



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.12.2019

DELIVERED ON : 07.01.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)Nos.4947 and 10109 of 2014

and

M.P. (MD) .Nos.2 and 2 of 2014

P.Gajapathy ... Petitioner in W.P.(MD).No4947 of 2014
V.Viswanathan ... Petitioner in W.P.(MD).No.10109 of 2014

Vs.

The Management of Tamilnadu State
Transport Corporation (Kumbakonam) Ltd.,
Kumbakonam Region,
rep. by its General Manager,
Kumbakonam. ... Respondent in both the petitions

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned orders dated 11.03.2013 and 11.06.2013 passed in Ref:TNSTC/Kumba/E3/1613/2013 and Ref: TNSTC/Kumba/E3/1985/2013 respectively, quash the same and consequently to direct the respondent to provide a suitable alternative permanent employment to the petitioners with pay protection, continuity of service, backwages from 14.03.2013 and 13.06.2013 respectively and all other attendant benefits in accordance with Section 47(1) of the Persons with Disabilities (Equal Opportunities, protection of Rights and Full Participation) Act, 1995.

For petitioner in
both the petitions : Mr.M.Ajmal Khan,
Senior Counsel for
for Mr.S.Arunachalam

For respondent in
both the petitions : Mr.D.Sivaraman

ORDER

Both the writ petitions have been filed challenging the orders relieving them from service on medical grounds and for a direction to the respondent to provide them an alternative employment with pay protection, continuity of service, backwages and all other attendant



benefits in accordance with Section 47(1) of the Persons with Disabilities (Equal Opportunities, protection of Rights and Full Participation) Act, 1995.

2. The learned senior counsel appearing for the petitioners submitted that the petitioners were appointed as Driver in the respondent Corporation and they were made permanent driver in the year 1996 and 1999 respectively. Due to serious illness, they expressed their inability/disability to perform their work as Driver to the respondent. The respondent, without informing the petitioners as to their right to get alternative employment, asked them to give a letter requesting medical discharge with an undertaking that they would not claim alternative employment and as such, the petitioners gave separate letters and also an affidavit in separate Non-Judicial Stamp Papers to that effect to the respondent. Based on the same, they were referred to Medical Board and the Medical Board reported that they are unfit for the post of Driver. Based on the report of the Medical Board, the respondent issued show cause notice to the petitioners to explain as to why they should not be relieved on medical ground. After getting explanation from the petitioner, the petitioners were discharged from service on medical ground. Immediately, on coming to know that they are entitled to alternative employment, the petitioners were sent representations seeking alternative employment, but they were not considered by the respondent. Hence, the petitioners have come up these writ petitions challenging the impugned orders of discharge.

3. The learned senior counsel appearing for the petitioners would further submit that the contents in the representations and affidavit in stamp papers filed by the petitioners are one and the same and verbatim identical, which proves that the respondent was the author of the statements and obtained signatures of the petitioners in the same. However, in the said representations as well as affidavit nowhere it is mentioned about offering of alternative employment by the respondent and that the petitioners declined the same and insisted only medical discharge. It is the duty of the respondent to inform to the petitioners about their readiness to provide alternative employment by finding out suitable job to their health condition. But, the respondent has failed to do so. Further, till date the respondent has not released the terminal and pensionary benefits to the petitioners and therefore, the petitioners cannot be stated to be relieved from service by the respondent and the respondent cannot deny alternative employment stating that the petitioners are relieved from service. Thus, he prayed to allow this writ petition.

4. In support of the above contention, the learned senior counsel appearing for the petitioners relied upon the following decisions:

(a) Bhagwan Dass and another Vs. Punjab State Electricity Board, 1984, 1 SCR 100, 1984 (2) L.L.N. 1; and



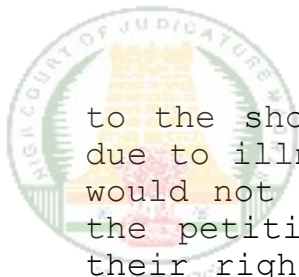
(b) E.Sheriff Vs. Tamil Nadu State Transport Corporation, Chennai, reported in 2008 (3) L.L.N. 419.

5. The learned counsel appearing for the respondent submitted that due to illness, the petitioners felt that they could not continue their avocation and therefore, they requested the management by written representations to discharge them from service on medical grounds. In addition to the written representations, they submitted individual affidavits also. In both the representations and affidavits, the petitioners have voluntarily submitted that they will not claim alternative employment as they were not in a position to work any more, which would show that they knew about their rights available under Section 47(1) of the Act. Based on the same, they were discharged from service on medical grounds. Surprisingly, after more than ten months from the date of their medical discharge, the petitioners wanted them to be accommodated in alternative employment and submitted representations. As they were already relieved from service, the claim of the petitioners could not be considered. While so, challenging the orders discharging them from service, the petitioners have filed these writ petitions.

