



W.P(MD)No.16831 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.03.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.16831 of 2020

and

W.M.P.(MD)No.14060 of 2020

T.Muneeswaran

... Petitioner

Vs.

1.The Chairman,
Ports Board,
V.O.C. Harbour Office,
Thoothukudi – 628 004.

2.The Deputy Traffic Manager,
The Tuticorin Port Trust Cargo
Handling Labour Pool (TPTCHLP),
V.O.C. Port Trust,
V.O.C. Harbour Office,
Thoothukudi – 628 004.

... 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 of the impugned order passed by the 2nd respondent in his proceedings in No.TPTCHLP/GEN/20/189/2008/D593 dated 09.06.2008 and quash the same and consequently direct the 2nd respondent to provide any suitable employment to the petitioner.



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For Petitioner : Mr.L.Prabhu

For Respondents : Mr.VR.Shanmuganathan,
Standing Counsel.

ORDER

Heard the learned counsel on either side.

2.The only question that calls for consideration is whether the petitioner is entitled to the benefit set out in Section 20(4) of the Rights of Persons with Disabilities Act, 2016. Of course, the cause of action in the present case arose in the year 1998. During the relevant time, 1995 Act was in force and there was a corresponding provision in Section 47 of the Old Act. The petitioner is said to have met with an accident on 18.02.1998 and later, he suffered amputation of limb. The statute categorically states that no government establishment shall dispense with or reduce in rank of an employee who acquires disability during his or her service. Invoking the aforesaid provision, the learned counsel for the petitioner states that the petitioner ought not to have been thrown out of service. It is further alleged that at the time of disbursing compensation, his signature was obtained as if he had resigned from service. Reiterating all the contentions set out in the affidavit filed in support of the writ petition, the learned counsel for the petitioner called upon this Court to grant relief as prayed for.



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3.I am not in a position to grant relief to the petitioner for more reasons than one. As rightly pointed out by the learned standing counsel for Port Trust, the petitioner is obliged to establish the existence of employer-employee relationship. The appointment order enclosed at Page No.1 was issued not by Port Trust but Tuticorin Port Trust Cargo Handling Labour Pool Association. Of course, subsequently, the employees engaged by the association were absorbed by Port Trust. But this subsequent development cannot come to the rescue of the petitioner. The only question that calls for consideration is whether at the time when the petitioner acquired disability, the Port Trust was the employer. The answer is in the negative. Therefore, aforesaid statutory provision will not come to the petitioner's rescue. Though laches would also come in the way, in view of my finding that Port Trust was never the employer of the petitioner, there is no question of granting relief. The writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

07.03.2023

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

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