



W.P(MD)No.23077 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.12.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.23077 of 2022

M.Edwin Charles

... Petitioner

Vs.

1.Tamil Nadu State Transport Corporation Ltd.,
Rep. by its Managing Director,
Tirunelveli Division,
Tirunelveli.

2.The General Manager,
Tamil Nadu State Transport Corporation Ltd.,
Tirunelveli Division,
Tirunelveli.

3.The Branch Manager,
Tamil Nadu State Transport Corporation Ltd.,
Shencottai Depot,
Tenkasi, Tenkasi 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 pertaining to the impugned order passed by the 1st respondent in Ka. No.6169/Niya3/Tha.A.Po.Ka/Thili/2019, dated 08.09.2022, quash the same and consequently direct the respondents to provide suitable alternative job to the petitioner with pay protection and other service benefits.



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For Petitioner : Mr.S.S.Thesigan

For Respondents : Mr.D.Jebaraj

ORDER

Heard the learned counsel on either side.

2. The petitioner joined the respondent Corporation as Driver in the year 1995. Some time in the year 2019, he suffered severe illness and was disclosed as suffering from CMA/HEMIPARESIS. The Regional Medical Board, Rajiv Gandhi Government General Hospital, Chennai had given a certificate on 20.11.2020 stating that the petitioner is unfit to work as driver.

3. The grievance of the petitioner is that till date, he had not been given any alternative employment. That led to filing of W.P.(MD)No.14965 of 2022. Vide order dated 12.07.2022, the writ petition was disposed of in the following manner:-

“5. The certificate issued by the Medical Board of Rajiv Gandhi Government Hospital, Chennai, dated 02.11.2020 shows that the petitioner's disability is assessed as 60% and he was declared as unfit to work as a driver.

6. Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 reads as follows:

“47. Non-discrimination in Government employment:-

(1) No establishment shall dispense with, or reduce in rank, an



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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.

(2) No promotion shall be denied to a person merely on the ground of his disability;

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this Section.”

7. It is seen from the Section that if an employee is found not suitable for the post because of acquiring disability, he could be shifted to some other post with the same pay scale and service benefits. It also states that if no post is available, he may be kept on a supernumerary post and no promotion shall be denied to a person merely on the ground of his disability. The petitioner though declared as unfit to work as a Driver, should be provided with alternative and suitable employment. Therefore, this Court directs the petitioner to submit a fresh representation to the first respondent through the third respondent. On such submission of the representation, the first respondent is directed to consider the representation of the petitioner within a period of six weeks thereafter.”

Pursuant to the aforesaid direction, the petitioner gave a fresh representation dated 18.07.2022. The said representation was disposed of by the impugned order on 08.09.2022. By the impugned order, the petitioner has been once again directed to appear before the Regional Medical Board, Rajiv Gandhi Government General Hospital, Chennai and based on the medical report, the



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decision regarding allotting alternative employment will be taken. The said order is put to challenge in the writ petition.

4. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to quash the impugned order and grant relief as prayed for.

5. The respondents have filed a counter affidavit. The learned standing counsel took me through its contents. It is admitted in the counter affidavit that the petitioner was sent to the medical board to assess his medical fitness on 17.12.2019 and he was found to be suffering from 70% disability. On re-evaluation after six months on 02.11.2020, he was again declared unfit and found to suffer disability of 60%. The only ground, on which, the Management is seeking to sustain the impugned order is that the petitioner did not care to re-assess his medical condition on 06.04.2022.

6. The stand of the Management cannot be appreciated. It is obvious from their own records that the petitioner was found medically unfit right from December 2019. He ought to have been given alternative employment as per statutory mandate. When the petitioner was re-evaluated, almost one year later, he was found to be unfit and suffering from disability of 60%. When the



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petitioner's left hand suffered paralytic stroke, it would be most unsafe to engage him as driver. It is basic common sense. Instead of allotting the petitioner an alternative employment, the respondents for reasons best known to them have declined to give him alternative employment and also not paid the salary arrears.

7. The learned standing counsel would contend that as per their regulations, the petitioner's medical condition will have to be re-evaluated once in six months. Such a condition cannot be applied in the cases of permanent disability. The petitioner suffered a stroke. Such a person obviously cannot be employed as driver. The Management should first allot an alternative employment to the petitioner and may be thereafter if according to them, there is some improvement in the physical condition of the petitioner, he can be sent for re-evaluation and not before that. Section 20(4) of Rights of Persons with Disabilities Act, 2016 is 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



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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.

8. The impugned order is set aside. The respondents are directed to give alternative employment to the petitioner within a period of three weeks from the date of receipt of a copy of the order. The salary arrears for the intervening period will also be disbursed within a period of twelve weeks. If according to the Management, the petitioner's physical condition has improved, after six months, they can consider sending the petitioner for re-evaluation to the medical board.

9. The Writ Petition is allowed. No costs.

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