effect from 01st January 1996.

12. A cursory perusal of the Act, especially Section 2(i) of the Act envisages that the persons who are suffering from disabilities, especially blindness, low-vision, leprosy-cured, hearing impairment, locomotor disability, mental retardation and mental illness have to be protected. Further, Section 47 of the Act speaks about non-discrimination in Government employment and the said section is usefully reproduced hereunder:

"47. Non-discrimination in Government Employment - (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 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.

(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."

13. The appellant is a Government of Tamil Nadu undertaking fully sponsored and administered by Government of Tamil Nadu, coming under the definition of State under Article 12 of the Constitution of India. Therefore, the Act will in its full vigor apply to the appellant/Transport Corporation. Moreover, the appellant is covered under Section 2(k) of the Act which reads as follows:



2. Definitions. -In this Act, unless the context otherwise requires,-

a.

b.

k. "establishment" means a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) and includes Departments of a Government;

14. Section 47 of the Act makes it clear that no establishment shall dispense with the services of an employee who acquired disability during his service and such employee should be shifted to alternate post in the same pay scale and service benefits and if it 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.

15. In view of the aforesaid position of law, the respondent/workman should have been given an alternate post and if it is not possible, he should have been kept in supernumerary post till he attained superannuation. As per the mandate of the Act, the respondent/workman is entitled to the following benefits.

1. The respondent/workman should not have been discharged from service on 05.01.1998.

2. The respondent/workman should have been provided with an equal alternate post.

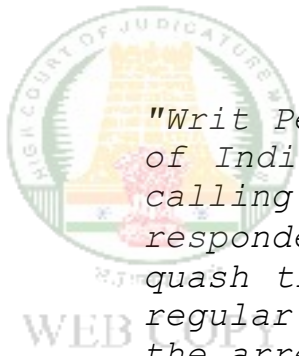
3. If in case, it is not possible to provide alternate post, the respondent/workman should have been kept in a supernumerary post until suitable post is available or he attains the age of superannuation.

4. There cannot be any reduction in the post or all other benefits.

16. Taking into consideration of the above aspects, the learned Single Judge relying upon Section 47 of the Act has rightly held that the respondent is deemed to have been in service till he attained superannuation. However, the learned Single Judge had directed to give only the pensionary benefits to the respondent/workman without noting that respondent has sought for quashing of the order and direction to pay regular pensionary benefits together with arrears of all consequential benefits. Even the order passed by the learned Single Judge has not been implemented by the Appellant and the same is being challenged before this Court.

17. The prayer sought for in the Writ Petition reads as follows:

<https://hcservices.courts.gov.in/hcservices/>



"Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the respondent in Ref.த.அ.பொ.க/கும்ப/ச2/10/2008, dated 11.03.2009 and quash the same and consequently direct the respondent to pay regular pensionary benefits to the petitioner together with the arrears and all consequential benefits"

The respondent/workman has sought for arrears of salary and other consequential benefits, apart from regular pensionary benefits. The respondent/workman should have come by way of an Appeal against the partial order allowing of the Writ Petition only granting the pensionary benefits. As stated above, the respondent sought for all the benefits including the arrears of salary. Even in the absence of any appeal by the respondent/workman, this Court would go into the issue of granting benefits to the workman against the order of the learned Single Judge, since it is the duty and responsibility of this Constitutional Court not only to protect the poor workman who lost his vision during service but also to implement the beneficial Act passed by the Parliament. In view of that, this Court while sustaining the order passed by the learned Single Judge granting pensionary benefits also grants arrears of salary and all other consequential benefits deeming the respondent/workman to be in service till he attained superannuation on 31.12.2008.

