



W.P.Nos.42344 & 42345 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.Nos.42344 & 42345 of 2016
and W.M.P.Nos.36247 & 36248 of 2017

K. Chinnusamy

... Petitioner in both WPs

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation
(Salem) Ltd.,
12, Ramakrishna Road,
Salem – 636 007.

2.The General Manager,
Tamil Nadu State Transport Corporation
(Salem) Ltd.,
12, Ramakrishna Road,
Salem – 636 007.

WPs

... Respondents in both

Prayer in WP.No.42344/2016: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records connected with the order of dismissal dated 23.09.2016 passed against the petitioner by the second respondent in his proceedings Pa.Mu.No.27-3923-D8-TNSTC-2013-16, quash the same and also direct the respondent/Management to reinstate the petitioner with continuity of service, back wages and all other attendant benefits.



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Prayer in WP.No.42345/2016: Writ Petition 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 dated 27.12.2015 passed by the second respondent in Proceedings No.E1A/4359-Pa.Pi/TNSTC/Salem/2015, quash the same and also direct the respondents to provide the petitioner with permanent alternative employment in the cadre equal to the post of Conductor with pay protection continuity of service and all other attendant benefits as per Section 47 of the Persons with Disabilities (Equal Opportunities Protection and of Rights and Full Participation) Act 1995 duly considering his physical disability to continue in the post of Conductor as per the considered and categorical opinions of the Medical Board.

For Petitioner : Ms.S. Girija
(in both WPs)

For Respondents : Mr.R. Babu
(in both WPs)

COMMON ORDER

The petitioner herein while serving as a Driver under the respondents/Corporation, suffered from 'Spondylitis Arthritis', which incapacitated him to perform the duty as a driver. In this connection, he had remained unauthorizedly absent from 24.01.2013 onwards. On 14.02.2013, charges came to be framed against him for unauthorized absence and an inquiry was also conducted. Pending the inquiry proceedings, the petitioner was subjected to Medical Board, which gave him opinion that he can be



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given light duty work and that he is unfit for driving. A similar opinion was given by the District Medical Board, Namakkal on 18.05.2015. The respondents thereafter seems to have referred the petitioner to the same District Medical Board, for ascertaining the percentage of disability and by a report dated 08.10.2015, his disability was ascertained at 35%. Through the proceedings dated 27.12.2015, the respondents had relied upon Section 2(t) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (for short 'the Act') and stated that since the locomotor disability should be 40% or more and since the petitioner's disability is only 35%, an alternate light duty cannot be given. The inquiry thereafter continued and ultimately by an order dated 23.09.2016, the petitioner was dismissed from service. Challenging the order of the respondents, denying the light alternate duty dated 27.12.2015, as well as the order of dismissal dated 23.09.2016, both the aforesaid Writ Petitions have been filed.

2. The learned counsel for the petitioner placed reliance on a decision of the Hon'ble Supreme Court in the case of '**Kunal Singh Vs. Union of India & another**' reported in '**(2003) 4 SCC 524**' and submitted that the



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provisions of Section 2(t) of the Act, will not apply to the persons in service and therefore, the reasoning adopted by the respondents in rejecting his request for alternate light duty, cannot be sustained. She further submitted that the inquiry itself has been made without following the proper procedures and that the impugned order of dismissal is a non-speaking order.

3. When the respondents had framed charges under the Charge Memo dated 14.02.2013, the petitioner had given his reply dated 27.02.2013, stating that, in view of his locomotor disability, he had remained absent. Thereafter, the respondents have subjected the petitioner to the Regional Medical Board at Salem, for examination, which had also opined that he can be given a light duty work and that he is unfit for driving. The opinion was reiterated by the District Medical Board, Namakkal on 18.05.2015 also. It is in this background, the respondents had approached the District Medical Board, seeking for the percentage of disability, which was arrayed at 35% through the report dated 08.10.2015.



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4. In this background, the respondents had placed reliance on the Disability Certificate issued by the District Medical Board and passed the order dated 27.12.2015, stating that the alternate light duty cannot be assigned to him. Consequently, on 02.02.2016, he was directed to report before the General Manager, for continuation of his work, as a Driver. The petitioner had given his reply stating that, in view of his disability, he cannot perform the duties of a Driver and reiterated that he must be given a light duty. Not being satisfied with the reasoning, the respondents have chosen to proceed with the inquiry and ultimately, the impugned order of punishment of dismissal, has been passed.

5. The Hon'ble Supreme Court in **Kunal Singh** (*supra*), had an occasion to deal with the case of an employee of establishment, who acquires disability during the service and the extension of benefit under Section 47 of the Act. While orders were passed in that case, it was held that the Chapter VI of the Act, relates to reservation of vacancies for persons with disabilities for initial appointments, whereas, Chapter VIII deals with an employee of an establishment who acquires a disability during his service. By observing so, it was held that, an employee who acquires



disability during the service, is to be provided under Section 47 of the Act specifically. The relevant portion of the order reads as follows:-

..... *"5. According to the learned counsel for the appellant, his disability falls under Section 2(i)(v), namely locomotor disability. What is meant by locomotor disability is stated in Section 2(o). There is no dispute that the Act applies to the establishment of the respondents and this establishment is not exempted under any notification issued under Section 47 of the Act. "Persons with disability" means a person suffering from not less than 40% of any disability as certified by a medical authority as per the definition given under Section 2(t).*

6. Short question that arises for consideration in this appeal is whether the appellant is entitled for the benefit of Section 47 of the Act.

