



W.P.No.28012 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	19/12/2023
Delivered on	22/12/2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition No.28012 of 2015
a n d
M.P.No.1 of 2015

P.J.Arul Devadoss ... Petitioner

Vs

1. The Managing Director
State Express Transport Corporation
Thiruvallur House
Pallavan Illam
Chennai 600 002.

2. The Branch Manager
State Express Transport Corporation
Nagapattinam Depot
Nagapattinam District. ...

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus to call for the entire records which culminated in passing the proceedings in Aana No.54067/P2/Aavipoka (T.N.Ko2)/99 dated 10/10/1999 on the file of the



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second respondent and quash the same and consequently direct the respondents to count the period from 10/10/1999 till the date of retirement of the petitioner on April 2015 for the purpose of continuity of service and all other attendant benefits including enhanced pension and to pass appropriate orders thereon within a stipulated time.

For petitioner ... Mr.B.K.Girish Neelakandan

For respondents ... Mr.L.S.M.Hasan Fizal

ORDER

This writ petition is filed seeking to quash the order dated 10/10/1999 passed by the second respondent Transport Corporation.

2. The facts in brief which led the petitioner to file this writ petition under Article 226 of the Constitution of India seeking certiorarified mandamus are that the petitioner was appointed as a Driver (Token No.88TV052) on 7/9/1988 at the first respondent State Express Transport Corporation. He was allotted to work in Nagapattinam Depot of the second respondent Corporation and from the date of joining, he has been driving the buses from Nagapattinam to Bangalore trips covering a



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distance of 600 kms per day. Due to the frequent usage of his right leg, while driving the bus, he was subjected to arthritis in his right knee and ultimately he has reached the level where he could not drive heavy vehicles and thereby he had to apply for medical leave.

3. The petitioner was directed to appear before the Medical Board, and on examination of the petitioner by the Medical Board, it was found that the petitioner was unfit to drive heavy vehicles. On the basis of the report given by the Medical Board dated 3/9/1999, second respondent has issued show cause notice as to why the petitioner shall not be discharged from the duties as a Driver. The petitioner has submitted his explanation. However, it was not considered and ultimately, by way of impugned proceeding dated 10/10/1999, the petitioner was discharged from the duty as a Driver without providing any alternative employment.

4. The petitioner has approached the workmen Compensation Forum by filing W.C.No.539 of 2003 before the Deputy Commissioner of Labour, Trichy. After seven years, said petition was dismissed on 5/8/2010 holding that the Deputy Commissioner of Labour has no jurisdiction to entertain the claim. The petitioner then has filed C.M.A



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(MD) No.1229 of 2011 and the same is still pending.

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5. The petitioner has filed number of representations before the respondents, seeking for alternate employment, under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and the same were rejected by the respondents on 17/12/2011.

6. It is further mentioned in the affidavit that W.P.No.10533 of 2012 was filed in an identical circumstances by another person wherein this Court has directed the respondents to consider the representation of the petitioner therein notwithstanding the delay in filing the writ petition. Therefore, ultimately, the petitioner has sought for relief under Section 47 of the Act to direct the respondents to provide alternative employment by quashing the proceeding issued by the first respondent in discharging the petitioner without providing alternative employment.

7. Heard Mr.K.Girish Neelakantan, learned counsel for the petitioner and Mr.L.S.M.Hasan Fizal, learned counsel for the respondents.

8. The learned counsel appearing for the petitioner submitted that



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once the petitioner has become unfit to drive heavy vehicles, he should have been given an alternative employment in the respondent Corporation as per the terms of Section 47 of the said Act.

9. Relying on a citation in ***G.MUTHU Vs. THE MANAGEMENT OF TAMIL NADU STATE TRANSPORT CORPORATION (MADURAI) LTD (2007) 50 AIC 293***, the learned counsel appearing for the petitioner submitted that a Hon'ble Division Bench has held that the Management therein was directed to provide alternate employment to the appellant from the date of his discharge with pay protection, continuity of service, backwages and all other attendant benefits for which he is legally entitled to. Relevant paragraph of the aforesaid decision is extracted hereunder:-

“26. After analysing the entire provisions of the Act and also various decisions cited above, we feel that the courts cannot shut its eyes if a person knocks at its door claiming relief under the Act. In a welfare State like India, benefits of benevolent legislation cannot be denied on the



