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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.07.2023**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.1061 of 2013
and
M.P.(MD)No.1 of 2013

The General Manager,
Tamil Nadu State Transport Corporation
(Madurai) Limited,
Tirunelveli Region, Tirunelveli.

... Appellant

Vs.

V.Kandasamy

... Respondent

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 21.06.2011 passed by this Court in W.P(MD)No. 4174 of 2011.

For Appellant :Mr.K.Mahendran

For Respondent :Mr.K.Hemakarthiskeyan



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JUDGMENT

(Judgment of the Court was delivered by **DR.ANITA SUMANTH, J.**)

This Writ Appeal is filed at the instance of the Tamil Nadu State Transport Corporation, Madurai.

2.The Writ Petitioner had made an application for the post of Conductor in response to a call for recruitment. Despite, according to him, being possessed of all requisite qualifications, he was not successful. Hence, the petitioner/respondent had, at the first instance, sought a Mandamus directing the Transport Corporation to appoint him as a Conductor.

3.The stand of the Transport Corporation was that the non-selection of the petitioner was attributable to a deformity, that he suffered from described as '*shortening of right lower limb*'. The Writ Petition came ultimately to be allowed by order dated 21.06.2011, the Writ Court relying upon a decision rendered in very similar circumstances, in



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W.A(MD)No.317 of 2008, dated 22.07.2008.

4.A copy of that judgment has been circulated for our benefit.

The appellant in that Writ Appeal, one P.Mahavishnu, had also sought appointment for the post of Conductor, but had been rejected and had challenged the order of rejection. The deformity that he suffered from is described as a '*deformity in the left hip due to non-union neck or femur left*'.

5.On a comparison of the deformities suffered by that appellant and the appellant before us, the effect of the deformity in both cases would be the shortening of the limb, the left limb in the case of P.Mahavishnu and the right limb in the case of the appellant before us. The Writ Appeal had come to be allowed by the First Bench on 22.07.2008.

6.The Bench noted that the medical authorities concerned had certified that the deformity suffered by that appellant would not stand in



way of his effective discharge of functions as Conductor. So to in the present case, there is a certificate, that has been issued by the competent medical authorities, to the effect that the petitioner would be in a position to discharge functions as a Conductor effectively.

7.The Bench also refers to the Rules, which stipulate and specify the deformities that would stand in way of effective discharge of functions under four categories. The deformities mentioned are:

- (i)Defective vision;
- (ii)Defective hearing
- (iii)Night blindness and colour blindness
- (iv)Bow legs, knock knees or flat foot.

8.These are the only circumstances that, as per the Rules, would stand in the way of employment and Mr.P.Mahavishnau, who admittedly did not suffer from any of those deformities, was found eligible for appointment. The Bench notes that the result of the deformity would be to impair his gait, if at all, that may become a little



inartistic. To quote the Bench, the functions rendered by the candidate after all, are, not that of a '*dance trainer*', but of a Conductor.

9. We are given to understand that the order in the Writ Appeal was carried before the Hon'ble Supreme Court and was confirmed. It is based on the order in the Writ Appeal that the learned Judge has allowed the Writ Petition, directing, in conclusion, that the Writ Petitioner would have to be provided employment within a period of eight weeks from the date of receipt of a copy of that order.

10. The grounds raised in Writ Appeal are a reiteration of the stand taken by the respondents at the original instance and learned Standing Counsel would point out that the deformity would affect the functioning of the respondent as a Conductor. We are unable to subscribe to this view for the reasons already assigned by the learned Judge relying on the order of the Division Bench, dated 22.07.2008, since confirmed by the Apex Court.



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11. Another objection raised is that the Writ Petitioner had approached the Writ Court even earlier, in W.P(MD)No.1534 of 2008 seeking identical relief of a Mandamus directing the Transport Corporation to consider his claim for appointment. He points out that the said Writ Petition was dismissed and further more, there is no disclosure of that Writ Petition in the present Writ affidavit.

12. Adverting to the second limb of the above argument first, even assuming that there is no disclosure in the Writ affidavit as alleged, it would only amount to a technical violation and would not come in the way of us rendering substantive justice.

13. Incidentally, we find that it is a same Judge, who has both dismissed W.P(MD)No.1534 of 2008 (by order 11.03.2008) and allowed W.P(MD)No.4174 of 2011 (by order dated 21.06.2011). Thus, it is evident that the learned Single Judge has noted the circumstance and distinguishing features that arose in both instances in arriving at opposing conclusions.



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14. That apart, we find that the basis of the prayer in that Writ Petition was itself different and distinguishable when compared with the present Writ Petition. In that Writ Petition, the claim of the petitioner was for appointment under the handicapped quota as per Section 33 of the Disabled Persons (Equal Opportunities and Protection of Rights and Full Participation) Act, 1995.

