



WP.No.15600 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 07.11.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

WP.No.15600 of 2010

P.Subramanian

...Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Salem.

2.The Managing Director,
Tamil Nadu State Transport Corporation,
12, Ramakrishna Salai,
Salem-636 007.

3.The General Manager,
Rep. by the Management of Tamil Nadu State Transport Corporation,
Salem division I,
12, Ramakrishna Salai,
Salem-636 007.

...Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records connected with the orders passed by the 3rd respondent discharging the petitioner from his service by his Proc.No.Ku.No.E11/4838/AaPooKa/96 dated 19.03.1997, and also the consequential award of the 1st respondent/ Labour Court made in I.D.No.381/2002, dated 11.03.2004 in so far as it has failed to grant the relief of an alternative employment to the petitioner with all attendant benefits as per Sec.47 of the Persons with Disabilities (Equal



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Opportunities Protection of Right and Full Participation) Act 1995 quash both of them and also direct the respondent/ transport corporation to grant the petitioner all the service benefits including continuity of service, pension and other attendant monetary benefits as per Section 47 of the Persons with Disabilities (Equal Opportunities Protection of Right and Full Participation) Act 1995.

For Petitioner : Mr.G.Peranban

For Respondents: R1- Court

RR2 & 3 - Mr.R.Babu

Standing Counsel

ORDER

Writ petition is filed by the workman challenging the order of the Labour Court dated 11.03.2004 in I.D.No.381 of 2004.

2. The petitioner was appointed in the 2nd respondent Corporation as a driver on 20.05.1979. On the direction of the 2nd respondent, the petitioner appeared before the Medical Board for medical check up on 22.01.1997. The Medical Board certified that the petitioner was not fit to continue as driver owing to defective vision. As per clause 24(b) of the corporation's standing order the petitioner became ineligible to continue as driver because of defective vision. Based on the Medical Boards certificate, the



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petitioner was asked to show cause as to why he should not be discharged from service. The petitioner submitted his explanation and thereafter the final order of discharge was passed on 19.03.1997. The petitioner therefore raised the dispute before the Labour Court seeking alternate employment with other consequential benefits on the basis of G.O(Ms).No. 746 Transport Department dated 02.07.1981 and clause 82 and 83 of the 12(3) settlement.

3. The 2nd respondent Corporation contested the I.D stating that the petitioner was discharged from service on the basis of the certificate issued by the Medical Board, which certified that the petitioner was unfit for discharging the duties of a driver. The respondent further stated that, a memo was issued to the petitioner calling for an explanation as to why he could not be discharged from service under the provisions of Section 24(b) of the standing orders. The petitioner submitted his explanation and as it was found unsatisfactory, the petitioner was discharged from service.

4. Before the Labour Court, the petitioner did not lead any evidence either oral or documentary. The respondent filed four documents, but did



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not examine any witness.

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5. The Labour Court on the basis of the evidence on record found that the discharge of the petitioner from service was justified on the ground of medical unfitness. The Labour Court held that the petitioner was entitled to alternate employment as per G.O(Ms).No.746, Transport Department dated 02.07.1981 and Clause 82 and 83 of 12(3) Settlement. The Labour Court therefore directed the respondent corporation to provide the petitioner alternate employment at the lowest scale of pay applicable to the category to which he was appointed as per G.O(Ms).No.746 dated 02.07.1981 and clause 82 and 83 of the 12(3) settlement, after settling the benefits, if any, arising out of discharge from service.

6. Aggrieved by the order passed by the Labour Court the petitioner has filed the above writ petition.

7. The learned counsel for the petitioner submitted that the petitioner's case ought to have been considered under Section 47 of the Persons with Disability (Equal Opportunities, Protection of Rights and Full



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Participation) Act, 1995, instead of directing the respondent to provide alternate employment under G.O.(Ms).No. 746, Transport Department dated 02.07.1981.

8. The learned counsel for the respondent on the other hand submitted that the petitioner was discharged from service on 19.03.1997 and as the petitioner did not challenge the discharge order, all the service benefits were settled as per Government Order in G.O(Ms).No.746 Transport Department, dated 02.07.1981. The learned counsel therefore submitted that the petitioner was not entitled to alternate employment under Section 47 of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, but was eligible for alternate employment only under G.O(Ms).No. 746 Transport Department, dated 02.07.1981 and clause 82 and 83 of the 12(3) settlement.

9. I have heard both the learned counsels and have perused the materials placed on record.

10. The core issue is whether the petitioner is entitled for alternate



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employment under Section 47 of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

11. According to the learned counsel for the 2nd respondent, the terminal benefits *viz.*, Gratuity of Rs.24,344/- and Provident Fund of Rs.24,041/- were settled to the petitioner on 28.08.1997 and 02.06.1997 respectively in pursuance of the discharge order dated 19.03.1997. The petitioner received the said amounts and raised Industrial Dispute only in 2002 claiming alternate employment under G.O(Ms).No. 746, Transport Department dated 02.07.1981 and clause 82 and 83 of the 12(3) Settlement.

12. Before the Labour Court the petitioner did not challenge the discharge order, but only claimed alternate employment with continuity of service, backwages and other benefits. The petitioner has challenged the discharge order for the first time in the writ petition, which in my view cannot be entertained, as the petitioner has received the entire service benefits pursuant to the discharge order.



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13. As the petitioner did not claim alternate employment under Section 47 of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, but claimed alternate employment only under G.O(Ms).No. 746, Transport Department dated 02.07.1981 and clause 82 and 83 of the 12(3) Settlement, that too without challenging the discharge order, the Labour Court cannot be faulted for directing the respondent to provide alternate employment to the petitioner by invoking G.O(Ms).No.746, Transport Department dated 02.07.1981 and clause 82 and 83 of the 12(3) Settlement. Under the circumstances, I find no infirmity in the award of the Labour Court.

14. As per G.O(Ms).No. 746 Transport Department, dated 02.07.1981 and clause 82 and 83 of the 12(3) Settlement, it is clear that a workman declared to be medically unfit would be given alternate employment at the lowest scale of pay applicable to the category to which he was appointed after settling all benefits arising out of discharge.

15. It is submitted by the learned counsel for the 2nd respondent that



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petitioner was superannuated within three months of the Labour Court award dated 31.05.2004. The learned counsel therefore submitted that the question of providing alternate employment to the petitioner does not arise. I am afraid that the submission of the learned counsel for the 2nd respondent cannot be countenanced. The 2nd respondent has not challenged the award and therefore the 2nd respondent is bound to comply with the directions of the Labour Court.

16. The learned counsel for the 2nd respondent on instructions submitted that as per the direction of the Labour Court the petitioner is entitled for appointment to the post of helper in the scale of pay of Rs.4,800 – 10,000/- with grade pay of Rs.1,300/-. The 2nd respondent is hence directed to pay the petitioner, the salary in the category of helper in the scale of pay of Rs.4,800 – 10,000/- with grade pay of Rs.1,300/- from 2002 (the date of filing of I.D) to 31.05.2004 (date of superannuation) along with 6% interest from the date of award of the Labour Court till the date of payment within a period of four (4) weeks from the date of receipt of a copy of this order.



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WEB COPY The writ petition is accordingly partly allowed. There shall be no order as to costs.

07.11.2023

Index: Yes/No
Speaking Order: Yes/No
Neutral Citation: Yes/No
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N.MALA, J.

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