



W.P.No.14544 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **29.09.2023**

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.14544 of 2017

V.Gunasekaran

... Petitioner

-Vs-

1. TamilNadu State Transport Corporation Ltd.,
Salem Division
rep. by its Managing Director
Ramakrishna Road,
Salem 636 007.

2. The General Manager
Tamil Nadu State Transport Corporation Ltd.,
Ramakrishna Raod,
Salem.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order passed by the first respondent in proceeding K.No.E1A/3437/T.N.s.T.C./Salem/217 dated 15.04.2017 and quash the same and consequently direct the respondents to bring the petitioners within the purview of Tamil Nadu State Transport Corporation Employees



W.P No.14544 of 2017

Provident Fund Rules (Old Pension Scheme) by counting the period of services rendered by him from 01.01.1994 to 04.01.1997 along with the period of services rendered by him from 16.07.2003.

For Petitioner : Mr. R.Prem Narayan

For Respondents : Mr. R.Babu
TNSTC (Standing Counsel)

ORDER

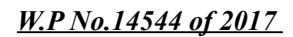
The Writ Petition has been filed in the nature of Certiorarified Mandamus seeking interference with an order passed by the first respondent / Tamil Nadu State Transport Corporation Ltd., Salem Division rep. by its Managing Director, Ramakrishna Road, Salem, to call for the records in pursuant to the impugned order passed by the first respondent in proceeding K.No.E1A/3437/T.N.s.T.C./Salem/217 dated 15.04.2017 and direct the respondents to bring the petitioner within the purview of Tamil Nadu State Transport Corporation Employees Provident Fund Rules (Old Pension Scheme) by counting the period of services rendered by him from 01.01.1994 to 04.01.1997 along with the period of services rendered by him from 16.07.2003 as qualified service.



W.P No.14544 of 2017

WEB COPY

2. In the affidavit filed in support of the Writ Petition, it had been stated that the petitioner had been initially appointed as Conductor in the first respondent Corporation on daily wage on 05.03.1993 and joined on 09.03.1993. His services were regularised in the post of Conductor with effect from 01.01.1994. He completed his probation on 31.12.1994. When he was duty on 12.04.1996 as Conductor in a bus, the driver of the bus had started the engine and reversed the bus. The Conductor / petitioner was standing on the backside of the bus suffered grievous injuries of fracture in his leg which had resulted in partial locomotor disability. The Medical Board declared him as physically disabled and medically unfit to work as conductor. He was discharged from 01.01.1997. The petitioner had then approached the Labour Court at Salem by raising a dispute and filing I.D.No. 16 of 1998. By an award dated 21.01.2013, the order of discharge was set aside and the respondents were directed to appoint the petitioner as Conductor or provide alternate employment. However, the Labour Court had also held that such appointment would be without continuity of service, without backwages and without any other benefits. Based on the award of



3. In the impugned order, the stand of the respondents was that there was no specific direction issued by the Labour Court at Salem in its order dated 16.07.1998 providing continuity of service or any other benefits and arrears of wages. It is therefore contended by the respondents that the respondent was appointed afresh as a helper on 16.07.2003. Questioning that particular impugned order, the present Writ Petition has been filed.



W.P No.14544 of 2017

WEB COPY

4. The learned counsel for the petitioner had widened the scope of arguments by placing reliance on the Rights of Persons with Disabilities Act 2016 and more particularly, to Section 20 and 23 of the said Act. Section 20 relates to non discrimination in employment. The petitioner had been discharged and thereafter reinstated as directed by the Labour Court and the issue is only with respect to provision of back wages and continuity of service which relief was not granted by the Labour Court.

5. The learned counsel also placed reliance on Section 23 of the aforementioned Act which relates to appointment of a Grievance Redressal Officer and also stated that any person, who is aggrieved with non compliance of provisions of Section 20 may file a complaint with the Grievance Redressal Officer. If Section 23 is to be taken into consideration, then the compliance as required under Section 20 will have to be examined. Section 20 provides that every Government establishment shall provide accommodation and provide conducive environment to employees with disabilities, and that no promotion shall be denied to a person merely on the



W.P No.14544 of 2017

ground of disability. It also provides that such person cannot be shifted to some other post with difference in pay scale. The disability should not be taken as burden by the employer and the employee should be provided with equal opportunities as if he had not suffered any disablement. For better clarification, Section 20 is reduced hereunder:-

“20. Non-discrimination in employment.

—

(1) No Government establishment shall discriminate against any person with disability in any matter relating to employment: 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, exempt any establishment from the provisions of this section.

(2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.



W.P No.14544 of 2017

(3) No promotion shall be denied to a person merely on the ground of disability.

(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service: Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall 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.

(5) The appropriate Government may frame policies for posting and transfer of employees with disabilities. ”



W.P No.14544 of 2017

WEB COPY

6. If any person is aggrieved by non compliance of the aforesaid directions as provided under Section 20, then he could approach the Grievance Redressal Officer.

7. The case of the petitioner is that he was discriminated during the course of his service as a helper from the year 2003 onwards till the date of filing of the Writ Petition and till he attained the age of superannuation. The grievance is that he had been considered as a fresh employee and that his earlier service as Conductor was not taken into consideration. But as pointed out by the learned counsel for the respondents, the petitioner should have questioned the Labour Court Award with respect to non grant of back wages or continuity of service. For reasons best known, the petitioner had not taken up that particular issue further.

