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Writ Petition No.21285 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.07.2023

PRONOUNCED ON : 31.07.2023

Coram:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Writ Petition No.21285 of 2011

1. S.Muthusami (Deceased)
2. Malarkodi
3. M.Senthilkumar
4. Bhavani
5. Nathiya

.... Petitioner

Vs.

1. The Tamilnadu State Transport Corporation,
(Villupuram) Ltd.,
(Formerly Thanthai Periyar Transport Corporation),
Rep. By its Managing Director,
Villupuram – 605 602.

2. Government of Tamil Nadu,
Rep. By its Secretary,
Transport Department,
Fort St. George, Chennai – 600 009.

.... Respondents

[Petitioners 2 to 5 substituted as Legal representatives of deceased sole petitioner vide order dated 28.03.2023 made in WMP No.9196 of 2023 in WP No.21285 of 2011 by JSNPJ)

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the



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records pertains to the order of the 1st respondent bearing Ref. No.22695/Nee7/ ThaNaAPoKa (VeeKool)/97 dated 22.12.1998 in discharging the petitioner with effect from 22.1.1999 is illegal contrary to The Persons with Disabilities (Equal Opportunities Protection of Rights & Full Participation) Act 1995 arbitrary & violative of Article 14 and 16 of the Constitution of India and consequently direct the 1st respondent to treat the services of the petitioner as continuous one without any break in service and grant all the benefits that the petitioner is entitled to but for Medical de-categorisation on 22.1.1999 grant the petitioner all the consequential monetary and other attendant benefits with effect from the date of medical de-categorisation on par with his juniors.

For Petitioner: : Mr.K.M.Ramesh, Sr. Counsel
for Mr.V.Subramani

For Respondents : Mr.Aswin (for R1)
Standing Counsel
Mr.L.S.M.Hasan Fizal (for R2)
Additional Government Pleader.

ORDER

The original writ petitioner filed the above writ petition, challenging the order issued by the 1st respondent dated 22.12.1998 in discharging him from service with effect from 22.01.1999 on medical grounds as illegal, contrary to the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Act 1 of 1996) (hereinafter in short, 'the Act') and consequently to direct the 1st respondent to treat his services as continuous one



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without any break in service and grant all the benefits to which he is entitled to but for medical de-categorization on 22.01.1999, grant him all the consequential monetary and other attendant benefits with effect from the date of medical de-categorization on par with his juniors.

2. During the pendency of the above writ petition, the original first petitioner died due to illness on 17.01.2023 and the widow, the sons and daughters, were brought on record as per the orders of this Court dated 28.03.2023 made in WMP No.9196 of 2023 in WP No.21285 of 2011.

3. The service matrix of the 1st petitioner that are necessary for determination of this case are as under

<i>Date</i>	<i>Event</i>
20.06.1986	Deceased petitioner S.Muthusamy joined the services of TNSTC Ltd as Conductor on daily wages basis in Kancheepuram Branch.
09.05.1997	By order dated 01.05.1997, the deceased petitioner was brought under the monthly cadre and posted to work in Chidambaram Branch.
22.02.1993	Deceased petitioner was confirmed in service.
01.02.1993	Deceased petitioner was promoted as Senior Conductor.
30.06.1996	While in employment, when deceased petitioner was riding a two wheeler at about 10.30AM, he met with an accident near Karuvelpalankurichi when a public transport bus dashed against the deceased. The deceased petitioner suffered injuries in forehead,



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<i>Date</i>	<i>Event</i>
	abdomen, right ankle joint, patella (right knee), nose and upper lip, loss of six teeth.
25.09.1997	The 1 st respondent asked the deceased petitioner to appear before Medical Board on 29.09.1997 with all relevant medical records.
05.11.1997	Medical Board after examining the deceased petitioner gave opinion to the effect that he is not fit for the post of Conductor.
29.10.1998	Pursuant to Medical Board's opinion, the 1 st respondent issued a show cause notice as to why the deceased petitioner should not be discharged from service on medical grounds and sought his explanation.
04.11.1998	The deceased petitioner submitted his reply seeking for an alternative employment.
21.01.1998	The 1 st respondent corporation issued final order discharging the deceased petitioner from service.
02.02.1999	The deceased petitioner sent representation seeking alternative employment.
10.05.1999	The 1 st respondent Corporation relying on G.O.Ms.No.1387, Transport Dept. issued an order provisionally selecting the deceased petitioner for alternative employment as Helper as fresh entrant.
12.05.2011	The 1 st respondent corporation stated that petitioner will be employed in the same post of helper and there will be no change of cadre or category.

4. Heard the learned counsel on either side and perused the documents.

5. The learned senior counsel appearing for the petitioner could submit that the 1st petitioner who was working as a Conductor in the Tamil



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Nadu State Transport Corporation (formerly Thanthai Periyar Transport Corporation) has 'acquired disability' 'during the employment' and he is entitled for benefit under Section 47 of the Act. Hence, he could contend that though the transport corporation had issued re-employment to the 1st respondent as a Helper on 14.05.1995, the same is in violation of Section 47 of the Act, as the pay scale of the said post is 3240-60-4680, whereas his original basic pay is Rs.11,100/- and as per Section 47 of the Act, he is entitled for pay protection and equal remuneration on par with his earlier post.