15. The stand of the Transport Corporation was that the reservation provided for physically handicapped persons would only be referable to certain specific posts, such as, Mike Announcer, Telephone Operator and Public Relations Officer and cannot be extended to the post of Driver and Conductor. Accepting the aforesaid stand, the earlier Writ Petition had come to be dismissed by order dated 11.03.2008.

16. The premise upon which the present Writ Petition has been filed is different, as the Writ Petitioner does not seek the benefit of reservation at all. He seeks appointment in the general category on the



ground that his disability would not stand in the way of appointment in the light of the relevant Service Rules. The detailed discussion in the order of the Division Bench, as reiterated by the learned Single Judge, would support this submission.

17. In the interest of completion, the discussion in the Division Bench, as extracted in the order of the learned Single Judge, is also extracted here:

"4. The stand of the learned counsel for the respondent was noted by the learned Judge in the order dated 14.12.2007. There is no dispute that the petitioner satisfied all the requirements. He also has required educational qualification and required height and weight. There is no dispute that the petitioner's eye sight is also adequate. There is a requirement under the relevant rules that the petitioner must be free from physical deformity. The following deformities are mentioned in the rules set out.

- (i) Defective vision*
- (ii) Defective hearing*
- (iii) Night Blindness and colour blindness*
- (iv) Bow legs, knock knees or flat foot*

The petitioner is not suffering from any one of them. The other requirement of experience in driving and age requirement are all satisfied by the petitioner. The only so-called deficiency which was found in the petitioner is that the petitioner is alleged to have a "deformity in the left hip due to non-union neck or femur left"

5. On this ground, the respondent refused to appoint the petitioner. The learned Judge has affirmed the aforesaid stand of the respondent and dismissed the Writ



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Petition.

6. *We are of the view that, in this matter, the manner in which discretion has been exercised by the learned Judge does not have our approval.*

7. *It is also not in dispute that the petitioner has submitted a Medical Certificate issued by the Orthopaedic Surgeon, Government Medical College, Thoothukudi to the effect that the aforesaid alleged deformity does not prevent the petitioner from walking around and working as a Conductor.*

8. *It is common knowledge that as a result of the deformity, which is alleged against the petitioner, his gait, if at all, may become a little inartistic. The petitioner is not appointed as a dance trainer but only as a Conductor in a bus and he satisfies all other requirements.*

9. *It cannot be disputed that in the present day grim situation of unemployment, a person's opportunity to be employed has been equated by the Apex Court as his right to life under Article 21 of the Constitution of India. So, by denying employment to the petitioner, virtually, his fundamental right to life is sought to be taken away solely on the aforesaid technical consideration.*

10. *The Apex Court has repeatedly emphasised that when a person is denied his fundamental rights, such denial has to be based on a procedure which is just, reasonable and fair. There is no fixed standard of fairness. Fairness has to be judged in the facts and circumstances of each case and in judging the fairness of a procedure, the Court must have due consideration of the entire facts and circumstances of the case, including the societal condition in which the parties are placed. The case of a person who is trying to eke out his living by accepting the job of a bus Conductor must be judged with a standard of a fairness which is obviously a little different from the cases of business barons or those of corporate magnets. In the cases of persons who are lowly placed the Courts have a duty to stretch the law as far as possible, without violating it, to give relief to those persons.*

11. *Going by the aforesaid consideration, this*



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Court finds that the decision of the respondent in the instant case in refusing the employment to the petitioner does not meet the standards of fairness of any person of ordinary prudence. Unfortunately, the learned Judge did not approach the issues involved in this case from this angle.

12. It is left to this Court to interpret and apply the rule in the light of Human Rights jurisprudence incorporated by the Apex Court in our laws and as a result of which the right to life has received a very liberal interpretation. So, we are constrained to take a different view from the one which has been taken by the learned Judge.

13. In these facts and circumstances of the case, we direct the respondent to give appointment to the petitioner/appellant to the post of Conductor since the candidature of the petitioner is free from any other defect except the one pointed out in the order under the appeal. Such appointment should be offered to the petitioner/appellant within a period four weeks from this date."

18. We have called for the Service Rules. The range of disabilities that would disentitle a candidate for the post of Driver are what have been noted by the Division Bench at paragraph 4 extracted above. The stipulation regarding the disabilities that would disentitle a candidate for the post of Conductor as per Rule is in general terms and only states '*must be free from physical deformity*'. However, we are of the considered view that, that will not make any difference to the conclusion that we have arrived at. The general stipulation which states



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'free from deformity' only means deformity, that would stand in the way of Conductor exercising normal functions effectively. Thus, notwithstanding this difference in stipulation between the Rules for a Driver and Conductor, we are maintain that deformity suffered by the respondent would not disentitle him to the post of Conductor. We believe that the reasons for specification of disability in the case of a Driver was bearing in mind the necessity for clear eye sight, sharp reflexes and control.

19. In light of the above detailed reasoning, we see no merit in the Writ Appeal and the same is dismissed. No costs.

[A.S.M.J.,] & [R.V.J.,]
05.07.2023

NCC : Yes/No
Index : Yes/No
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