



W.P.No.12117 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 06.05.2022

CORAM :

THE HON'BLE MR. JUSTICE **R. MAHADEVAN**

W.P.No.12117 of 2022
and
W.M.P.No.11552 of 2022

B.Venkatarathinam

..Petitioner

Vs

1.Metropolitan Transport Corporation
(Chennai) Limited,
Rep. by its Managing Director,
Pallavan Salai, Chennai - 2.

2.The General Manager,
Metropolitan Transport Corporation
(Chennai) Ltd.,
Pallavan Salai, Chennai - 2.

3.The Senior Deputy Manager (HR),
Metropolitan Transport Corporation
(Chennai) Ltd.,
Pallavan Salai, Chennai - 2.

4.The Branch Manager,
Metropolitan Transport Corporation
(Chennai) Ltd.,
Ambathur Depot, Chennai - 53.

..Respondents



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Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus directing the respondents to provide the petitioner suitable alternative employment on permanent basis is commensurate with his health condition with continuity of service, pay protection, back wages and other service benefits and to treat the entire period from 18.09.2019 till date during which he was not given light duty as duty with pay for all purposes.

For Petitioner : Mr.S.Sakthivel
For Respondents : Mrs.Anitha,
Special Government Pleader

ORDER

Seeking to issue a writ of mandamus directing the respondents to provide alternative employment on permanent basis to the petitioner, together with continuity of service, pay protection, backwages and other service benefits, the present writ petition has been filed.

2. According to the petitioner, he was appointed as a Driver in the respondent-Corporation in the year 2009 and his services came to be regularized on 01.07.2010. On 18.09.2018, while he was in duty, the petitioner suffered brain stroke and he was undergoing treatment for the same. Due to the said medical ailment, he was declared as unfit for the post



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of Driver, through the report of the Medical Board on 24.01.2020. Based on the report, the petitioner was assigned alternative employment with light duty. Thereafter, from 02.03.2022, the respondent-Corporation did not assign any light duty and they forced the petitioner to resume the post of Driver. Aggrieved against the same, the petitioner made representations to the respondents on 26.03.2022 and 26.04.2022 seeking alternative employment. However, the said representations have not been considered, so far. Therefore, this writ petition.

3. The learned counsel for the petitioner submitted that the petitioner has been continuously taking treatment for right massive MCA infarct with decompressive hemicraniectomy. However, the respondent Corporation, without reassessing the present health condition of the petitioner, by referring him to the Medical Board, directed him to to join the regular duty of driver, which is arbitrary, illegal and violative of Articles 14, 16 and 21 of the Constitution of India. Relying on section 20(4) of the Rights of Persons with Disabilities Act, 2016, (RPwD Act, 2016) the learned counsel submitted that taking note of the nature of the ailment suffered by the



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petitioner, he may be provided with alternative employment. Stating so, the learned counsel prayed for a direction to the respondent corporation to consider the representations submitted by the petitioner in this regard.

4. On the above submissions, this court heard the learned Special Government Pleader taking notice for the respondents.

5. Admittedly, the petitioner suffered brain stroke, while he was in service and has been continuously taking treatment for the same. It is also not in dispute that as per the medical report dated 24.01.2020, the petitioner was declared as unfit for the post of driver and based on the same, he was provided with light duty.

6. Now, it is the grievance of the petitioner that without referring the petitioner to the Medical Board for reexamining the present health condition, he was forced to join duty as driver. In this regard, the petitioner made representations to the respondent Corporation, which were not considered, till date.



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7. Undoubtedly, Section 20(4) of the RPwD Act, 2016 provides a reasonable accommodation to the persons with disabilities and the same is quoted below for ready reference:

“(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.”

8.In the light of the aforesaid legal position and having regard to the submissions made by the learned counsel for the petitioner, which seems to be *bona fide*, this court directs the respondent Corporation to consider the representations of the petitioner dated 26.03.2022 and 26.04.2022 and pass appropriate orders, after reassessing the present health condition by referring him to the medical board, within a period of four weeks from the date of receipt of a copy of this order.



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WEB COPY 9.This writ petition stands disposed of in the above terms. No costs.

Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

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To

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R. MAHADEVAN, J.

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