



W.P(MD)No.5901 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.5901 of 2023

and

W.M.P.(MD)No.5485 of 2023

Muthukumar

Vs.

... Petitioner

1.The Managing Director,
Tamil Nadu State Transport Corporation,
(Madurai Limited),
Madurai.

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

3.The Branch Manager,
Tamil Nadu State Transport Corporation,
(Madurai Limited)
Virudhunagar Region,
Aruppukkottai Branch,
Virudhunagar.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondents to take necessary action on the basis of the petitioner's representation dated



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22.08.2022 with regard to provide alternative employment as light duty in terms of Section 47(1) of persons with Disabilities (Equal Opportunities, Protection of rights and full participations) Act, 1955 and consequently, direct the respondents to pay wages and all other attendant benefits for the period within a time limit as stipulated by this Court.

For Petitioner : Mr.D.Anbarasu

For Respondents : Mr.S.C.Herold Singh
Standing Counsel

ORDER

Heard the learned counsel on either side.

2. The petitioner joined the respondent corporation as Driver in the year 1999. During March 2017, the petitioner was afflicted with paralysis. His left leg and hand had been affected. The petitioner was referred to the medical board. The medical board opined that the petitioner is unfit for driver job. The petitioner was sent for second opinion in the year 2019. Finally, the petitioner was provided with job as security in the office of the third respondent. The grievance of the petitioner is that since 17.12.2022 he is not being provided with any alternative employment and he is not getting any salary. The stand of the respondents cannot be appreciated. Section 20 of Rights of Persons with Disabilities Act, 2016 is as follows:-



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20. (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.

(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.

3. I am more than satisfied that the rights of the petitioner have been seriously infringed. The respondents are directed to forthwith provide any lite duty as alternative employment. The petitioner shall also be paid his arrears of salary. The management cannot mechanically keep referring a disabled employee for opinion of the medical board. The management must arrive at a prima facie satisfaction based on definite and relevant materials and observe



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that the petitioner has become fit. Only after recording such categorical observation, the competent authority in the rank of general manager can refer the employee for opinion of the medical board.

4. The writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

27.04.2023

Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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