6. The learned counsel appearing for the respondent would further submit that simply because the different employees have submitted verbatim identical affidavits, it cannot be presumed that the management was the author of the said affidavits. He would further submit that the Provident Fund amount has been immediately settled to the petitioners after the impugned orders. The writ petitioner in W.P.(MD).No.4947 of 2014 is entitled for total unpaid terminal benefits of Rs.1,06,421/-, however, the amounts to be recovered from him is Rs.4,09,219/- for increment cut, advance salary, etc. The over due payable by him is Rs.3,02,798/-. Similarly, the writ petitioner in W.P.(MD).No.10109 of 2014 was settled with the Provident Fund amount immediately. The total unpaid terminal benefit is Rs.1,16,459/-, whereas the total amount to be recovered from him is Rs.1,32,850/- for increment cut, advance salary, etc. The over due payable by him is Rs.16,391/-. In view of the above, they were not paid the other terminal benefits and pension. Thus, he prayed to dismiss this writ petition.

7. Heard the learned counsel appearing for both sides and perused the records carefully.

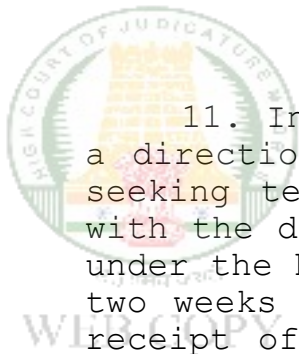
8. Admittedly, it is not in dispute that the petitioners were given representations and affidavits seeking discharge from service on medical ground voluntarily and not on compulsion. It is also equally not in dispute that the petitioners are not illiterate. In the representations as well as in the affidavits, the petitioners have categorically stated that they would not claim alternative employment, which would show that they knew about their rights under Section 47(1) of the Act. Even in the reply given by the petitioners



to the show cause notice, it is categorically stated by them that due to illness, they may be relieved on medical ground and that they would not claim alternative employment. The above statement made by the petitioners would further clearly shows that they knew about their rights under the Act. Even assuming that the undertaking to the effect that they would not claim alternative employment, has been given by the petitioners as dictated by the respondent, by mere reading the said statement, even a layman can easily understand that he has right to get an alternative employment. Having given such an undertaking in the representation, affidavit and reply to the show cause notice and having failed to be vigilant enough, now the petitioners cannot blame the respondent. Since the petitioners themselves thrice have categorically given an undertaking that they would not claim alternative employment, the question of once again informing about their rights under the Act would not have arisen. Therefore, the contention of the petitioners that they were not informed by the respondent about their rights under Section 47 of the Act and therefore, they should be reinstated in service and provided alternative employment, cannot be sustained. Further, the decisions relied on by the learned senior counsel for the petitioners are not applicable to the facts and circumstances of this case and therefore, they are not taken into account.

9. The next submission of the learned counsel for the petitioners is that till date the respondent has not provided terminal and pensionary benefits to the petitioners and therefore, they are not fully relieved from service and hence, they are entitled to claim alternative employment. Merely because, the terminal benefits have not been provided, it cannot be taken that they are in continuous service. More over, in this case, the petitioners have already received their Provident Fund amount on their relieving from service. The petitioners were made their claim of alternative employment only after a period of ten months from the date of their relieving from service. Therefore, the above submission of the petitioners cannot be accepted and the relief as sought for by the petitioners cannot be granted.

10. It is stated by the respondent that the amount to be recovered from the petitioners is more than the amount to be settled to the petitioners and therefore, they were not provided with terminal benefits. A perusal of record shows that a nominal amount to be recovered from the petitioners, according to the respondent, is the unimplemented increment cut. It is not known as to whether the above position has been intimated to the petitioners or not. Therefore, this Court is of the view that it would be appropriate to direct the petitioners to submit a detailed representation seeking terminal and pensionary benefits to the respondent along with the decisions relied by them in respect of unimplemented increment cut, etc., and the same may be directed to be disposed of by the respondent within a stipulated time.



11. In the result, both the Writ Petitions are disposed of with a direction to the petitioners to submit a detailed representation seeking terminal and pensionary benefits to the respondent, along with the decisions relied by them in respect of deduction of amount under the head of "unimplemented increment cut", within a period of two weeks from the date of receipt of a copy of this order and on receipt of such representations, the respondent shall consider the same and pass appropriate orders on merits and in accordance with law within a period of three weeks thereafter. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

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To

The Management of Tamilnadu State
Transport Corporation (Kumbakonam) Ltd.,
Kumbakonam Region,
rep. by its General Manager,
Kumbakonam.

+1 CC to Mr.D.SIVARAMAN, Advocate (SR-498[F] dated 07/01/2021)

common order made in
W.P (MD) Nos.4947 and 10109 of 2014
07.01.2021

VB (20.01.2021) 5P 3C