



W.P.(MD)No.10496 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

<i>Judgment Reserved On</i>	<i>Judgment Pronounced On</i>
16.11.2022	14.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

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D.Gopalakrishnan

... Petitioner

Vs.

1.The Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Represented by its Managing Director,
Kumbakonam

2.The General Manager,
The Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Trichy Region, Trichy

3.The Administrator,
The Tamil Nadu State Transport Pension Fund Trust,
Thiruvalluvar Illam,
Pallavan Salai, Chennai – 2.

.... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of ***Writ of Declaration***, declaring action of the respondents in discharging services of the petitioner from the Post of Driver on medical grounds



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with effect from 23.12.1995 and appointing him as Helper as fresh entrant with effect from 21.10.1996 and denying pay protection, continuity of service in the post of driver, as illegal and violative article 14 and 21 of the Constitution of India and consequently to direct the Respondents to extend the benefit of continuity of service, pay protection in the post of Driver with effect from his date of discharge and to re-determine / re-fix his retirement benefits as if he continued to work as Driver from 20.03.1985 to 30.04.2011 and to pay revised retirement benefits to him including monthly pension, gratuity, leave salary and commuted value of pension etc., within the time limit that may be fixed by this Court.

For Petitioner : Mr.A.Rahul

For Respondents : Mr.D.Sivaraman
Standing Counsel

ORDER

This Writ Petition has been filed seeking for a ***Writ of Declaration***, declaring the action of the respondents in discharging services of the petitioner from the Post of Driver on medical grounds, with effect from 23.12.1995 and appointing him as Helper, as fresh entrant, with effect from 21.10.1996 and denying pay protection, continuity of service in the post of driver, as illegal and violative of Articles 14 and 21 of the Constitution of India and also sought for a



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consequential direction to the Respondents to extend the benefit of continuity of service, pay protection in the post of Driver, with effect from his date of discharge and to re-determine/re-fix his retirement benefits, as if he continued to work as Driver from 20.03.1985 to 30.04.2011 and to pay revised retirement benefits to him including monthly pension, gratuity, leave salary and commuted value of pension, etc.

2. Heard Mr.A.Rahul, learned counsel appearing for the petitioner and Mr.D.Sivaraman, learned Standing Counsel appearing for the respondents. Perused the material documents available on record.

3. The petitioner has joined the service of Cholan Roadways of Corporation Limited, Kumbakonam as Driver, with effect from 20.03.1985. The petitioner has suffered *disc prolapse* and he was sent to Medical Board for medical examination. The Medical Board submitted a report, dated 12.11.1995 and certified that the petitioner is not fit for working as driver and recommended for providing alternative light duty, but the respondents did not provide alternative employment. The respondents, vide proceedings, dated 04.12.1995,



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has issued a Show Cause Notice, directing the petitioner to explain, why he could not be discharged from duty on medical grounds. The petitioner has submitted his explanation requesting not to terminate his services and to provide alternative light duty as recommended by the Medical Board. Without considering the same, the petitioner was discharged from service on medical grounds, with effect from 23.12.1995. Thereafter, the respondents through an office order, dated 21.10.1996 re-appointed the petitioner as Helper with the basic wage of Rs.1,710/-, in the minimum scale of pay of Rs.1710-20-1870-25-2245.

4. The contention of the petitioner is, at the time of discharge from duty as driver he was drawing the scale of pay of Rs.1795-25-2495 and was drawing basic pay of Rs.2,170/-, which indicates the petitioner was not granted pay protection and was granted lesser pay in the post of Helper. The petitioner was put on probation for a period of 6 months and his appointment was made on permanent in the post of Helper, with effect from 01.05.1997 and continued as Helper and he retired from service, with effect from 30.04.2011. Thereafter, the respondents have issued Pension Payment Order, wherein, the total period of qualifying service is mentioned as 22 years. The petitioner claims that, he has



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joined as driver on 20.03.1985 and retired from service on 30.04.2011 and has rendered a total period of service is 26 years, one month, one week and four days. Since the petitioner is receiving meager amount, he is facing difficult to run as day-to-day life. If the pay of the petitioner for the post of Driver was protected he would have been continued receiving salary of driver. Even, after appointment of Helper, the respondents have denied pay protection. The petitioner is willing to forego the difference in wages payable from the date of discharge i.e., from 25.12.1995 to 30.04.2011. However, his pay may be re-fixed notionally by extending pay protection and revise the retirement benefits to the petitioner.

5. The respondents have filed counter stating that the petitioner while serving as Driver on 08.04.2002, he has involved in an accident, wherein 17 persons died and 47 persons sustained injuries. Totally, there are 63 cases claiming compensation are pending before the Motor Accident Claims Tribunal. The petitioner has sustained injury in the aforesaid accident. Due to which, his right knee was amputated. He was referred to Medical Board vide letter dated 29.04.2004, wherein the Board opined that the petitioner cannot discharge his duties as a Driver, vide its report, dated 21.05.2004. Hence, a Show Cause