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ground of mere hyper technicalities. When the law makers have conferred certain privileges on a class of persons, like in this case to a disabled person, the duty is cast upon the judiciary to oversee that the authorities or the persons to whom such a power is conferred, enforce the same in letter and spirit for which such enactment has been made. In the present case on hand, the appellant has been discharged on the ground of 'colour blindness' without providing alternative job as per [Section 47](#) of the Act, which is unjustified and unreasonable. Hence, the order of the respondent dated 26.3.2002 discharging the appellant on medical grounds has no leg to stand. The appellant is entitled to the protection under [Section 47](#) of the Act. He should have been given a suitable alternative employment with pay protection, instead of discharging him from service on the ground of 'colour blindness'. Viewed from any



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angle, the order of the learned Single Judge dismissing the writ petition on the mere ground of laches without considering the claim of the appellant on merits is liable to be set aside.

10. Learned counsel appearing for the respondents submitted that running of the buses for transporting the public is the only activity of the respondent Corporation and basing on the experience and qualification of the petitioner, he cannot be provided any job in the Corporation except as a Driver and since the alternative employment was not available, he cannot be provided.

11. Heard both sides and perused the materials available on record.

12. Section 47 of the said Act, reads as under:-

“Non-discrimination in Government employments.—

(i). No establishment shall dispense with, or reduce in rank, an employee who



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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.

(ii). 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.”



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13. The petitioner was admittedly working as a Driver, and was entrusted with the duty of driving long distance buses from Trichy to Bangalore, covering about 600 kms every day. The petitioner has admittedly developed arthritis on his right leg knee on account of his continuous work as a Driver, as the buses during that time are on a manual transmission and not an auto transmission. Once the petitioner has become sick on account of knee problem on his right leg knee, he was subjected to Medical Board examination which comes to show that he cannot drive heavy vehicles. Since the Medical Board has directed that the petitioner cannot drive heavy vehicles, he should not be allowed to drive the vehicles.

14. The impugned order passed by the first respondent dated 10/10/1999 would go to show that explanation submitted by the petitioner is not acceptable, thereby, in compliance with the recommendations of the Medical Board, the petitioner was terminated with immediate effect. However, there is a rider. It is mentioned in the order that in case, if the petitioner seeks for an alternative employment, he can submit an application. It is submitted by the counsel for the



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respondents that the petitioner has not submitted an application seeking alternate employment.

15. Originally, the petitioner has submitted an application to the respondents seeking alternative employment. The petitioner has filed a copy of the representation submitted to the Transport Minister and copy of the legal notice issued to the first respondent, dated 30/8/2003. Considering the above, it cannot be said that the petitioner has not made representation to the respondents seeking alternative employment.

16. Even though, the petitioner has made a representation for alternative employment, the respondent Corporation has failed to provide alternative employment to the petitioner, which is a clear violation of Section 47 of the Act and therefore, the impugned order passed by the first respondent dated 10/10/1999 shall not sustain.

17. The petitioner was aged about 58 years on the date of filing of the writ petition in the year 2015. Now, he has been superannuated on account of his age. Normally, once the writ petition like this is allowed, the respondents should have been directed to provide an alternative



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suitable employment to the petitioner. However, on account of retirement of the petitioner, such directions cannot be given.

18. Learned counsel for the petitioner has submitted vehemently that since the respondents have violated Section 47 of the Act, the petitioner is entitled for backwages and terminal benefits. Learned counsel for the respondents has made a submission that the respondent Corporation would consider for providing him all terminal benefits including pension, if backwages are not insisted upon.

19. In view of the submissions made above, considering the fact that respondents have refused to provide alternate employment in violation of Section 47 of the Act, impugned proceedings dated 10/10/1999 passed by the first respondent are hereby set aside and accordingly, this writ petition is allowed. The respondents are directed to provide all terminal benefits to the petitioner, including the pension with continuity of service, without monetary benefits from the date of termination until his superannuation by considering his past service from the date of joining until his termination. Considering the fact that petitioner is bed ridden, the respondent Corporation is directed to provide the benefits as directed, as



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quickly as possible. No costs.

Consequently, the connected

Miscellaneous Petition is closed.

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mvs.

Index: Yes/No

Neutral Citation: Yes/No

To

1. The Presiding Officer
Labour Court
Cuddalore.



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Dr.D.NAGARJUN,J

mvs.

Pre-delivery order made in
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