



WEB COPY

W.P.(MD)No.20715 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.03.2022
CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.20715 of 2014

and

M.P. (MD)No.1 of 2014

S.kannan

... Petitioner

vs

1. The Management of Tamil Nadu

State Transport Corporation (Madurai) Ltd.,
represented by its Managing Director,
Bye-Pass Road, Madurai - 10.

2. The General Manager,

Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Madurai Region, Bye-Pass Road,
Madurai - 10.

3. The Branch Manager,

Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Pudukulam Branch,
Madurai - 7.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari Mandamus, to call for the records pertaining to the impugned order passed by the second respondent in Ref.No.Nirvagam/A4/2155/2014, dated 01.08.2014, quash the same in so far as not providing continuity of service, pay protection and back wages in terms of Section 47(1) of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and consequently, direct the respondents to give him pay protection, continuity of service and back wages with attendant benefits including review benefit payable to him with effect from 30.08.2012 to 30.09.2013 by treating the above said period as duty.

For Petitioner : Mr.A.Rahul

For Respondents : Mr.J.Senthil Kumaraiah

**O R D E R**

This Writ Petition is filed to quash the impugned order, dated 01.08.2014 and consequently, to direct the respondents to give him pay protection, continuity of service and back wages with attendant benefits including review benefits for the period from 30.08.2012 to 30.09.2013.

2. The brief facts of the case are that the petitioner joined the first respondent Corporation as Driver with effect from 01.04.1994 and his service was confirmed on 01.01.1995. On 14.06.2010, the petitioner suffered severe chest pain while he was in service. The petitioner was admitted in Annamalai Hospital on 14.06.2010 at 10.30 a.m., After giving first aid, the petitioner was sent to Vadamalaiyan Hospital and was admitted as inpatient from 14.06.2010 to 18.06.2020. The petitioner was discharged from hospital on 13.07.2010 and joined the post of Driver on 12.08.2010. The petitioner was not granted alternative employment despite his request. The petitioner was allowed to drive a Bus called Bye-pass Rider which is an Express Bus Service in the first respondent Corporation. The petitioner again developed chest pain and applied for medical leave from 30.08.2012. On the recommendation of the Medical Officer of the first respondent, the petitioner was referred to Regional Medical Board of Government Rajaji Hospital.

3. The petitioner appeared before the Medical Board on 20.11.2012 and the report states that "In view of coronary artery disease, can give problem at any time considering the public safety. The patient S.kanna, Driver, TNSTC Ltd., is unfit for heavy vehicle driving." Even then the petitioner was not granted alternative employment. Therefore, the petitioner has filed a writ petition in W.P. (MD) No. 11113 of 2013 directing the respondents to provide alternative employment and this Court, vide order, dated 27.09.2013 directed the respondents to grant alternative employment in terms of Section 47 (1) of Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995 by considering the report of the Medical Board and other relevant records. The petitioner was given alternative employment as Salesman in Amma Mineral Water Scheme from 30.09.2013. The respondents have not conferred review benefit which is payable from November 2012 and increment, salary and other monetary benefits was not disbursed to the petitioner. The respondents did not calculate the period from 30.08.2012 to 30.09.2013 as duty period. Since the earlier writ petition was not considered, the petitioner has filed a Contempt Petition in CONT. P. (MD)No.174 of 2014. Thereafter, the respondent has passed the said impugned order. In the impugned order, it is stated that based on the medical report, alternative employment was granted in the post of Non ITI Helper, but the impugned order does not state anything



with regard to continuity of service, pay protection, back wages and other benefits to the petitioner. Aggrieved over the same, the present writ petition is filed.

4. The second respondent has filed a counter affidavit stating that the petitioner was granted alternative employment, vide order, dated 01.08.2014 without pay protection. The petitioner was also granted review benefits and increments and the petitioner was allowed to do work in the Amma Mineral Water Scheme. The petitioner had availed his eligible Casual Leave, Earned Leave, Medical Leave and Leave on Loss of Pay from 30.08.2012 to 30.09.2013 on personal reasons, so this period of leave availed cannot be treated as duty period. The petitioner has availed all the eligible dues and leave on loss of pay for his personal reasons. So for the period of leave on loss of pay, No pay and other benefits will not be paid to the petitioner. Hence, the respondents prayed to dismiss the writ petition.

5. The petitioner has also filed a Rejoinder affidavit and has denied the content of the counter affidavit stating that the petitioner is eligible for all benefits and continuity of service including the period from 2012 to 2013. The contention of the petitioner is that from the date of Medical Board report, the petitioner is entitled to alternative employment under Section 47(1) of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act. The petitioner submitted several representations, in spite of that the respondents have not granted any payment. The petitioner was posted in the Amma Mineral Water Scheme from 30.09.2013 and the respondents have to consider the date from 30.08.2012 to 30.09.2013 as duty period and not as leave on loss of pay. The petitioner has already submitted an application for alternative employment. Therefore, this period ought to have been considered as duty period because the respondents have denied the alternative employment and the delay was not on the part of the petitioner. The petitioner relied on the order passed in W.P. (MD) No. 22469 of 2015 dated 04.01.2016, where it has been held that the employee is entitled to alternative employment and also pay protection, except for actual monetary benefits and other service benefits are also ought to be granted to the employee. In another W.P.(MD)No.1739 of 2014 dated 13.10.2020 in the case of M.R.Natarajan vs SETC (Tamil Nadu) Ltd., where it has been held that there was an administrative delay in providing alternate employment. However, under the principles of "No Work No Pay", the employee may not be entitled to back wages. But as far as the service benefits are considered, the employee is entitled to include the said period for calculating the petitioner's service and petitionary benefits.

6. Heard Mr.A.Rahul, learned Counsel appearing for the petitioner and Mr.J.Senthil Kumaraiah, learned Standing Counsel appearing for the respondents



7. Admittedly the petitioner was not fit for driving heavy vehicles due to his heart ailment. The petitioner was referred to Medical Board and the Board has issued a certificate as not fit. If so the petitioner is entitled to alternative employment from the date of Medical Board report. The petitioner is also entitled to pay protection.

8. Therefore, this Court is of the considered opinion that the petitioner is entitled to pay protection and other benefits. Hence this Court is passing the following order:

(a) The respondents are directed to grant pay protection, continuity of service. It is made clear that the petitioner is not entitled to back wages for the period from 30.08.2012 to 30.09.2013.

(b) The petitioner is entitled to review benefits and the monetary benefits from 30.09.2013 onwards.

(c) The respondents are directed to pay employers Provident Fund contribution for the period from 30.08.2012 to 30.09.2013.

9. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

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Sub Assistant Registrar(CS)

jbr

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.



To

1. The Managing Director,
Management of Tamil Nadu
State Transport Corporation (Madurai) Ltd.,
Bye-Pass Road, Madurai - 10.
2. The General Manager,
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Corporation (Madurai) Ltd.,
Madurai Region, Bye-Pass Road,
Madurai - 10.
3. The Branch Manager,
Tamil Nadu State Transport
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Pudukulam Branch,
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+1 CC to M/s.A.RAHUL, Advocate (SR-10935[F] dated 09/03/2022)

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MGJ(01.04.2022) 5P 5C