8. The learned counsel for the petitioner had placed reliance on the observations of a learned Single Judge in *LLN 989 (Mad.)*,



W.P No.14544 of 2017

WEB COPY

K.Allimuthu Vs. State of Tamil Nadu. In that particular case, the petitioner, who was a driver in the respondent Corporation / The Tamilnadu State Transport Corporation, suffered injuries consequent to an accident while he was driving the bus. He suffered head injuries. He appeared before the Medical Board which opined that the petitioner therein was not fit to drive and continue as driver. The petitioner requested alternate light duty. However, the respondents had issued a show cause notice seeking explanation as to why they should not discharge him from work. He had given an explanation stating that he could discharge light work and not work as driver. The impugned order had been passed discharging the petitioner therein. Questioning that particular order, the Writ Petition has been filed.

9. A learned Single Judge of this Court while examining the facts had also examined the contentions of the learned counsel for the respondents that alternate employment could be given but as a fresh appointment. But that particular stand of the learned counsel for the



W.P No.14544 of 2017

WEB COPY

respondent / State was rejected by the learned Single Judge, who placed reliance on the Judgment of the Hon'ble Supreme Court reported in ***JT 1994 (2) SC 94 [Narendra Kumar Chandla Vs. State of Haryana]***. Let me extract paragraph No. 6 of the Judgment of the learned Single Judge wherein the extract of the Judgment of the Supreme Court is given:-

“6. The contention raised in the writ petition is covered by the judgment of the Apex Court relied on by the petitioner. Though Mr. R.P. Kabilan, learned counsel points out that as per the State Government directions, alternate employment, suitable to the physical condition, had to be given as a fresh appointment, this contention of Mr. R.P. Kabilan, learned counsel, cannot be sustained in view of the pronouncement of the Apex Court in Narendra Kumar Chandla v. State of Haryana , reported in JT 1994 (2) SC 94, wherein it has been held thus:-



W.P No.14544 of 2017

'7. Article 21 protects the right to livelihood as an integral facet of right to life. When an employee is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the posts he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge the duties as a Carrier Attendant is unjust. Since he is a Matriculate, he is eligible, for the post of L.D.C. For L.D.C, apart from matriculation, passing in typing test either in Hindi or English at the speed of 15/30 words per minute is necessary. For a Clerk, typing generally is not a must. In view of the facts and circumstances of this case, we direct the respondent-Board to relax his passing of typing test and to appoint him as a L.D.C. Admittedly, on the date when he had unfortunate operation, he was drawing the salary in the pay scale of Rs. 1400-2300. Necessarily therefore, his last drawn pay has to be protected. Since he has been rehabilitated in the post of L. D.C. we direct the respondent to appoint him to the post of L.D.C



W.P No.14544 of 2017

protecting his scale of pay of Rs. 1400-2300 and direct to pay all the arrears of salary.'

7. The above pronouncement of the Apex Court squarely applies to the facts of the present case. That apart, the teamed counsel for the writ petitioner also relied upon an order passed by this Court in respect of another State Transport Corporation wherein directions have been issued, following the judgment of the Apex Court. ”

10. The Writ Petition was allowed and the learned Single Judge had held that the petitioner was deemed to be in continuous service without break and the respondent was directed to assign a light duty while protecting his pay and all the benefits which he is entitled to.

11. The one distinguishing factor between that particular Judgment and the case in hand is that the petitioner herein stares at the face of an award of the Labour Court which is a pronouncement by a competent Court and the Labour Court has not granted back wages or continuity of service. There were further remedies available to the petitioner herein to question



W.P No.14544 of 2017

the award of the Labour Court. Unfortunately, he had remained satisfied by being given the post of helper and had also accepted that particular post as an alternate which considered him as a fresh appointee.

12. The learned counsel for the petitioner then placed an alternate further argument by placing reliance on G.O.Ms.No. 16 dated 02.12.2020 issued by the Welfare of Differently Abled Persons Department wherein the Government had issued directions that every Department of the Government should place a Grievance Redressal Officer as provided under Section 23 of the Rights of Persons with Disabilities Act 2016. It is therefore contended that the case of the petitioner could be examined by the Grievance Redressal Officer and even if the respondents claim that there is no such Officer available, still the representation of the petitioner should be considered by that particular officer to examine whether the petitioner could be granted continuity of service with back wages.



W.P No.14544 of 2017

WEB COPY

13. The impugned order does not contain any reference or opinion received from the Grievance Redressal officer. It is also doubtful whether in the year 2017 when the impugned order was passed, the respondents had in fact a Grievance Redressal Officer though the Act had come into force much earlier in the year 2016 itself. If they did not have such an officer, then it would be a failure on their part and the petitioner cannot be put to suffer owing to that aspect.

14. In view of that particular fact and also taking into consideration that the petitioner had now retired on attaining the age of superannuation, the impugned order would stand but however the petitioner may give a representation to the Grievance Redressal Officer of the first and second respondents who may examine the representation given by the petitioner herein and examine whether any order could still be passed of granting continuity of service or back wages as sought by the petitioner.



W.P No.14544 of 2017

WEB COPY

15. It is entirely left to the discretion of the Grievance Redressal Officer, who has to act in accordance with rules and regulations as provided under the Rights of Persons with Disabilities Act 2006. Giving that small window open to the petitioner, this Writ Petition stand disposed of. No order as to costs.

vsg

29.09.2023

Index:Yes/No

Neutral Citation:Yes/No

To

1. The Managing Director
TamilNadu State Transport Corporation Ltd.,
Salem Division
Ramakrishna Road,
Salem 636 007.
2. The General Manager
Tamil Nadu State Transport Corporation Ltd.,
Ramakrishna Raod,
Salem.



WEB COPY



W.P No.14544 of 2017

C.V.KARTHIKEYAN,J.

vsg

W.P.No.14544 of 2017

29.09.2023