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W.P.No.10634 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.10634 of 2015

S.Murugan

...Petitioner

-Vs-

1. Pondy cherry University,
(Thru the Vice Chancellor),
Barat Ratna Dr.B.R.Ambedkar
Administrative Building,
R.Venkataraman Nagar,
Kalapet, Puducherry – 605 014.

2. The Chief Commissioner for
Persons with Disabilities,
Ministry of Social Justice & Empowerment,
Department of Disability Affairs,
Sarojini House,
No.6, Bhagwan Dass Road,
New Delhi – 110001.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings in Case No.23/1024/11-12/R4988, dated 10.07.2014, on the file of the second respondent herein and to quash the same as illegal and the petitioner is entitled to the protection under Section 47 of the Persons with Disability Act, 1995 and



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consequently direct the first respondent to re-instate the petitioner without forfeiture of past service and to compensate the petitioner for denial of his statutory right and for his mental agony and harassment by the first respondent.

For Petitioner : Mr.R.Prabhakaran

For Respondents

For R1 : Mr.M.Ravi

For R2 : No appearance

ORDER

This Writ Petition has been filed challenging order dated 10.07.2014, passed by the second respondent in Case No.23/1024/11-12/R4988, thereby rejected the representation submitted by the petitioner requesting him to reinstate without forfeiture of past service and to compensate the petitioner for denial of his statutory right.

2. The petitioner initially joined in the first respondent university as a Peon on 08.06.1987 under physically handicapped quota with personal disability of 45%. He completed his probationary period of two years on 07.06.1989 and thereafter he was promoted to the post of Junior Assistant cum typist on regular basis with effect from 17.08.1995 and placed him under probation period of two years from 17.08.1995.



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3. While being so, on 29.04.1999, the petitioner met with an accident while proceeding to purchase service stamps to the Post Office.

Therefore, he sustained serious bone fracture and dislocation of spinal cord discs and fracture in coccyx. Therefore, he suffered from added disability to his previous disability condition. He availed medical leave and also undergone surgical procedures to recover from the injuries sustained during the accident and he was diagnosed to having Coccycodaenia, in the lower part of spine.

4. Therefore, the first respondent referred the petitioner to the Medical Board, JIPMER, Pondicherry, for evaluation and the Medical board certified that the petitioner does not appear to be completely and permanently incapacitated for further service of any kind and certified that the petitioner is fit for remaining service. However, the petitioner did not join duty to the immediate effect. Thereafter, the first respondent again referred the petitioner to the Government Hospital Medical Board, Puducherry, on 17.06.2002. The petitioner appeared before the Government Hospital Medial Board on 26.10.2002 and it certified that the petitioner was suffering from Chronic Coccydynia and the leave



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taken during the period of 05.03.2002 to 02.07.2002 as genuine. After surgery, the petitioner was again subjected to the Medical Board and advised to do work of light nature.

5. The Executive Council of the first respondent resolved to offer the lower post and based on the resolution, the reduction in rank by offering a lower post as Peon passed by an order dated 12.03.2004. The petitioner requested the first respondent to consider his physical status which would not permit him to discharge the Peon duties to the fullest satisfaction of the first respondent. Therefore, the petitioner did not report duty and continued to be on leave. He also sought for pension on medical ground.

6. The request made by the petitioner was considered by the Executive Council of the University and by its resolution offered lower post first before admitting the petitioner's request for pension, subject to the consent of the individual. However, the petitioner vide his letter dated 15.03.2004 refused to accept the offer made by the respondents and sought for 15 days time to think over. Thereafter, by the letter dated



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05.04.2004, he refused the post of Peon and instead requested for grant of invalid pension. Taking a sympathetic view, the respondent again placed the request of the petitioner before the Executive Council and its resolution dated 11.06.2004, approved to grant of invalid pension to the petitioner.

7. Thereafter, the petitioner has tendered his resignation to the first respondent University on 18.10.2004 and the same was accepted by the first respondent with effect from 21.10.2004. After resigned from service, the petitioner made a request to the first respondent on 07.12.2011, for reinstatement and the same was rejected by the first respondent University by the impugned order. Aggrieved by the same, the petitioner approached this Court by way of this Writ Petition.

8. The learned counsel appearing for the petitioner submitted that because of the reversion to the post of Peon, the petitioner had tendered his resignation to the first respondent on 18.10.2004. It was mechanically accepted by the first respondent University with effect from 21.10.2004, without informing the petitioner and his rights



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protected under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of rights and Full Participation) Act, 1995.

Therefore, on 07.12.2011, the petitioner requested the first respondent for his reinstatement of service. However, the request was rejected by the first respondent by an order dated 03.02.2012.

9. Heard the learned counsel appearing on either side and perused the material placed before this Court.

10. It is seen that after accepting the resignation given by the petitioner with effect from 21.10.2004, the petitioner made representation claiming his right under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of rights and Full Participation) Act, only on 07.12.2011. It is relevant to extract the provision under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of rights and Full Participation) Act, 1995 as follows :-

“No establishment shall dispense with or reduce in rank, an employee who acquires a disability during his service: Provided that, if an employee, after



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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”

11. The petitioner was initially appointed on physically challenged category and he did not acquire the disability during his service. Further the offer of Peon post in lieu of Junior Assistant-cum-Typist was only an option given to the petitioner to accept the same. Even after offering the post of Peon, the petitioner's right to continue in the same post was never taken away by the respondents. Only on the Medical Board report, the petitioner was offered to the said post. However, the petitioner was reluctant to rejoin the duty and he offered resignation from his service. Therefore, it was accepted by the first respondent and the petitioner was settled with all terminal benefits.

12. Having been accepted all terminal benefits and after the



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period of seven years, the petitioner requested to avail right under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of rights and Full Participation) Act, 1995. Therefore, the first respondent rightly rejected the same and this Court finds no infirmity or illegality in the order passed by the respondents herein.

13. Accordingly, the Writ Petition stands dismissed. There shall be no order as to cost.

11.07.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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