



W.P(MD)No.20102 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.02.2022
Pronounced on : 13.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.P (MD) No.20102 of 2021
and
WMP (MD) No.16804 of 2021

D.Anbalagan ... Petitioner
Vs

- 1.The State of Tamil Nadu,
Represented by its
Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Chennai - 9.
- 2.The Director,
The Department of Public Health
and Preventive Medicine,
Chennai - 6.
- 3.The Deputy Registrar of Health Service,
Office of the Deputy Director of Health Service,
Virudhunagar.
- 4.The Deputy Director of Health Service,
Office of the Deputy Director of Health Service,
Ramanathapuram.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of writ of certiorarified mandamus calling for the records relating to



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the impugned order passed by the second respondent vide his proceedings in Na.Ka.No.54240/Pa.Tho3/Iru2/2021, dated 17.09.2021 and to direct the respondents to redesignate the post of the petitioner commensurate with his qualification within the period that may be stipulated by this Court.

For Petitioner : Mr.H.Mohammed Imran,
for Mr.Ajmal Associates
For Respondents : Mr.J.Ashok,
Special Government Pleader

ORDER

This writ petition has been filed challenging the order of the second respondent dated 17.09.2021, in and by which, the petitioner has been provided with alternate employment of Office Assistant.

2.The learned Counsel for the petitioner submits that the petitioner joined service in the Health and Family Welfare Department as Driver in the year 2007 in Virudhunagar. On 13.11.2017 he underwent Macro Pituitary Adenoma surgery and due it, his eyesight got weakened. He got medical advice of not to drive vehicles anymore. Therefore on this medical advice, the petitioner submitted



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a representation dated 20.05.2021 to the second respondent seeking an alternate employment equivalent to his educational qualification, as he possessed qualification M.A., H.P.Ed., CFE. Based on his representation, the petitioner was referred to the Medical Board, which after examining the petitioner, opined that the petitioner was unfit for Driver post and advised for providing an alternative employment to the petitioner. Again the petitioner made a representation dated 03.03.2021 to the second respondent seeking alternative employment. But vide impugned order, the petitioner has been provided with the post of Office Assistant in the same scale of pay.

3.The learned Counsel further submits that though the petitioner's scale of pay is protected, he has been given employment in the lower category and not in the equal cadre of the Driver. The learned Counsel for the petitioner by relying upon Section 47 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and Section 20 of the Rights of Persons with Disabilities Act, 2016 submits that no government establishment shall dispense with or reduce in



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rank, an employee who acquires a disability during his or her service and if there are no vacancies available in the said post, the employee should be kept in a supernumerary post until a suitable post is available.

4.The learned Counsel further submits that in the case of the petitioner, there are Junior Assistant posts available and therefore, giving him Office Assistant post is unfair and similarly placed person one S.Devaki, who worked as Nurse was provided with alternate employment of Junior Assistant. The learned Counsel has relied on the following decisions in support of his contention:

i.Kunal Singh Vs Union of India and Another [(2003) 4 SCC 524]:

ii.Sudharsan Rajpoot Vs Uttar Pradesh State Transport Corporation [(2015) 2 SCC 317]

5.The learned Additional Government Pleader appearing for the State submits that the petitioner has problem in his eyes and he cannot perform his duties as Driver and he has been posted as an Office Assistant. Though the



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petitioner is posted as Office Assistant his pay is protected without any reduction. The learned Additional Government Pleader also relied on the Government Order in G.O.Ms.No.86 of Personnel and Administrative Reforms (R) Department dated 08.02.1996 and submits that if any Driver is declared unfit for continuance in the same post by Doctors because of eye defect or any other ailment, he will be provided with alterative employment in posts like Helpers or Office Assistant depending upon their qualification by retaining the same pay scale.

6.Heard the learned Counsel for the petitioner and the learned Additional Government Pleader for the respondents.

