



W.P.(MD).No.17269 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.10.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.17269 of 2015

B.Robin (Died)

Baby Leelabai Bai

... Petitioner

*(Petitioner is substituted vide Court Order dated 05.09.2022 in W.M.P.
(MD).No.18981 of 2021 in W.P.(MD).No.17269 of 2015)*

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation (Tirunelveli),
Tirunelveli.

2.The General Manager,
Tamil Nadu State Transport Corporation (Tirunelveli),
Nagercoil Division,
Nesamony Nagar,
Ranithottam,
Nagercoil – 629 001,
Kanyakumari District.

3.The Branch Manager,
Tamil Nadu State Transport Corporation (Tirunelveli),
Kuzhithurai Branch-I,
Kanyakumari District.

... Respondents



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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 second respondent's impugned letter No.9316/legal2/TNSTC/2014 dated 21.04.2015 and quash the same and consequently direct the respondents to give all attendant cum monetary benefits with effect from 28.10.2010 to 16.12.2014 after deducting the pay already paid to the petitioner.

For Petitioner : Mr.K.Vamanan

For Respondents : Mr.K.Sathiyasingh

ORDER

This Writ Petition has been filed for Certiorarified Mandamus to quash the impugned order dated 21.04.2015 and quash the same and consequently direct the respondents to grant all attendant cum monetary benefits with effect from 28.10.2010 to 16.12.2014 after deducting the pay already paid to the petitioner.

2. The brief facts as stated in the affidavit are that the petitioner was appointed as Driver in the year 1994. On 20.02.2006, while the petitioner was driving the bus, the wind shield glass was suddenly broken and the petitioner sustained injuries. The broken glass particles caused injuries in the petitioner's



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right eye ball and he was unable to see anything. The petitioner was admitted in the hospital and underwent eye surgery and he was discharged on 23.02.2006. The petitioner was on medical leave for about 75 days and joined duty in the month of May 2006. Again on 28.12.2010, when the petitioner was on duty, there was bleeding in his right eye. Immediately, the petitioner was given treatment. On 06.01.2011, again the petitioner was underwent laser surgery. Since the petitioner was suffering from acute eye pain, again the petitioner underwent retina surgery on his right eye on 09.05.2011 and the petitioner was advised not to drive any vehicle. Hence, the petitioner submitted representation to grant alternative employment. But no response was evoked thereof. Since the petitioner strained his left eye during driving, his left eye was also severely affected. On 20.10.2011, the petitioner underwent retina surgery in his left eye also. Therefore, the petitioner approached the respondents on 22.11.2011 requesting for alternative employment. Further, the petitioner prayed to treat the medical leave as full wages. The contention of the petitioner is that because of low quality of the wind shield glass fitted in the bus, the accident took place and the petitioner has suffered seriously. Thereafter, the respondents considered the petitioner's request and granted alternative work as Traffic Controller for some period and again the respondents directed the petitioner to do the driving work. Hence, the petitioner repeatedly requests the



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respondents to grant alternate employment. By considering the repeated requests of the petitioner, on 22.01.2013, the second respondent provided the employment in Traffic Control Room and the petitioner worked there till 06.10.2013. But on 07.10.2013, when the petitioner went to the office for the duty, the third respondent orally directed the petitioner to drive the bus or otherwise to leave the job forever. On 18.10.2013, the petitioner submitted a representation and yet another representation on 08.01.2014. Since the respondents failed to provide alternate employment, the petitioner filed W.P. (MD).No.5071 of 2014 and prayed to grant alternative employment as per Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955 with all attendant benefits. This Court directed the respondents therein to consider the representation and pass orders. After receipt of the order, the respondents directed the petitioner to appear before the respondents Medical Officer on 20.08.2014. Thereafter, the Medical Board confirmed the defective vision in both the eyes of the petitioner and recommended the petitioner for light duty. In spite of Medical Board recommendations, the petitioner was not granted any alternative employment. Further, the respondents illegally kept the petitioner out of service from 28.10.2010. Hence, the petitioner filed another Writ Petition in W.P.(MD).No. 20208 of 2014. Immediately, the respondents provided alternative employment



