



WEB COPY



W.P.No.1572 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.1572 of 2023
and WMP Nos.31669 and 1670 of 2023

S.A.Manikavasagar

...Petitioner

Vs

1. The Managing Director,
Tamil Nadu State Transport Corporation (Coimbatore) Ltd.,
37, Mettupalayam Road,
Coimbatore-641 043.
2. The General Manager,
Tamil Nadu State Transport Corporation (Coimbatore)Ltd.,
Erode Region, Erode District.
3. The Branch Manager,
Tamil Nadu State Transport Corporation (Coimbatore) Ltd.,
Anthiyur Branch, Erode Region, Erode District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in Pa.No.1/D8/526/Law/EMa/2017 dated 26.08.2019 and Pa.No.1/D3/730/Law/TNSTC/EMa/2018 dated 16.07.2021 and to quash the same and consequently direct the 2nd respondent to provide the petitioner with all service benefits including of the wages, continuity of service,



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increment and review benefits for the period for which the petitioner has demanded for the alternate employment on account of he is deprived of alternate employment as per the provisions of the Rights of Persons with Disabilities Act, 2016.

For Petitioner : Mr.P.Paramasiva Doss
For Respondents : Mr.M.Murali Vinodh
Standing Counsel

ORDER

The petitioner is a driver in the respondent Corporation. He was subjected to two disciplinary proceedings through two separate charges of unauthorised absence alleging that he had remained absent from 08.11.2017 and from 15.05.2018 respectively. Based on the proven charges, the disciplinary authority had imposed two punishments viz., stoppage of increment for a period of two years with cumulative effect by order dated 26.08.2019 and reduction of pay scale of two stages by order dated 16.07.2021. Both these orders of punishment are now under challenge in the present writ petition.



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2. Learned counsel for the petitioner submits that the petitioner had a medical disablement of low vision and therefore, was unable to attend the regular duty of bus driver. According to learned counsel for the petitioner, since Section 20 of Rights of Persons with Disabilities Act, 2016 safeguards the rights of such disabled persons, the respondents ought not to have subjected the petitioner to any departmental action.

3. Per contra, the learned Standing Counsel appearing for the respondents submits that the petitioner is a habitual absentee and that earlier on 11(eleven) occasions, he had been on unauthorised absence and by taking into account of the nature of charges, the disciplinary authority had imposed proportionate punishment and the same does not need any interference.

4. Section 20 of the Act provides that no Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service. The provision also safeguards the rights of such persons with an alternate employment in a suitable post.



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5. In the instant case, the petitioner was originally subjected to medical board and by a Report issued in the month of March 2019, the Medical Board opined that the petitioner was unfit for driving. Likewise, in the subsequent report of the Medical Board dated 24.02.2022 also, it was reiterated that the petitioner was unfit for driving purposes. Apart from these medical reports, the petitioner was continuously representing to the respondents, complaining of his visual disability and seeking for alternate employment.

6. The respondents, on the other hand, without considering such representations, had disregarded the medical reports and had considered the petitioner's absence to be “unauthorised”. When Section 20 of the Act safeguards the rights of such persons with any of the physical disabilities, which include visual disablement, the appropriate recourse on the side of the respondents would have been to provide with the petitioner an alternate and suitable post. Had such an exercise been taken by the respondents, possibly the petitioner would have reported for duty. The action of respondents in violating the statutory obligation and subjecting the petitioner to the charges of misconduct cannot be sustained since the



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respondents have disregarded the representations made by the petitioner in this regard as well as the reports of the Medical Board. In this view of the matter, the consequential punishment imposed on the petitioner would stand vitiated.

7. Accordingly, the impugned orders passed by the 2nd respondent in Pa.No.1/D8/526/Law/EMa/2017 dated 26.08.2019 and Pa.No.1/D3/730/Law/TNSTC/EMa/2018 dated 16.07.2021 are hereby quashed without any deprivation of monetary benefits. The respondents are directed to refund to the petitioner the amount withheld/recovered on account of the punishment imposed, within a period of four weeks from the date of receipt of a copy of this order.

6. With the above direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index:Yes
Speaking order
sr



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M.S.RAMESH,J.

Sr

To

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