



W.P.No.10969 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

Writ Petition No.10969 of 2013
and M.P.No.1 of 2013

The Management
Tamil Nadu State Transport Corporation
Coimbatore Division 1, Coimbatore 641 043
Rep.by its Managing Director.

.... Petitioner

-Vs-

1.Pushpa
2.Mytheswaran
3.Tamilarasu
4.Chinnammal
5.The Presiding Officer
Labour Court, Coimbatore.

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records in I.D.No.469 of 2003 dated 27.01.2012 on the file of the 5th respondent and quash the same.

For Petitioner : Mr.A.Sundaravadanam

For Respondents : Mr.K.Bharathi – for RR 1 to 4
R5 – Labour Court



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ORDER

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The writ petitioner challenges the order passed in I.D.No.469 of 2003 dated 27.01.2012. The facts leading to the writ petition are not controversy. The husband of the 1st respondent, father of the respondents 2 and 3 and the son of the 4th respondent was one Nagaraj. He joined the services of the petitioner on 27.09.1985. During the course of employment, he suffered an accident on 17.06.2001. He sustained serious injuries on the right hand and right leg. Apart from the same, he also lost vision of his left eye. He took treatment in the Government hospital as well as in a private hospital, but unfortunately his eye sight could not be restored.

2. On reporting for duty, the petitioner informed him that without a certification from the Medical Board, they would not permit the said Nagaraj to rejoin duty. Accordingly, he submitted himself for examination by a Medical Board. The Board submitted a report on 12.08.2002 that the petitioner cannot continue as a driver but suggested that he is fit enough for an alternate employment. Within a month of the receipt of the medical report, the writ petitioner issued a show cause notice to the deceased Nagaraj as to why he should not be discharged on medical grounds.

2. In response to the same, on 20.09.2002 he issued a reply stating that



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he is willing for alternate employment that may be offered by the writ petitioner.

Without responding to this letter, which was marked as Ex.M5 before the labour Court, a second show cause notice was issued on the same ground as to why the said Nagaraj should not be discharged from service. On 30.09.2002, the said Nagaraj issued a reply stating that he is willing for alternate employment and is not accepting the claim made by the writ petitioner that he should be discharged on medical grounds. Despite the same, on 23.10.2002 orders were passed discharging him from service on medical grounds.

3. Challenging the same, the said Nagaraj raised an industrial dispute in I.D.No.469 of 2003. Pending the industrial dispute, the said Nagaraj passed away on 27.06.2009 and the respondents 1 to 4 were brought on record. After receiving a counter from the writ petitioner, the labour Court, Coimbatore came to a conclusion that the writ petitioner Management is under an obligation to pay all the monetary benefits to the respondents 1 to 4 with continuity of service and without any interruption till the date of death of Nagaraj which is on 27.06.2009. Challenging the same, the present writ petition has been filed.

4. Mr.Sundaravadanam, learned counsel appearing for the writ petitioner would vehemently contend that the person having suffered serious disability of loss of vision and also damage to his right hand is unfit to be a driver and the



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writ petitioner has the right to decide as to why it should keep him in employment. Being a driver, it required fittest of persons to operate the vehicle especially in the long distance buses and the deceased Nagaraj not being able to see through his left eye could not have been accommodated as a driver. Apart from that, he would further add that Nagaraj himself had given in writing that he would receive the compensation under the Workmens Compensation Act. It is on record that a sum of Rs.1,30,586/- was paid under the Workmens Compensation Act. Mr.Sundaravadanam would add that apart from this, a sum of Rs.65,295/- was paid as compensation under the Disabilities Act.

5. I am afraid I am not in a position to accept the argument of Mr.Sundaravadanam. There is a mandate under Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, on the Management to provide alternate employment to the person who has suffered disability during the course of his employment. This is a duty imposed on the Management. Instead of discharging the duty, the Management had discharged the deceased Nagaraj on medical grounds. It is on record that the said Nagaraj was willing for alternate employment and had given letters, not once but twice to the Management. Despite this, the writ petitioner did not accede to the same. It has miserably failed to comply with the provisions of a parliamentary statute. The letter obtained from the workman does not discharge



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the Management of its responsibilities under the aforesaid Act. There cannot be contracting out of a Statute. Such a contract is contrary to public policy and hence, unenforceable.

6. Therefore, I reject the argument of the writ petitioner. I have no other option than to confirm the order of the labour Court in I.D.No.469 of 2003 dated 27.01.2012. The petitioner shall comply with the order of the labour Court within a period of three months from the date of receipt of a copy of this order. The writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

06.06.2023

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order / Non-speaking order
KST

To

The Presiding Officer
Labour Court, Coimbatore.



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V. LAKSHMINARAYANAN, J.

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