



W.P(MD)No.14477 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 29.03.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

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Ayyavoo (Died)

1.Arun Kumar

2.Vaideki

3.Ganesh Kumar

... Petitioners

(Petitioners 1 to 3 are substituted vide order dated 20.03.2023 in W.M.P.(MD)No.5604 of 2023 in W.P.(MD)No.14477 of 2020 by GRSJ)

Vs.

1.Tamil Nadu Civil Supplies Corporation,
Rep. by its Chairman and Managing Director,
No.42 Thambusamy Street,
Kilpauk, Chennai – 600 010.

2.The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Ramanathapuram Region,
Ramanathapuram.

... Respondents

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 relates to the impugned Communication dated

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22.12.2015 vide Se.Mu.Aa.No.E1/0389/2015 issued by the 2nd respondent and quash the same as illegal and consequently direct the respondents to allow the petitioner to retire from service on the date of his superannuation i.e 30.05.2019 by sanctioning all the benefits including service benefits retirement benefits pension and gratuity benefits of the petitioner.

For Petitioners : Mr.A.V.Raja

For Respondents : Mr.G.Mohnakumar,
Standing Counsel.

ORDER

Heard the learned counsel on either side.

2.Ayyavoo was the original writ petitioner. He joined the respondent corporation as Office Assistant on 02.11.1990. He was promoted to the post of Bill Clerk in the year 1995. He became Junior Assistant in the year 2010. Since on account of his health condition, he was unable to do any work, he was referred to the Medical Board, Ramanathapuram on 13.02.2014 for obtaining fitness certificate. He was examined by the Medical Board on 12.09.2014 and report was submitted



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stating that Ayyavoo was suffering from neuropsychological disorder. He was referred to Madurai Government Rajaji Hospital for further examination. Even though Ayyavoo was asked to appear before the Madurai Medical Board on 14.10.2014, he did not appear. He instead went on medical leave from 27.01.2015. Ayyavoo eventually appeared before the Regional Medical Board, Madurai at Madurai Government Rajaji Hospital and report dated 25.03.2015 was issued stating that he was unfit to be a Junior Assistant as he had cognitive issues for reading or carrying out his job. Since Ayyavoo was on unauthorized absence from 31.03.2015 onwards, the impugned order dated 22.05.2015 came to be passed removing him from service. The petitioner did not file any appeal, instead, the present writ petition came to be filed. During the pendency of this writ petition, Ayyavoo passed away and his legal heirs came on record.

3.The learned counsel for the writ petitioners 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 direct the respondents to pay the terminal benefits to the substituted petitioners.



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4.The corporation has 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. Even going by the materials on record, it is too obvious that Ayyavoo, the original writ petitioner had not committed any act of misconduct. Only if there is negligence or ill motive, an act or omission of an employee would constitute the act of misconduct. Neither the case herein. Ayyavoo suffered from neuropsychological disorder and he could not read or write or understand. That made him unfit to be an employee of the respondent corporation. In other words, during the course of his service, he had acquired disability. He was obviously entitled to the benefits set out under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. In any event, he did not deserve the order of removal from service. Since only on the account of medical reasons, Ayyavoo remained absent, the order dated 22.12.2015 is set aside.



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Instead of remanding the matter, it is directed that Ayyavoo shall be treated as having regularly retired with effect from 24.03.2015. The benefits payable to the legal heirs shall be disbursed within a period of eight weeks from the date of receipt of a copy of this order.

6.The writ petition is allowed on these terms. No costs.

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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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