

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2023

CORAM:

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

Writ Petition No. 17080 of 2013
and
Writ Petition No. 36667 of 2016

W.P.No.17080 of 2013

K. Sakthivel

.. Petitioner

Versus

1. The Director General of Police,
Kamaraj Salai,
Mylapore, Chennai 600 004.
2. The Commissioner of Police,
Egmore, Chennai – 600 008.
3. The Deputy Commissioner of Police,
Armed Force in-charge Motor Vehicles,
Pudupet, Chennai 600 002.

.. Respondents

WP No. 17080 of 2013:- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to consider the petitioner's representation dated 04.05.2013, in the light of the petitioner's medical report and pass necessary order within a time frame fixed by this Court.

W.P. No. 36667/2016:

K.Sakthivel

.. Petitioner

Versus

1. The Director General of Police,
Mylapore, Chennai 600 004.
2. The Commissioner of Police,
Vepery, Chennai – 600 007.
3. The Deputy Commissioner of Police (Administration),
Office of Commissioner of Chennai City Police
Vepery, Chennai 600 007.

.. Respondents

WP No. 36667 of 2016:-Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, after calling for the concerned records from the 3rd respondent, quash the charge memo dated 23.05.2016, bearing Tha.Ko.No.505/Tha B 3(2)/2016 issued by the 3rd respondent as illegal, arbitrary and contrary to the provisions of the persons with disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and consequently, direct the respondents to give alternative employment of Helper to the petitioner with all consequential benefits, protection of pay and other benefits.

For petitioner : Mr. Balan Haridas
in both the Writ Petitions

For Respondents : Mr. M. Shahjagan
Special Government Pleader
in both the Writ Petitions

COMMON ORDER

The petitioner in both the writ petitions are one and the same. Out of the two writ petitions, the petitioner has filed WP No. 17080 of 2013 seeking to issue a Writ of Mandamus directing the respondents to consider his representation dated 04.05.2013, in the light of his medical report and to pass necessary order within a time frame. He has filed the other Writ Petition being WP No. 36667 of 2016 for issuing a Writ of Certiorarified Mandamus to quash the charge memo dated 23.05.2016 bearing Tha.Ko.No.505/Tha B 3(2)/2016 issued by the 3rd respondent as illegal, arbitrary and contrary to the provisions of the persons with disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and consequently, direct the respondents to give alternative employment of Helper to him with all consequential benefits, protection of pay and other benefits.

2. The case of the petitioner in brief is as follows:-

(a) The petitioner was appointed as Syces in Chennai City Police and he joined the service on 01.07.2005. On such appointment, he was assigned work in the Horse Stable for maintaining the horses in the Head Office. According to the petitioner, he discharged his duty sincerely without any complaint. However, during the course of his employment, he suffered ailment due to severe diabetic and consequently he could not do the work in the horse stable and maintain the horses as the same involves physical exertion. Hence he made a representation to the 2nd respondent requesting to provide alternative employment on medical grounds and the same was considered by the Deputy Commissioner of Police (Armed Force in-charge and motor vehicle branch) in his proceedings bearing Na.Ka.No.29/Thu.A.Mo.Va.P./Camp/2010 dated 09.06.2010 and directed the Assistant Commissioner of Police (Head Quarters) not to assign the work of maintaining the horses in the horse stable to the petitioner, instead give him the work of Helper in the Head Office. It was further instructed to give suitable instructions to the Inspector of Police (Headquarters) and to direct him to follow the instructions. Even though he was given alternative employment as Helper, after one year, once again the petitioner was assigned work of

maintaining the horses and other work in the Horse Stable. In these circumstances his health was seriously affected and he became sick. Consequently, he availed leave on medical grounds without salary and the same was sanctioned from 26.03.2013 up to 27.09.2013. As his health condition did not improve on 25.09.2013, he requested the respondents to extend him leave from 28.09.2013 to 27.03.2014.

(b) According to the petitioner, he submitted a representation dated 04.05.2013 to the first respondent requesting to provide him alternative employment of Helper in the Headquarters. As the representation dated 04.05.2013 was not considered, he filed a Writ Petition in W.P.No. 17080 of 2013 before this Court seeking to consider his representation for alternative employment and the same is pending.

(c) While so, he received a Memo dated 23.05.2016, stating that he had taken unauthorized leave from 29.09.2013 to 17.11.2013. On receipt of the Memo dated 23.05.2016, he tendered his explanation on 02.06.2016 stating that because of the nature of work assigned to him in the Horse Stable, he acquired illness and could not work in the horse stable to maintain the horses.

Even in the explanation dated 11.03.2013, he sought to provide alternative employment of Helper by invoking provision under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Thereafter, the third respondent asked him to appear for enquiry on 16.08.2016 in connection with the charges. Accordingly, he appeared and denied the charges levelled against him. During the enquiry, three witnesses were examined on the side of the department and their signatures were obtained. Thereafter, the enquiry officer questioned the petitioner and his answers were typed and his signature obtained. However, the copy of the proceedings was not given to him. In this regard, he sent a representation dated 18.08.2016 and the 3rd respondent sent a communication dated 08.09.2016, enclosing the enquiry report, dated 22.08.2016. Challenging the same, the second Writ Petition being WP No. 36667 of 2016 has been filed.

3. On going through the averments made in the Writ Petition, it is seen that the petitioner was suffering from diabetes and had disability in his legs. Due to such injury, he could not do the work of maintaining the horse in the horse stable. This Court, on an earlier occasion has directed the government pleader to obtain appropriate medical certificates regarding

disability if any found in the petitioner's health and the same was also adhered to by the learned counsel for the respondents by directing the petitioner to appear before the Team of Medical Board constituted at Rajiv Gandhi Government General Hospital, Chennai. Accordingly, the petitioner was examined on 24.02.2023. The report has been filed by the medical board - Sakthivel No.001410, Chair Person: Dr.M.Bharatha Mohan and the Team of Doctors. The petitioner's age was evaluated as about 55 years by Orthopaedics Department, Rajiv Gandhi Government General Hospital, Chennai [Dated 21.02.2023] and he was diagnosed with right knee post traumatic sequelae. According to them, the petitioner is suffering from permanent disability of 40% and he is advised to avoid carrying heavy weight activities and to do light activities/Job. The Medical Board also advises him to be assigned light duty/job. It is also pointed out by the learned counsel for the petitioner that at the earlier point of time, there are number of persons who were transferred from various other department by conversion order on 22.01.2021 and many persons were posted transferred to various other sections and that the petitioner's representation also can be considered.

4. In the light of the above, the charge memo dated 23.05.2016 issued by the third respondent against the petitioner is hereby quashed and the respondents are directed to consider the petitioner's health condition that he is suffering from 40% disability and to give him a job in a lighter post which does not involve hard work or physical exertion, particularly in the post of Helper or Assistant and appropriate orders to be passed by the respondents regarding his eligibility with all consequential benefits.

5. With the above directions, both the Writ Petitions stand disposed of. No costs.

29.03.2023

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To

1. The Director General of Police,
Kamaraj Salai,
Mylapore, Chennai 600 004.
2. The Commissioner of Police,
Egmore, Chennai – 600 008.
3. The Deputy Commissioner of Police,
Armed Force in-charge Motor Vehicles,
Pudupet, Chennai 600 002.

WP No.17080 of 2013 & 36667 of 2016

V. BHAVANI SUBBAROYAN, J

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WP No.17080 of 2013

29.03.2023