



**W.P.(MD)No.8458 of 2018**

**WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON : 22.08.2022

PRONOUNCED ON : **21.09.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE M.S.RAMESH**

**W.P.(MD)No.8458 of 2018**

V.Shanmugam

...Petitioner

Vs.

1.The Chairman,  
Tamil Nadu Generation of Electricity & Distribution  
Corporation Ltd.,  
Anna Salai,  
Chennai-600 002.

2.The Superintending Engineer,  
Pudukkottai Electricity Distribution Circle,  
Pudukkottai.

3.The Chief Internal Audit Officer,  
Board Office Audit Branch,  
Tamil Nadu Electricity Board,  
No.144, Anna Salai,  
Chennai.

...Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the second respondent in his proceedings in Ka.No.00445/Ne.A/Pa.Pirivu./Oo.3/Ko.Pension/2017 dated 28.11.2017,



**W.P.(MD)No.8458 of 2018**

quash the same as illegal, arbitrary and directing the respondents to pay arrears of salary from 02.11.2007 to till 21.02.2020 and directing the respondents to take proper steps to sanction pension benefits by taking into services of the petitioner from 1998 to 2020.

For Petitioner : Mr.K.Baalasundharam  
For Respondents : Ms.P.Malini  
for M/s.T.S.Gopalan & Co.

### **ORDER**

Heard Mr.K.Baalasundharam, learned counsel for the petitioner and Ms. P.Malini, learned Standing counsel for the respondents/TANGEDCO.

2. The brief facts of the case are as follows:-

The petitioner herein while in service in the Tamil Nadu Generation of Electricity & Distribution Corporation (hereinafter referred to as "TANGEDCO"] of Pudukottai Circle as a wireman in the year 2006, fell from an electric pole and sustained permanent disabilities. On the basis of the opinion of the Regional Medical Board, Thanjavur Medical College Hospital, Thanjavur, he was invalidated from service on 20.12.2007. In view of his invalidation, he could not complete the minimum 10 years of qualifying service to be eligible for pensionary benefits. In this background, when the



**W.P.(MD)No.8458 of 2018**

WEB COPY

petitioner herein had sought for inclusion of his service period as a contract labourer for the purpose of qualifying himself for pensionary benefits, his claim was rejected through the impugned order dated 28.11.2017, stating that such inclusion of the contract labour service, is impermissible under the TANGEDCO / Board's Regulations. The petitioner now seeks for quashing of this order, with a consequential prayer for sanctioning of pensionary benefits to him.

3. The learned counsel for the petitioner submitted that under Section 47(1) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 [hereinafter referred to as "Disabilities Act"], the action of the respondents' Board/TANGEDCO, incapacitating the petitioner from service, is illegal and therefore the consequential rejection of the petitioner's claim for pensionary benefits, requires to be set aside.

4. The learned counsel for the respondent board/TANGEDCO on the other hand submitted that, the Writ Petition is liable to be rejected on the ground of delay and laches. According to the learned counsel, the petitioner has chosen to question his invalidation that was made on



**W.P.(MD)No.8458 of 2018**

20.12.2007, in the year 2017. It is her further submission that after the invalidation of the petitioner, his son namely, Mr.S.Velpandian was given compassionate appointment as a Assessor Gr-II (Trainee) on 31.10.2013, by TANGEDCO and therefore, the petitioner is not entitled for any other relief, much less qualifying for pensionary benefits.

5. Section 47(1) of the Disabilities 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 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.”*

The provision is self explanatory. Thus, when a Government employee acquires a disability during his service, the Board cannot dispense with his



**W.P.(MD)No.8458 of 2018**

service, but is mandated to shift him to an alternate post and if no such alternate post is available, he must be kept on a supernumerary post, until such vacancies arises or he attains the age of superannuation.

6. The scope and object of Section 47 of the Disabilities Act came to be dealt with in the case of ***Kunal Singh Vs. Union of India and Another*** reported in **2003 (4) SCC 524**. While analyzing the provision, the Hon'ble Supreme Court held the provision to be mandatory in nature and that, a disabled employee would be entitled for the protection guaranteed therein. The relevant portion of the order reads as follows:-

*"9. Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that person does not*



**W.P.(MD)No.8458 of 2018**

WEB COPY

*acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under [Section 47](#) of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of [Section 47](#) clearly indicate its mandatory nature. The very opening part of Section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The Section further provides 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; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of [Section 47](#). [Section 47](#) contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability*



W.P.(MD)No.8458 of 2018

WEB COPY

*during the service. In construing a provision of social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of [Section 47](#) is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service.*

Thus, when an employee suffers from any disability during his service, the respondents Board / TANGEDCO is under an obligation to either provide him an alternate post or keep him on a supernumerary post, till the vacancy arises, but is disentitled to discharge him from his services.

7. The incidental issue that requires for consideration is as to the consequences of such a discharge / dismissal, in violation of the mandate under Section 47.

