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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2023

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.8212 of 2023

and

WMP(MD)No.7565 of 2023

M.R.Eswaran

... Petitioner

Vs.

1.The Secretary to Government,
State of Tamil Nadu,
Tamil Development and Information
Department,
Fort St.Goerge, Chennai – 600 009.

2.The Director of Information and Public
Relations,
Secretariat, Fort.St.George, Chennai – 600 009.

3.The Public Relation Officer,
Dindigul District Collector Office Campus,
Dindigul.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned GO(Ms).No.51 (Tamil Development and Information (Nir 3.1) Department) dated 03.04.2023 issued by the 1st respondent herein, quash the same and further direct the



respondents herein to accommodate the petitioner to some other post with the same pay scale and service benefits as per Section 20 of the Rights of Persons with Disabilities Act, 2016.

Petitioner : Mr.E.V.N.Siva
For Respondents : Mr.K.Balasubramani,
Special Government Pleader

ORDER

Heard the learned counsel on either side.

2.The petitioner was working as Assistant Photographer in Public Relation Office, Dindigul. He had joined the department way back in the year 1995 as Photographer Attendant. He had put in more than 27 years of service. The petitioner suffered what is called in common parlance as stroke in May 2021. The petitioner had to take continuous treatment. The petitioner had also had to go on leave. He wanted to be transferred to Madurai. But this request was denied. He wanted an alternate employment. The petitioner asked to appear before the Regional Medical Board, Government Rajaji Hospital, Madurai for neurological evaluation. The board gave its opinion that the petitioner is suffering from 51% disability and that he is unfit to perform the duties of a photographer.



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Based on this report dated 08.08.2022, the Government issued G.O (Ms) No.51 Tamil Development and Information (Nir 3.1) dated 03.04.2023 came to be issued compulsorily retiring the petitioner from service. Challenging the same, this writ petition came to be filed.

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

4.As the respondents have not filed a formal counter affidavit, the learned Special Government Pleader sought time. I indicated that the matter had come up for admission in April 2023 and had been listed thrice before me. It appears that written instructions had already been given to the learned Special Government Pleader. I called upon him to pass on the said written instructions. He reiterated all the contentions set out therein. The prime contention of the learned Special Government Pleader is that the petitioner is unfit for any kind of work and that is why, he was rightly sent on compulsory retirement. According to him, the matter does not call for any interference. He pressed for dismissal of this writ petition.



5.I carefully considered the rival contentions and went through the materials on record. The petitioner had acquired disability while in service. He should therefore be dealt with in the manner set out in Section 20 of the Rights of Persons with Disabilities Act, 2016. Section 20 of the said Act 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.

(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.”

Pursuant to the rule making power conferred under Section 101 of Central Act 49 of 2016, the Government of Tamil Nadu had issued the Tamil Nadu Rights of Persons with Disabilities Rules, 2018. I went through the medical records of the petitioner. While the certificate of disability indicates that the petitioner is suffering 50% disability, the opinion reads that the petitioner cannot perform the duties of a photographer. There is no finding that the petitioner cannot perform the duties of any other post. Section 20 of the Central Act 49 of 2016 has a noble object behind it. If a person acquires disability while in service, he ought not to be thrown out. Earlier, such persons would be sent out as medically unfit. Owing to the paradigm shift, the parliament has declared that such persons have to be accommodated in some supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Only if the employee is unable to perform any kind of duty, then and then alone, he can be retired or his services can be terminated. In the



case on hand, the respondents have not undertaken such an exercise. Straightway, the impugned order has been passed retiring the petitioner from service compulsorily. It is clearly violative of Section 20 of Central Act 49 of 2016.

6. On this ground, the impugned government order is set aside. The petitioner is entitled to be paid his salary for the intervening period. This salary shall be paid within a period of five weeks from the date of receipt of copy of this order. The respondents shall refer the petitioner to medical board once again and opinion shall be obtained as to whether the petitioner is eligible to perform any other kind of duty. Based on the report to be obtained, the respondents shall accommodate the petitioner in any suitable post. This exercise shall be completed within a period of ten weeks from the date of receipt of copy of this order.

7. This writ petition is allowed. In the written instructions, the conduct and approach of the petitioner has been referred to. I do not want to add to his agony by making a copious reference to



what the government counsel passed on to the court. I am of the view that the petitioner ought to behave with greater grace. No costs. Connected miscellaneous petition is closed.

26.06.2023

Index : Yes / No
Internet : Yes/ No
SKM

To

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G.R.SWAMINATHAN, J.

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