6. Per contra, learned standing counsel for the 1st respondent Transport Corporation could contend that in order to avail the benefit under Section 47 of the Act, he should have acquired disability 'during and out of course of the employment' and the 1st respondent further contended that since the 1st petitioner has accepted the alternative employment on 14.05.1999, as a Helper instead of Conductor, he is estopped from claiming and challenging the said order and also pleaded that the writ petition is hit by delay and laches.

7. The points for consideration that arises in this case are as follows:

(i) Whether the 1st petitioner is entitled to get alternative employment in

terms of Section 47 of the Act, as he is found medically unfit to be a



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Conductor in Transport Corporation bus?

- (ii) Whether the claim of the petitioner is estopped from filing writ petition after joining the post of 'Helper' afresh?
- (iii) Whether the writ petition is to be dismissed on the ground of laches?

8. I find that all the three points raised herein has been duly covered by the decision of this Court in ***G.Kandasamy Vs. Tamil Nadu State Transport Corporation, (Villupuram) Ltd.***, reported in **2010 (7) MLJ 356**, wherein all the points have been answered in affirmative in support of the petitioner.

9. It remains to be stated that the counsel for the 1st respondent wants to deviate from the line of judgment, on the point, that the decisions referred by the petitioner's counsel are relating to acquiring the disability during and out of the course of employment, however, in the factual situation that in the instant case, the petitioner while driving the two wheeler for his private affairs has met with the accident and acquired the disability and the medical board has rendered him to be unfit for the post of the 'Conductor'.

10. Section 47 of the Act, reads as under:

<https://www.mhc.tn.gov.in/judis> “Non-discrimination in Government employment.-(1)No



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establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service;

Provided that, if an employee, after 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.

(2) No promotion shall be denied to a person merely on the ground of his disability;

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.”

11. As per Section 47 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, an employee shall not be discharged from service on a finding that he is unfit to hold the post due to medical reasons. On the other hand, he shall be provided any alternative employment, ie., he cannot suffer due to non-employment, due to his unfitness on medical reasons. Hence, in all cases where the employees are discharged on the ground of unfitness and provided alternative employment subsequently, they are entitled to wages for the period of non-employment. It is a well settled principle.



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12. The Act 1 of 1996 is a beneficial enactment and as per Section 47 of the Act, the petitioner is entitled to get alternate employment with pay protection and other monetary benefits and he cannot be discharged at all. Admittedly, the Government Order issued in G.O.Ms.No.746, Transport Department, dated 2.7.1981 cannot override the provisions of Section 47 of the Act 1 of 1996, which was specifically dealt with in the decision reported in 2006 (1) MLJ 452 (*P.Thangamarimuthu Vs. Tamil Nadu State Transport Corporation, Madurai*).

13. In view of the specific words in the said Act, extracted supra, if the person acquire disability 'during the service' is sufficient and it need not be during and out of the course of the employment as contended by the 1st respondent and also I am fortified by the following two decisions.

(i) In the decision reported in **2006 (4) MLJ 1669** [*G.Muthu Vs. Management of Tamil Nadu State Transport Corporation (Madurai) Ltd.,*] this Court has extended the benefit of Section 47 of the Act to the petitioner therein, who has been discharged on the ground of 'colour blindness'.

(ii) Further, in the decision of this Court reported in **2016 (2) LLJ**

<https://www.mhc.org.in/judgments> **372** [*G.R.Ramesh Vs. The Managing Director, Tamilnadu State Transport*



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Corporation (Tirunelveli), Tirunelveli and others] the petitioner, who suffered ear pain and thereafter lost his hearing capacity, was also given the benefit of Section 47 of the Act.

14. On the point of estoppel, it is well settled that there cannot be any estoppel against the statute. The Division Bench of this Court in ***Managing Director, Tamil Nadu State Transport Corporation Ltd., (Villupuram Division-III) Kancheepuram vs. E.Humayun Sheriff***, reported in **2013 (2) CWC 332**, in the matter of similar nature, has held that there cannot be any estoppel against the statute by following the judgment of the Hon'ble Supreme Court in ***Indirabai Vs. Nand Kishore***, reported in **1990 (4) SCC 668**.

15. On the point of latches, I find that the Act came into force in the year 1995 and the disability acquired by the petitioner is on 30.06.1996 and hence, he is entitled for protection of the Act and due to declaration of the disability as unfit for Conductor by the Medical Board, he has sought re-employment with pay protection and multiple representations have been made and however, he was made to accept the lesser post of Helper on 14.05.1999, with starting Basic Pay of Rs.3,240/- and subsequently, the petitioner also

<https://www.mhca.org.in> appeared before the Medical Board on 16.09.2010 and according to the



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petitioner he was fit to hold the post of 'Conductor', however he was not restored to the old employment and hence, all the points are held in favour of the petitioner. Thus, the writ petition deserves to be allowed.

16. Accordingly, the writ petition stands allowed in entirety. As the petitioner has died and legal representatives are on record, the 1st respondent is hereby required to pay the difference of pay and all other monetary benefits attending thereto, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

31.07.2023

Index : Yes/No
Speaking order / Non-speaking order
Neutral Citation: Yes/No.
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To

1. The Managing Director,
The Tamilnadu State Transport Corporation,
(Villupuram) Ltd.,
(Formerly Thanthai Periyar Transport Corporation),
Villupuram – 605 602.

2. The Secretary,
Government of Tamil Nadu,
Transport Department,
Fort St. George, Chennai – 600 009.



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RMT.TEEKAA RAMAN,J
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Pre-delivery order in
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