8. In the case of **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., Vs. Ram Gopal Sharma and Other** reported in **2002 (2) SCC 244**, when



**W.P.(MD)No.8458 of 2018**

WEB COPY

a workman was discharged in violation of the statutory provision under the Industrial Disputes Act, 1947, the Hon'ble Supreme Court, had held that such an order of discharge or dismissal, in contravention of a statutory provision, would become "inoperative". The relevant portion of the order reads as follows:-

*"13. ... It is well-settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer. He cannot disobey the mandatory provision and then say that the order of discharge or dismissal made in contravention of [Section 33\(2\)\(b\)](#) is not void or inoperative. He cannot be permitted to take advantage of his own wrong. The interpretation of statute must be such that it should advance the legislative intent and serve the purpose for which it is made rather than to frustrate it. ... "*

14. ... [Section 33A](#) is available only to an employee and is intended to save his time and trouble inasmuch as he can straightaway make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the order of approval instead of making efforts to raise an industrial dispute,



WEB COPY



**W.P.(MD)No.8458 of 2018**

get a reference and thereafter adjudication. In this view, it is not correct to say that even though where the order of discharge or dismissal is inoperative for contravention of the mandatory conditions contained in the proviso or where the approval is refused, a workman should still make a complaint under [Section 33A](#) and that the order of dismissal or discharge becomes invalid or void only when it is set aside under [Section 33A](#) and that till such time he should suffer misery of unemployment in spite of statutory protection given to him by the proviso to [Section 33\(2\)\(b\)](#). It is not correct to say that where the order of discharge or dismissal becomes inoperative because of contravention of proviso to [Section 33\(2\)\(b\)](#), [Section 33A](#) would be meaningless and futile. The said Section has a definite purpose to serve, as already stated above, enabling an employee to make a complaint, if aggrieved by the order of the approval granted.

15. The view that when no application is made or the one made is withdrawn, there is no order of refusal of such application on merit and as such the order of dismissal or discharge does not become void or inoperative unless such an order is set aside under [Section 33A](#), cannot be



**W.P.(MD)No.8458 of 2018**

WEB COPY

accepted. In our view, not making an application under [Section 33\(2\)\(b\)](#) seeking approval or withdrawing an application once made before any order is made thereon, is a clear case of contravention of the proviso to [Section 33\(2\)\(b\)](#). An employer who does not make an application under [Section 33\(2\)\(b\)](#) or withdraws the one made, cannot be rewarded by relieving him of the statutory obligation created on him to make such an application. If it is so done, he will be happier or more comfortable than an employer who obeys the command of law and makes an application inviting scrutiny of the authority in the matter of granting approval of the action taken by him. Adherence to and obedience of law should be obvious and necessary in a system governed by rule of law. An employer by design can avoid to make an application after dismissing or discharging an employee or file it and withdraw before any order is passed on it, on its merits, to take a position that such order is not inoperative or void till it is set aside under [Section 33A](#) notwithstanding the contravention of [Section 33\(2\)\(b\)](#) proviso, driving the employee to have recourse to one or more proceeding by making a complaint under [Section 33A](#) or to raise another



WEB COPY

**W.P.(MD)No.8458 of 2018**

industrial dispute or to make a complaint under [Section 31\(1\)](#). Such an approach destroys the protection specifically and expressly given to an employee under the said proviso as against possible victimization, unfair labour practice or harassment because of pendency of industrial dispute so that an employee can be saved from hardship of unemployment."

9. Likewise, in the case of ***G.Muthu Vs. The Management of Tamil Nadu State Transport Corporation (Madurai) Ltd., Madurai***, reported in ***2006 (5) CTC 413***, on similar facts, the Hon'ble Division Bench of this Court had considered the benevolent provision of the Disability Act and set aside the order of discharge on the ground of disablement. The relevant portion of the order reads as under:-

*"10.2. Per contra, the learned Counsel for the respondent vehemently contended that the appellant who has suffered the order of discharge on 26.03.2002 has approached the Court only in December 2004 and the delay has not been properly explained.*

*10.3. We are unable to accept the contention put forth by the learned Counsel for*



**W.P.(MD)No.8458 of 2018**

WEB COPY

*the respondent. As submitted by the learned Counsel for the appellant, since the Act contains benevolent provisions for the disable persons, they cannot be treated like other able persons. Further, the appellant seems to be under the hope that the respondent will be considering his representations favourably. In view of the fact that the respondent did not consider his case favourably he has approached the Court as a last resort. Hence, we are unable to accept the finding of the learned single Judge that the appellant is not entitled for the relief claimed by him since he has approached the court after a long time. In any event, in our opinion, as between March 2002 and December 2004, it cannot be said that the appellant displayed total inaction and thereby his approach to this Court in December 2004 should be held to be hit by laches. In between a period of one year and nine months, the appellant approached the respondent claiming alternate employment by way of representations which did not evoke any response from the respondent. Therefore we do not find any laches or inaction on the part of the appellant in order to throw out his claim without being considered on merits. ...*

....