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as Traffic Controller to the petitioner. Thereafter, this Court vide order dated 11.12.2015 directed the respondents to consider the request of the monetary benefits of the period within a period of eight weeks. Without considering the same, the third respondent passed the impugned order dated 21.04.2015 stating that for the period from 28.01.2010 to 16.12.2014, the petitioner has not attended the duty about 682 days and that period is treated as 'leave on loss of pay'. Aggrieved over the same, the present Writ Petition is filed.

3. The respondents have not filed a counter but the learned counsel appearing for the respondents submitted that during that period, the petitioner has not served at all which would be considered as unauthorized absence and based on the principle of 'No Work No Pay', the petitioner is not entitled to any monetary benefits. As this Court already directed the respondents to consider and pass orders. However, in order to obey the order of this Court, the respondents passed the impugned order and the petitioner's claim was considered as per law. Hence, the learned counsel for the respondents prayed to dismiss this Writ Petition.



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4. Heard Mr.K.Vamanan, learned counsel for the petitioner and Mr.K.Sathiyasingh, learned counsel for the respondents and perused the records.

5. During the pendency of the Writ Petition, the writ petitioner died. Hence the petitioner's wife substituted her through W.M.P.(MD).No.18981 of 2021 and the same was allowed vide order dated 05.09.2022 by this Court.

6. The learned counsel appearing for the petitioner submitted that under Section 47 of the said Act, the respondents are duty bound to grant alternate employment, in case there is some disability. The Act states that the respondents ought to grant an alternative employment by creating supernumerary posts, in case there is no vacancy. The deceased petitioner has repeatedly sought alternative employment through various petitions and also preferred Writ Petitions before this Court. Now, the respondents cannot take a plea that the deceased petitioner has not worked. Moreover the respondents cannot invoke the 'No Work No Pay' principle. The learned counsel for the respondents submitted that in order to ascertain whether the deceased petitioner's vision defect was rectified, the deceased petitioner was directed to



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appear before the Medical Board. However, the deceased petitioner approached the Medical Board belatedly. Once the Medical Board has issued the fitness certificate within few months, the affected person was granted alternative employment. Therefore, there is no delay in providing alternative employment to the affected person. Hence, the deceased petitioner is not entitled to any backwages during the non-employment period. Moreover, the deceased petitioner was granted alternative employment during intermediate period whenever the vacancies arose. Moreover, during the non-employment period, the deceased petitioner has availed leave and the same was granted as leave on loss of pay for a period of 1 year 10 months 11 days. During the medical period, the deceased petitioner was granted medical leave as well as the applicable wages to the deceased petitioner.

7. On considering the rival submissions made by learned counsel for both the parties, it is seen that the deceased petitioner had underwent operation three times and he has defective vision. The contention of the petitioner is that due to low quality of wind shield glass fitted in the bus, the deceased petitioner met with an accident which has caused loss of vision to the deceased employee. On perusal of the medical report, it is seen that the deceased petitioner was affected with proliferative advanced diabetic retinopathy and it has nothing to do with



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the accident. Moreover, it is seen that the respondents have granted medical leave and also wages for the medical leave period that is for 1 year 10 months 11 days. The deceased petitioner was granted leave on loss of pay.

8. In such circumstances, for the claim of monetary benefits during the period from 28.10.2010 to 16.12.2014, this Court is of the considered opinion that the petitioner is eligible only for 50% of monetary benefits. Therefore, this Court is inclined to allow this Writ Petition partly. The respondents are directed to pay 50% of wages to the petitioner during the aforesaid period with consequential effect.

9. In view of the above, this Writ Petition is partly allowed. There shall be no order as to costs.

27.10.2022

Index : Yes / No
Internet : Yes/ No
Nsr



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WEB COPY

- To
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S.SRIMATHY, J.

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