7.No doubt the petitioner was working as a Driver and during his service his eyesight got weakened. The Medical Board which examined the petitioner, certified that he is unfit for the post of Driver. Under such circumstances the petitioner sought an alternate employment. Based on his request and medical condition, the second respondent appointed the petitioner as Office



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Assistant. The petitioner is aggrieved over appointing him as Office Assistant and requests for appointment of Junior Assistant.

8.The learned Additional Government Pleader relied on the Government Order in G.O.Ms.No.86 of Personnel and Administrative Reforms (R) Department dated 08.02.1996, which reads as follows:

"4.The Government also direct that, if any Driver is declared unfit for continuance in the same post by Doctors because of eye defect or any other ailment, he will be provided with alterative employment in posts like Helpers of Office Assistant depending upon their qualification by retaining the same pay scale."

9.It is relevant to refer to Section 47 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, which is extracted hereunder:

"47. Non-discrimination in Government employments.-

(1) No establishment shall dispense with, or



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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."

10. Section 20 of the Rights of Persons with Disabilities Act, 2016, reads as follows:

"20. Non-discrimination in employment.—

"(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."



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11.The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, was enacted by the parliament pursuant to the proclamation in the Asian and Pacific Decade of the Disabled Persons 1993 - 2002 convened by the Economic and Social Commission for Asian and Pacific Region held at Beijing in the year 1992. India is a signatory to the said proclamation. This Act was enacted with objects of creating barrier free environment for persons with disabilities; removing any discrimination against persons with disabilities in the sharing of development benefits vis-a-vis non-disabled person; making special provision of the integration of persons with disabilities into the social mainstream.

12.The Hon'ble Supreme Court of India in **Kunal Singh Vs Union of India and another**, reported in **(2003) 4 SCC 524** has held that the The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, is a special legislation dealing with persons with disabilities to provide equal opportunities and the relevant portion reads as follows:



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"The Act is a special legislation dealing with persons with disabilities to provide equal opportunities, protection of rights and full participation to them. It being a special enactment, the doctrine of generalia specialibus non derogant would apply and Section 72 of the Act reads as follows:

"72.Act to be in addition to and not in derogation of any other law: The provisions of this Act, or the rules made thereunder shall be in addition to, and not in derogation of any other law for the time being in force or any rules, order or any instructions issued thereunder, enacted or issued for the benefit of persons with disabilities."

13.The above provisions clearly say that when the government employee acquires disability during the service, his / her services should not be dispensed with and there shall not be reduction in rank. The Hon'ble Supreme Court in the above decision held that this Act is a special legislation. Therefore the Government Order referred to by the learned Additional Government Pleader cannot prevail



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over the Act, that too a special legislation, in view of Section 72 of the Act and also in view of the above decision. Further it is stated in the respondent Department there are Junior Assistant posts available and moreover, the petitioner also claims that he is having sufficient educational qualifications for being appointed as Junior Assistant.

14. In this case though the petitioner is declared to be unfit for the post of Driver and he has been protected with pay by giving alternative employment, it is lower cadre than the post he was holding before acquiring disability. In view of the above provisions that no Government establishment shall reduce in rank of an employee, who acquires disability during his service, the petitioner should be provided with an equal alternative employment. Further the petitioner has also referred to a similarly placed persons being provided with alternative equal employment in Health Department and the Municipal Administration. Therefore providing an alternate employment of a lower cadre post would be contrary to the above provisions and to the objects towards which the Act was enacted.



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15. In the light of the above discussion, the writ petition is allowed. The impugned order is set aside. The first respondent is directed to provide some other alternate post equivalent to the post of Driver to the petitioner within a period of three months from the date of receipt of a copy of this order, if he is otherwise eligible. No costs. Consequently, connected miscellaneous petition stands closed.

.07.2022

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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.



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To

- 1.The Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai - 9.
- 2.The Director,
The Department of Public Health
and Preventive Medicine,
Chennai - 6.
- 3.The Deputy Registrar of Health Service,
Office of the Deputy Director of Health Service,
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B.PUGALENDHI, J.

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