



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2023

CORAM

THE HON'BLE Mr. JUSTICE **C. V. KARTHIKEYAN**

W.P.No.10729 of 2019
and
W.M.P.No.11208 of 2019

K. Britto Rajkumar

.. Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation,
(Coimbatore) Limited.,
37, Mettupalayam Road,
Coimbatore - 641 002.

2.The General Manager,
Tamil Nadu State Transport Corporation,
(Coimbatore) Division – II,
Erode Regional Officer,
Chennai-malai Road,
Erode – 638 001.

.. Respondents

Prayer: This Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to reckon the date of joining of service of the petitioner as Driver on 23.07.21993 instead of 20.11.1998, the date on which he was provided with an alternative employment as Helper, in accordance and in compliance of



the orders dated 27.01.2010 passed by this Court in W.P.No.2491 of 2009 and accordingly refix the scale of pay and to grant all the consequential service and monetary benefits due to the petitioner and pay the arrers of salary at an early date.

For Petitioner .. Ms. S. Girija
For Respondents .. Mr. M. Murali vinodh

ORDER

This writ petition has been filed in the nature of Mandamus seeking a direction to the respondents, the Managing Director, Tamil Nadu State Transport Corporation (Coimbatore) Ltd., Coimbatore and the General Manager of the Tamil Nadu State Transport Corporation (Coimbatore) Division – II, Erode to hold that the petitioner had joined duty on 23.07.1993 as driver instead of 20.11.1998 on which date, he had been provided with an alternate employment as helper and refix his scale of pay and all consequential service benefits and monetary benefits and pay the arrears of salary within a specific period of time.

2. The petitioner had joined the respondents Corporation at Coimbatore on 23.07.1193. He was on duty as driver of a bus bearing



Registration No. TN-33-N-0687 between Erode – Tiruppur on 24.07.1996.

The bus met with an accident. The petitioner suffered a hip fracture and also underwent a brain surgery. He could not continue to work as driver. He was discharged on medical grounds. Subsequently, he was appointed as helper on 20.11.1998. He continued to work as a helper under the respondents and finally retired on attaining the age of superannuation on 30.04.2019.

3. The only issue which was also an issue before this Court in an earlier round of writ petition and is again the issue in this writ petition is about the period of service which has to be counted for retirement benefits and for all other benefits, whether it should be counted from 23.07.1993 when he was originally appointed as driver or from 20.11.1998 when he was again appointed as helper.

4. As stated this issue had already been examined by a learned Single Judge of this Court in the writ petition filed by the petitioner himself in W.P.No.2491 of 2009. By an order dated 27.01.2010, the learned Single Judge who was examining that writ petition in the nature Certiorarified Mandamus seeking a direction to give alternate employment to the



petitioner herein and also to pay arrears of monetary benefits, consequent to his discharge and being re-appointed as helper, had held as follows:

“2. The case of the petitioner is that he was working as a Driver in the respondent Corporation; since he met with an accident during the course of his employment; he suffered certain physical infirmities; based on this, by order dated 22.07.1997, he was posted as a Helper; in pursuance of this, by order dated 28.10.1998, he was served with posting order as Helper. Challenging these two orders, this writ petition is filed.

3. The grievance of the petitioner is that as per the order dated 28.10.1998, the petitioner has been inducted as a new recruit consequently, this order is passed violating Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hence, this writ petition.

4. The learned counsel for the respondent Corporation has submitted that the management is willing to give pay protection in terms of Section 47 of the above said Act, however, since the writ petition is filed nearly after 11 years, the petitioner is not entitled for the arrears from 1997 and he is entitled to the same, only from the date of filing this writ petition.

5. But, the learned counsel for the petitioner has



submitted that when statutory protection is given under the above said Act, ignoring the same, orders have been passed treating the petitioner as a new recruit; since the said order is prima facie contrary to Section 47 of the said Act, the respondent Management should be directed to give pay protection from the date of the order, viz., from 22.07.1997.

6. Taking note of the fact that the petitioner was working only as a driver and when statutory protection has been given with regard to pay protection and since the petitioner has accepted the pay fixation done to him by the impugned orders, it cannot be said that the petitioner is not entitled for the protection given under the said Act. Consequently, the impugned orders are set aside and the respondent is directed to give pay protection to the petitioner in terms of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and fix the petitioner's pay notionally from 22.07.1997 and to pay arrears from the date of filing of the writ petition, within a period of four weeks from the date of receipt of a copy of this order.

