



W.P(MD)No.6964 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.6964 of 2023

M.Dhandapani

... Petitioner

Vs

1.The Director of Town Panchayat,
7th & 8th Floor,
Urban Administrative Office Campus,
Chennai.

2.The Executive Officer,
Aravakurichi Special Grade Panchayat,
Aravakurichi,
Karur District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings of the second respondent in Na.Ka.No. 174/2022 dated 17.11.2022 and quash the same as illegal and unconstitutional, consequently direct the respondents to provide alternative employment to the petitioner with pay and service protection and back wages for the period from 17.11.2022 to till the date on which he is provided with alternative employment



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in terms of Sec.47(1) of the persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995 more particularly within a time frame.

For Petitioner : Mr.V.Jeyarani

For Respondents : Mr.G.Suriyananth
Additional Government Pleader for R.1

Mr.P.R.Prithiviraj for R.2

ORDER

Heard the learned counsel on either side.

2. The writ petitioner was working as water supply helper in the second respondent local body. Unfortunately, he suffered paralytic stroke. He was referred to Medical Board. The Medical Board had given report dated 09.11.2022 indicating that the petitioner is not fit for discharging his duty. Thereupon the impugned proceedings were issued by the second respondent retiring the petitioner on ground of medical invalidity. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.



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4. The respondents have filed counter affidavit and the learned Standing Counsel took me through its contents. He pressed for dismissal of the writ petition.

5. I carefully considered the rival contentions and went through the materials on record. Of course, in the writ petition the petitioner had invoked Section 47 of the persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995. It is true that the said act has been repealed vide Central Act pertain on 2016. In the new Act, i.e Rights of Persons with Disabilities Act, 2016 the corresponding provision is Section 20. It reads as follows:

“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.

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



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(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.”

It is true that a person who has acquired disability during employment should not be thrown out on that ground. If he is not suitable for the post he was holding, he must be shifted to some other post with the same pay scale and service benefits. But the petitioner must be in a position to render service in any other post. Where the employee is rendered completely unfit, it is not possible for this Court to apply Section 20 of the Rights of Persons with Disabilities Act, 2016.

6. In this case, after going through the materials on record I am more than satisfied the petitioner has become completely unfit to do in work. It is for this reason the second respondent chose to retire the petitioner on medical grounds.



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The order impugned in this writ petition does not warrant interference.

However, the terminal benefits payable to the petitioner shall be settled within a period eight weeks from the date of receipt of a copy of this order.

7. With this direction, this writ petition is disposed of. There is no order as to costs.

07.06.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA

To

The Director of Town Panchayat,
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Urban Administrative Office Campus,
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G.R.SWAMINATHAN, J.

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