



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .No.21212 of 2014

and

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

R.Balakrishnan

... Petitioner

Vs.

- 1.Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Bye pass Road, Madurai,
Represented by the Managing Director.
- 2.The General Manager,
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Virudhunagar Region,
Virudhunagar.
- 3.The Branch Manager,
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Sivakasi Branch,
Virudhunagar District.
- 4.The Senior Assistant Engineer,
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Sivakasi Branch,
Virudhunagar District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the second respondent dated 01.08.2014 in த.அ.டெ.க விருது நிர்.அ.2.163.2014 insofar as reduction of rank and denial of promotion and quash the same in reference to such aspect and consequently direct the respondents to extend all the benefits under "Persons with Disabilities (Equal Opportunities, Protection of the Rights and Full Participation) Act, 1995 and rules and grant continuity of service, pay protection, back wages and all other attendant and consequential and monetary benefits to the petitioner.

For Petitioner

:

Mr.N.Dilip Kumar



For Respondents : Mr.J.Senthil Kumaraiah
Standing Counsel

ORDER

Heard Mr.N.Dilip Kumar, learned counsel for the petitioner and Mr.J.Senthil Kumaraiah, learned Standing Counsel for the respondents.

2. This Writ Petition has been filed challenging the impugned order dated 01.08.2014 passed by the second respondent insofar as reduction of rank and denial of promotion and quash the same in reference to such aspect and consequently direct the respondents to extend all the benefits under "Persons with Disabilities (Equal Opportunities, Protection of the Rights and Full Participation) Act, 1995 and rules and grant continuity of service, pay protection, back wages and all other attendant and consequential and monetary benefits to the petitioner.

3. The brief facts of the case are that the petitioner was appointed as a Conductor on 01.11.1988, was made permanent in the year 1989, then was awarded senior grade in the post of Conductor in the year 1998, Selection Grade on 01.08.2011. The petitioner's spinal cord was injured while he was in service in June 2008 and he was admitted in Madurai City Hospital on 18.05.2009 and Surgery was performed on 31.05.2009. He was discharged from hospital on 10.06.2009. The petitioner had submitted an online application on 09.07.2009 followed by yet another representation dated 24.09.2009 seeking alternative employment. The respondents did not consider his application but issued charge memo on 26.05.2009 alleging unauthorized absence. Thereafter, he was engaged as a Clerk on 10.07.2009 and the action for unauthorized absence was dropped on 29.07.2009. On 01.05.2010, he was assigned to act as cashier. On 14.12.2011, again the petitioner was directed to discharged the duty of the Conductor. Because of the physical inability, the petitioner submitted an application for leave on medical grounds on 14.12.2011 itself. Again, the petitioner had submitted the application for alternative employment on 17.12.2011.

4. The petitioner had filed writ petition in W.P. (MD). No.159 of 2012. In the meanwhile, the respondents again initiated departmental proceedings on 16.01.2012 alleging unauthorized absence. In the writ petition, this Court directed the respondents to pass an order on the representation for disposal of the disciplinary proceedings. Aggrieved over, the petitioner filed Writ Appeal in W.A.No.325 of 2012. In the meanwhile, the respondents submitted before the Division Bench that already the petitioner was referred to Medical Board and it was assessed the disability of the petitioner is 25%. Recording the said submission, the Division Bench vide order dated 06.08.2013 directed the respondents to pass orders.



5. The petitioner submitted a detailed explanation on 05.09.2013, since the respondents did not consider the claim of the petitioner, the petitioner preferred contempt petition. The respondents submitted a proceeding dated 13.12.2013, in which the petitioner request for alternative employment was rejected. Again, the petitioner filed W.P. (MD). No. 873 of 2014 and this Court vide order dated 03.04.2014, passed a final order holding the respondents are bound to consider alternative employment without reference to percentage of disability. Then the petitioner was directed to appear before the Committee on 27.05.2014 and the Sub-Committee directed the petitioner to join in the Office of Diesel Pump Operator and maintenance of records. However, the fourth respondent did not allow the petitioner to join duty.

6. On 01.08.2014, the impugned order was issued by the second respondent granting alternative remedy with a specific condition that this post is degraded to the cadre of non I.T.I. Helper with effect from 01.08.2014. Thereafter, two charge memos were issued on 24.07.2014 and 11.11.2014 stating that the petitioner slept during the working hour and unauthorizedly absence for a day. In spite of his physical inability, the respondents are directing the petitioner to do heavy work like moving heavy things in the maintenance records. Aggrieved over the attitude of the respondents, the petitioner has filed this Writ Petition claiming promotion and to grant pay protection.

7. The respondents had filed a counter affidavit stating that the petitioner was granted alternative employment as non I.T.I helper w.e.f. 01.08.2014 and the said alternative employment was in consonance with the Disability Act. His pay and scale of pay also protected by the impugned order. In the counter it has been stated as under:

S. No.	Incident Date	Nature of Offence	Punishment Awarded
1.	28.08.2014	Absent of duty	Fine Rs.75
2.	04.12.2014	Absent - More than 10 days	Pending
3.	31.12.2014	Attacked the Foremen in Depot Gate	Pending
4.	28.02.2015	Absent to duty	Fine Rs.100
5.	01.06.2015	Absent to duty	Pending
6.	02.06.2015 to 05.06.2015	Absent to duty	Pending



of a copy of this order.

11. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Nsr

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,
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Bye pass Road, Madurai.
- 2.The General Manager,
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Sivakasi Branch, Virudhunagar District.
- 4.The Senior Assistant Engineer,
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Sivakasi Branch, Virudhunagar District.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-6314[F] dated 15/02/2022)

W.P. (MD) .No.21212 of 2014
14.02.2022