7. According to the learned counsel for the petitioner, in the course of the accident, the petitioner had suffered a fracture in his hand as well as in his hip, consequently, he is not able to discharge heavy work; but, he is directed to execute only heavy work, i.e., mechanical work. As far as this is concerned, the petitioner is at liberty to make a representation



in this regard with a request to give him light work and in the event of the petitioner making such a request, the respondent is directed to consider and pass orders on the same.

With the above direction, this writ petition is disposed of. No costs.”

5. The learned Single Judge while examining the very same issue had taken recourse to Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Let me now extract the said provision for better understanding:

*47. Non-discrimination in Government employment.—
(1) No 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.

6. Among the objects of the Act, which had been passed consequent to a United Nations Convention on rights of persons with disabilities to which India is a signatory, there must not be any discrimination, there must be inclusion in the society and there must be equality of opportunity even if any persons suffers from any physical ailment leading to disability.

7. In this particular case, the petitioner who was working as driver can no longer function as a driver since he had suffered a hip fracture. Therefore, an obligation was placed on the respondents to provide him with an alternate employment. This in crux, is the object of the said Act.



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8. It is very easy to dismiss or to discharge from employment on the ground of physical disability which occurred in the course of his employment. But the Act provides that such step should be undertaken by the employer, but rather it is duty of the employer to ensure that an alternate work is provided to the person who suffers from disability, in this case an accident by the petitioner, while driving a Government bus. It is not a case of the petitioner suffering an accident independent of the nature of work, for which he had been employed. He had been employed as a driver and while driving the bus, he had suffered an accident.

9. It is not for this Court to examine whether the accident occurred due to the negligence of the petitioner or whether negligence could be attributed to him. The fact that he was an employee places an obligation on the employer / respondents to ensure employment in an alternate place of work and see that the fire is still kept burning in his kitchen.



10. The respondents, on the other hand, discharged him on medical grounds and then later re-inducted him as helper. That discharge was struck down by the learned Single Judge in the earlier writ petition. Very specific reference had been made to the law and it had been stated that he was entitled for all monetary benefits.

11. The learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court reported in **(2003) 4 SCC 524, *Kunal Singh Vs. Union of India and Another***, wherein, in paragraph No.9, the broad object of the Act had been stated by the Hon'ble Supreme Court.

“9. Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of “disability” and “person with disability”. It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It



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must be remembered that a person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of the section reads “no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service”. The section further provides 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; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities,



protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service.”

12. It is thus seen that the primary object is to extend a helping hand to one who suffers physical ailment during the course of his employment and the said employee is not deserted by the employer.

13. The petitioner herein is deeply aggrieved by the salary slip, which had been produced, in which the date of his employment was given as the date on which he had re-entered as helper, namely 20.11.1998.

14. The learned counsel for the respondents stated an agreement had been entered into with the petitioner, which he had signed, wherein, he had agreed that he would not claim the break in service as continuity in service.

15. This agreement is of no value and will not come to the



assistance of the respondents herein. At that particular time, when he had just recovered from the accident any benefit extended by the respondents would be received by him. But the respondents cannot hide behind that particular agreement, which is struck down as being against the principles of law as upheld by the Constitution. No citizen should be deprived of work merely because they had suffered physical ailment or injury during the course of their employment. It is the duty of the respondents to have inducted the petitioner herein as helper without any break in service. No explanation has been given as to why they had insisted on this particular break in his service. They having re-inducted him as helper. They should count his service right from the first date, on which he had joined service as driver. The only reason that he was given employment as helper was that he was already in employment in one capacity or the other. On the date of such re-induction, if they had considered him as a stranger, they should not have appointed him as a helper at all. Having appointed him, they should also undertake the responsibility of extending the benefits from the date on which he originally joined in service as driver and consider that particular service also for the purpose of pension and for all other monetary benefits.



16. A direction is therefore given to the respondents herein to enter into the records of the petitioner that he had joined service on 23.07.1993 as a driver and that the nature of job had changed to that of helper on and from 20.11.1998 and that till then he was to be considered as driver and thereafter calculate the monetary and pensionary benefits, which are to be paid to him. If the amounts have been paid, then the respondents must readjust the amounts which have not been paid. The entire proceedings should be issued within a period of twelve weeks from the date of receipt of a copy of this order.

17. With the above observations, this Writ Petition stands allowed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

21.08.2023

Index:Yes/No
Internet:Yes/No
Neutral Citation:Yes/No
Speaking order: Yes/No
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To



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Tamil Nadu State Transport Corporation,
(Coimbatore) Limited.,
37, Mettupalayam Road,
Coimbatore - 641 002.

2.The General Manager,
Tamil Nadu State Transport Corporation,
(Coimbatore) Division – II,
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C.V.KARTHIKEYAN,J.



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