**W.P.(MD)No.8458 of 2018**

WEB COPY

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19. Therefore, as argued by the learned Counsel for the appellant, while the provisions contained in Chapters IV to VII of the Act deals with "Persons with disability" [Section 47](#) alone deals with " an employee who acquires a disability during his service". The said provision clearly says that no establishment shall dispense with or reduce in rank, an employee who acquires a disability during his service which means that the person who is employed in an establishment when he acquires a disability, his services cannot be dispensed with or there should be any reduction in rank. Further, the proviso to the said Section clearly states that if he is not suitable for the post he could be shifted to some other post with the same scale of pay and benefits. If it is not possible, he could be kept on a supernumerary post until a post is available or he attains the age of superannuation whichever is earlier. The said provision further states that no promotion shall be denied to any person merely on the ground of his disability. Thus, if we apply [Section 47](#) of the said Act, the order of discharge passed by the respondent dated 26.03.2002 has no leg to stand."



**W.P.(MD)No.8458 of 2018**

The ratio laid down in the aforesaid decision would squarely apply to the legal position in the present case also, when the respondents have grossly violated the mandatory provision under Section 47(1) of the Disabilities Act, by invalidating the petitioner from service. Such invalidation, is deemed to be *per-se* illegal and void in the light of the aforesaid decisions and therefore, the impugned order dated 20.12.2007 itself, is considered to be "inoperative". Consequently, the petitioner herein is deemed to have been in service and would thus be entitled for all the service benefits, from the date of such an illegal action. Accordingly, the petitioner's service period from 20.12.2007, could be taken into account for the purpose of calculating his pensionary benefits.

10. The learned counsel for the respondents also submitted that after the invalidation of the petitioner from his services on the ground of his disability, his son was appointed in the Board / TANGEDCO on compassionate appointment and in view of such rehabilitation, the petitioner cannot seek for any further benefits. I am not in agreement with such a submission. When Section 47(1) prohibits the Board to discharge the petitioner by invalidating him, they cannot take shelter under the compassionate appointment extended to his son. In *Kunal Singh's case*



**W.P.(MD)No.8458 of 2018**

(supra), a similar situation arose whereby the employee therein, was discharged from services on the ground of disability in violation of Section 47 and consequently he was paid "invalidity pension" as per Rule 38 of the Central Civil Services Rules. When the employer had taken a similar objection to deny the protection under Section 47, the Hon'ble Supreme Court rejected such a plea in the following manner:-

*"12. Merely because under Rule 38 of CCS Pension Rules, 1972, the appellant got invalidity pension is no ground to deny the protection, mandatorily made available to the appellant under [Section 47](#) of the Act. Once it is held that the appellant has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay-scale and service benefits; if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation, whichever is earlier. It appears no such efforts were made by the respondents. They have proceeded to hold that he was permanently incapacitated to continue in service without considering the effect of other provisions of [Section 47](#) of the Act."*



**W.P.(MD)No.8458 of 2018**

By applying the ratio laid down as above to the facts of the present case, the objection of the respondents to deny the protection under Section 47 of the petitioner, in view of the alternate relief granted to the petitioner, cannot be sustained.

11. In fine, the original action of the respondents in invalidating the petitioner, in violation of Section 47(1), is deemed to be "inoperative". Likewise, the compassionate appointment extended to the petitioner's son, cannot be an excuse for denying the protection to him under Section 47(1).

12. Insofar as the petitioner's claim for backwages is concerned, I am of the view that the compassionate appointment granted to the petitioner's son can be declared to have been extended in lieu of his claim for such monetary benefits. At this juncture, the learned counsel for the petitioner also submitted that the petitioner gives up his right to claim the backwages for the period of his non employment. Such a statement is hereby recorded.

13. For all the foregoing reasons, the impugned order dated 28.11.2017 passed by the second respondent, is hereby quashed.



**W.P.(MD)No.8458 of 2018**

WEB COPY

Consequently, the order of TANGEDCO dated 20.12.2007, invalidating the petitioner from service, is declared as "illegal and inoperative". Accordingly, there shall be a direction to the respondents to include the petitioner's service from 20.12.2007, till his date of superannuation and thereby disburse the retirement and pensionary benefits for which he would be otherwise entitled to, had he not been invalidated. However, the petitioner shall not be entitled for the arrears of salary for the period of his non employment. Such orders shall be passed by the TANGEDCO / respondent Board, within a period of eight weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed accordingly. There shall be no order as to costs.

**21.09.2022**

Index : Yes  
Order : Speaking  
DP



**W.P.(MD)No.8458 of 2018**

WEB COPY

To

- 1.The Chairman,  
Tamil Nadu Generation of Electricity & Distribution  
Corporation Ltd.,  
Anna Salai,  
Chennai-600 002.
- 2.The Superintending Engineer,  
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WEB COPY



W.P.(MD)No.8458 of 2018

**M.S.RAMESH, J.**

DP

Order made in  
W.P.(MD)No.8458 of 2018

21.09.2022