7. From the facts, which are not in dispute, it is clear that the disability suffered by the appellant is covered by Section 2(i)(v) read with Section 2(o) of the Act. It is also not in dispute that this disability was acquired by the appellant during his service. Under Section 2 "disability" and "person with disability" are separately defined and they are distinct. We may also notice some provisions in Chapter VI of the Act relating to employment. Section 32 deals with identification of posts which can be reserved for persons



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with disabilities. Section 33 speaks of reservation of such percentage of vacancies not less than 3% for persons or class of persons with disability of which 1% each shall be reserved for persons suffering from (i) blindness or low vision; (ii) hearing impairment and (iii) locomotor disability or cerebral palsy. Section 38 requires the appropriate Governments and local authorities to formulate schemes for ensuring employment of persons with disabilities. Section 47 is included in Chapter VIII of the Act. Chapter VI deals with employment relating to persons with disabilities including identification of posts and reservation of vacancies for such persons. Under this Chapter, reservation of vacancies for persons with disabilities is made for initial appointments. Section 47 in Chapter VIII deals with an employee of an establishment who acquires a disability during his service.

..... 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 must be remembered that 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 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 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.

10. The argument of the learned counsel for the respondent on the basis of definition given in Section 2(t) of the Act that benefit of Section 47 is not available to the appellant as he has suffered permanent invalidity cannot be accepted. Because, the appellant was an employee, who has acquired 'disability' within the meaning of Section 2(i) of the Act and not a person with disability.....”

6. The aforesaid extract is self-explanatory. As such, the reliance placed by the respondents on Section 2(t) of the Act and rejecting the petitioner's request for alternate light duty on the ground that his disability is less than 40%, cannot be sustained.

7. Insofar as the inquiry is concerned, it is seen that the entire charges relate to unauthorized absence. The respondents have not denied the fact



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that the petitioner suffered from some physical locomotor disability. The proper procedure for dealing with such cases of locomotor disability is, to ascertain the percentage of disability by referring the concerned employee to the Medical Board and thereafter, allot alternate light duty, in view of Section 47 of the Act. In the instant case, the very basis on which the inquiry was sought to be conducted, emanates from the theory adopted by the respondents that such alternate light duty will not be available to an employee who has less than 40% of locomotor disability. When the very foundation of the domestic inquiry is found to be illegal, all further proceedings that were initiated pursuant to the levelled charges, becomes obliterated.

8. The report of the Inquiry Officer seems to be a filling up of printed form. The form refers to the documents produced before the Inquiry Officer, which would be relevant only in the cases of delinquencies where a driver meets with an accident. The documents referred therein, relates to a complaint, FIR, an accident report, the statements of the Driver and the Conductor, the rough sketch of the accident and the inquiry reports. None of these documents pertain to the petitioner whose charges relate to



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unauthorized absence. Thus, there is a clear non-application of mind on the part of the Inquiry Officer in submitting his report. This apart, when the Disciplinary Authority had passed the impugned order of dismissal, there is absolutely no discussion with regard to the findings rendered by the Inquiry Officer nor the consideration of the explanation submitted by the petitioner. Above all, the disability suffered by the petitioner which has been reiterated by him in all his explanations, have been totally ignored. On consideration of all these aspects, I am of the view that the order of punishment is one of a non-application of mind, which cannot be legally sustained.

9. It is pertinent to note that after the impugned order of dismissal was passed, the petitioner had preferred an appeal on 26.10.2016 before the Managing Director of the Transport Corporation and it is stated by the learned standing counsel for the respondents that the same has not been disposed of till date.

10. Since 7 years have been passed since the petitioner filed an appeal and the same has been kept pending, no wilful purpose will be served by granting further time to the Appellate Authority for consideration of the



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services.

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11. Since this Court has found that the very foundation of the domestic inquiry is mulcted with illegality in not allotting light duty to the petitioner, in view of the protection guaranteed to him under Section 47 of the Act, I am of the view that the consequential impugned order of punishment, cannot be sustained.

12. In the result, the impugned orders dated 27.12.2015 and 23.09.2016 passed by the second respondent, are hereby quashed. Consequently, there shall be a direction to the first respondent herein, to forthwith pass orders, reinstating the petitioner back into service, with effect from the date of his dismissal, together with all service and monetary benefits, including continuity of service. The first respondent shall also pass orders, allotting light duty to the petitioner, in accordance with Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, within a period of six (6) weeks from the date of receipt of a copy of this order. It is clarified that the petitioner will be entitled for arrears of salaries, except for the period when he was in



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unauthorised absence.

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13. Accordingly, these Writ Petitions stand allowed. No costs.

Connected miscellaneous petitions are closed.

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Speaking Order
Neutral Citation: Yes
Index: Yes
Internet: Yes

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To

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Tamil Nadu State Transport Corporation
(Salem) Ltd.,
12, Ramakrishna Road,
Salem – 636 007.

2.The General Manager,
Tamil Nadu State Transport Corporation
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M.S.RAMESH,J.

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