18. Eventhough the prayer sought for by the petitioner in the Writ Petition is to quash the order dated 11.03.2009 by which the appellant herein had denied alternate employment, the impugned order which has been passed against the respondent/workman is the discharge order dated 05.01.1998 by which the respondent/workman was discharged from service on medical ground. Though the said order has not been challenged by the respondent, this Court cannot mechanically decide the matter based on the prayer sought for before this Court, but should go into the very root of the matter. The root cause of the case is the discharge order dated 05.01.1998 which has been passed in violation of Section 47 of *The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995*. In view of the same, the order dated 05.01.1998 is quashed, even though it has not been challenged by the respondent. It is the duty of the appellant/Transport Corporation to go by the Act passed by the Parliament and give benefit to the disabled employee. The appellant/Transport Corporation cannot shirk its responsibility in not only denying the benefit to the respondent/workman but also frustrating the very noble intention of the Parliament in enacting the Act. The establishment Corporations/Authorities which are coming under Article 12 of the Constitution are bound by the Acts passed by the Parliament as well as by the legislature and that

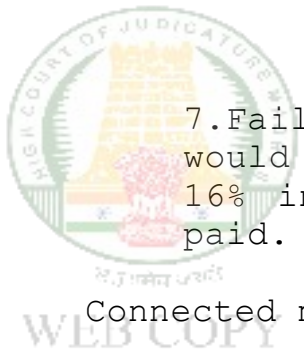


should clearly act in furtherance of the Act and not in violation of the Act, failing which this Court is entitled to deprecate and condemn those authorities who violate the statutes, apart from awarding exemplary costs.

19.This is not the first time the appellant/Transport Corporation is negligent in implementing the Act passed by the Parliament. In numerous cases, in case of disability, the usual order of discharge has been passed prejudicing the rights of the workmen, compelling them to approach the Labor Court as well as this Court. It not only violates the rights of the workmen but also frustrates the intention of the Parliament. Further, the judicial time is also wasted unnecessarily because of the wrong orders passed by the appellant/Transport Corporation. This Court had an opportunity to deal with similar type of cases before the Principal Bench and one of us [NKKJ] while sitting in a Division Bench authored a judgment in the case of *Managing Director, Tamil Nadu State Transport Corporation Ltd., Vs. E.Humayun Sheriff* awarding costs of Rs.50,000/- to be paid by one of the State Transport Corporation. In spite of the said order, the appellant or similarly placed Transport Corporations are bent upon passing such irresponsible orders which have been regularly set aside by this Court and therefore, the attitude of the appellant/Transport Corporation needs to be deprecated or condemned. Though this Court is justified in awarding heavy costs, this Court is not awarding exemplary costs, in view of the bad financial position of the appellant/Transport Corporation.

20.In fine, the Writ Appeal is dismissed with the following directions:

- 1.The order of the learned Single Judge quashing the order dated 11.03.2009 and granting pensionary benefit alone to the respondent/workman is upheld.
- 2.The order of discharge dated 05.01.1998 passed by the appellant, though is not challenged before this Court is quashed, since it violates Section 47 of the Act.
- 3.The respondent/workman is deemed to have been in service from 05.01.1998 till he attained superannuation on 31.12.2008.
- 4.In view of the above, the respondent/workman is entitled to salary for the aforesaid period from 05.01.1998 to 31.12.2008.
- 5.His service is deemed to have been ended only on 31.12.2008 and therefore, the entire service period upto 31.12.2008 is deemed to be considered as service for calculating pensionary benefits and other statutory benefits.
- 6.The arrears of salary and statutory benefits calculating arrears and pension should be paid within 12 weeks from the date of receipt of a copy of the order.



7.Failure to pay the amount within the stipulated period would render the appellant to pay the said amount along with 16% interest for the said amount till the entire amount is paid.

Connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar (CS)

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TO
The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Tamil Nadu State Transport Corporation
Kumbakonam Division I,
Railway Station New Road,
Kumbakonam 612 001

+1 CC to MR.D.SIVARAMAN, Advocate (SR-17613[F] dated 27/04/2021)

+1 CC to MR.T.ANTONY ARUL RAJ, Advocate (SR-17790[F] dated 28/04/2021)

W.A. (MD) .No.213 of 2018

Dated : 26.04.2021

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