



W.P(MD)No.8584 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.03.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.8584 of 2020
and
W.M.P.(MD)Nos.7953 and 7955 of 2020

A.Alphonse

... Petitioner

Vs.

- 1.Tamilnadu State Transport Corporation
(Tirunelveli) Ltd.,
Represented by its Managing Director,
Tirunelveli.
- 2.The General Manager,
Tamilnadu State Transport Corporation
(Tirunelveli) Ltd.,
Thoothukudi Region,
Thoothukudi.
- 3.The Branch Manager,
Tamilnadu State Transport Corporation
(Tirunelveli) Ltd.,
Kovilpatti Branch,
Kovilpatti,
Tuticorin District.
- 4.The Deputy Manager (Recruitment),
Tamilnadu State Transport Corporation
(Tirunelveli) Ltd.,



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Tirunelveli Region,
Tirunelveli.

... Respondents

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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 4th respondent in Ref. K. No.6108/NiYa11/TNSTC/Thili/2017 dated 10.12.2019 quash the same and consequently direct the respondents to continue to provide alternative employment to the petitioner on permanent basis at Kovilpatti Branch of the 1st respondent based on the report of the Medical Board of Rajiv Gandhi Government General Hospital, Chennai dated 08.11.2019 and to direct the respondents to pay him wages from 02.08.2017 to till the date on which he is provided with alternative employment by treating the aforesaid period as duty for all purposes including for counting the same for the purpose of granting continuity of service, annual increment, periodical review, provident fund, pension, backwages and all other attendant service benefits as per Section 20(4) of Rights of the Persons with Disability Act, 2016.

For Petitioner : Mr.A.Rahul

For Respondents : Mr.R.Rajamohan,
Standing Counsel.



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ORDER

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Heard the learned counsel on either side.

2.The basic facts are not in dispute. The petitioner jointed the respondent corporation in the year 2014. He suffered heart attack on 02.08.2017. He was referred to medical board which opinioned on 09.08.2017 that the petitioner is not fit to discharge the duty of driver. Since the petitioner was not given any alternative employment, he filed W.P.(MD)No.20299 of 2017 on 28.10.2017 seeking alternative employment. The said writ petition came be to be disposed on 07.08.2019. The petitioner was thereafter given an alternative employment with effect from 04.08.2019. The petitioner suffered second heart attack on 21.09.2019. He underwent bypass surgery. He was again referred to medical board. The medical board once again gave opinion that the petitioner is permanently unfit to be a driver. He was given alternative employment with effect from 29.07.2020. The petitioner was thus disengaged for two spells ie., from 02.08.2017 to 04.08.2019 and again from 23.09.2019 to 29.07.2020. The management passed the



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impugned order dated 10.12.2019 treating these periods of disengagement as one on leave on loss of pay. Challenging the same, the present writ petition has been filed.

3.During the pendency of the writ petition, the management permitted the petitioner to join duty as helper with effect from 29.07.2020.

4.The issue raised in this writ petition can very well be answered with reference to Section 20(4) of the Rights of Persons with Disabilities Act, 2016. The said provision reads as under:-

“20. Non-discrimination in employment.—

(1)

(2)

(3)

(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



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suitable post is available or he attains the age of superannuation, whichever is earlier.”

5.It is true that the management cannot be expected to offer alternative employment immediately after the employee suffers from disability. Two things will have to be fulfilled. The medical board will have to opine that the petitioner is not fit to perform the duty attached to the original post. Secondly, the petitioner must be ready to accept the alternative employment. In this case, the petitioner's willingness to accept the alternative employment is seen from the fact that he filed the writ petition on 28.10.2017. Therefore, while the period from 02.08.2017 till 28.10.2017 can be treated as leave on loss of pay, the period from 28.10.2017 till 04.08.2019 will have to be treated as one on duty as per the aforesaid provision. The petitioner had suffered second heart attack on 21.09.2019 and he also underwent bypass surgery on the same day. This Court cannot assume that the petitioner was ready for alternative employment from the said date itself. He gave a representation only on 24.02.2020. Therefore, the period from 24.02.2020 till 29.07.2020 will have to be treated as on duty for all



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purposes. The order impugned in this writ petition is interfered with to the aforesaid extent. To reiterate, the period from 28.10.2017 to 04.08.2019 and the period from 24.02.2020 to 27.09.2020 shall be treated as on duty for all purposes and the petitioner will be paid all the corresponding monetary benefits by the respondent management within a period of twelve weeks from the date of receipt of a copy of this order.

6.The writ petition is allowed accordingly. No costs.
Consequently, connected miscellaneous petitions are closed.

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

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