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Notice, dated 21.07.2004 was issued directing the petitioner to show cause, why he discharged from service on medical grounds. The petitioner has challenged the same by way of filing writ petition in W.P.No.210 of 2004, however the same was dismissed. Again the petitioner has filed W.P.No.7070 of 2005, wherein this Court, directed the respondent to consider the representation of the writ petitioner, dated 09.02.2005, wherein, the petitioner prayed to invoke the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Based on the order of this Court, the respondents have considered the petitioner's case and passed an order, dated 25.10.2005, rejecting the claim of the petitioner as the disability sustained by him was not covered under the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The petitioner did not choose to challenge the order passed by the 1st respondent and had remained silent for more than nine years. On 29.04.2014, again the writ petitioner was referred to Medical Board, where the Medical Board had opined that the petitioner is not fit for driving it is only thereafter, the petitioner had filed another writ petition in W.P.No.17507 of 2014 to provide alternative employment. This Court, vide order, dated 30.10.2014, directed the respondent Corporation to



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consider the representation of the petitioner and to provide alternative employment with continuity of service. After placing the order before the 220th Board Meeting for necessary approval, thereafter the petitioner was reinstated by proceedings, dated 21.05.2015 and the consequential order was passed on 21.05.2015. By virtue of the above orders, the petitioner was reinstated with continuity of service by providing pay protection, however, backwages was denied for non-employment period. The respondents further submitted that by order, dated 30.10.2014, in W.P.No.17507 of 2014, this Court directed the respondents to provide alternative employment with continuity of service and the same was complied with. However, this Court left the question of payment of backwages to be decided by the respondent Corporation. Since the petitioner has not challenged the proceedings of the 2nd respondent, dated 25.10.2005 (the respondents had rejected the claim of the petitioner under Disability Act), the petitioner has not stated any reasons for justifying his silence for more than 9 years for not taking any steps to get alternative employment. Hence, there is no question of backwages on the sole ground of delay and latches. Hence, the respondents have prayed to dismiss the writ petition.



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6. The dates and the facts are admitted by both the parties. The petitioner had suffered an injury in the year 1995 and the claim of the petitioner was rejected on 23.12.1995, hence the cause of action arose on this date, but the petitioner had filed this present petition in the year 2015. Therefore, this Court is of the considered opinion that the petitioner has placed this claim, belatedly and it is hit by delay and laches.

7. The learned counsel appearing for the respondents submitted by way of filing written arguments as well as oral arguments, the prayer in the writ petition is not maintainable, since the petitioner has neither challenged the Medical Discharge order, dated 23.12.1995 nor challenged the appointment order wherein the petitioner was appointed as Helper as fresh entrant, dated 21.10.1996. Having accepted the above said orders to become final, more than 20 years back, the petitioner cannot file this writ petition and the same is not maintainable.

8. The next contention that was raised by the respondents is that the Protection of Disabilities Act, was enacted in the year 1995, which is subsequent to the accident. Hence, the petitioner is not entitled to invoke the said Act. The



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petitioner has submitted a representation, by invoking G.O.Ms.No.746, dated 02.07.1981 and based on the said G.O., the petitioner was discharged on medical grounds and all the terminal benefits were settled. The petitioner has received all the terminal benefits without any protest and accepted the appointment as fresh entrant on 21.10.1996 and has worked for more than 15 years without any objection or protest. In such circumstances, the petitioner is not entitled to invoke the benefits under Section 47 of the Persons with Disabilities Act, 1995, that too after 20 years of medical discharge and fresh appointment. Moreover, at the time of medical discharge, i.e., on 23.12.1995, the G.O.Ms.No.746, Transport Department, dated 02.07.1981 alone was in force. The Disabilities Act, 1995 came into effect only from 07.02.1996. Therefore, the provisions of Act, is not applicable to the facts of the present case.

9. On perusal of the rival submissions, it is seen that the petitioner suffered Disc prolapse, which was confirmed by the medical report, dated 12.11.1995, thereafter, he was granted alternative employment in the year 1996. Subsequently, he was allowed to act as Driver and again involved in an accident, where his right knee was amputated. Again he was referred to Medical Board and



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based on the medical report, he was discharged from his duty as Driver from 21.07.2004. Thereafter, the petitioner has claimed benefits under the Disabilities Act, which was rejected vide, order, dated 22.10.2005. The petitioner was silent all these years and now has preferred this writ petition. And the ground for filing this writ petition is that the petitioner is receiving lesser pension. The learned counsel appearing for the petitioner submitted that the Disabilities Act is a welfare legislation and the same should be applicable to the petitioner and submitted that the respondents should grant pay protection to the petitioner under the Disabilities Act. This Court is of the considered opinion that the claim of the petitioner can be entertained, if it is filed within the reasonable time. Also this Court is of the considered opinion that the petitioner had submitted representation to grant benefits under G.O.Ms.No.746 dated 02.07.1981 and the same was considered under the said G.O. and granted the relief. Once the parties have acted on the G.O.Ms.No.746 and granted benefits, that too receiving the benefits for all these years, the petitioner cannot turn around and seek to grant more benefits based on the Act which was enacted subsequently. More so when the respondent corporation would be affected financially.



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10. Admittedly, the petitioner is claiming after lapse of 20 years. The respondents have paid the terminal benefits which is applicable to the petitioner, when he was discharged from service based on medical grounds. The respondents Corporation grants pension by depositing the amount in the Pension Trust and the amount, that is deposited includes the petitioner's contribution as well as the respondents' contribution. In the present case, no such contribution was deducted from the petitioner's salary. For the previous service, the petitioner has also received the entire terminal benefits i.e., applicable to the petitioner. Therefore, this Court is of the considered opinion that the claim is a stale claim. If the petitioner has approached this Court within a reasonable time, the claim can be entertained.

11. The learned counsel appearing for the petitioner submitted in the affidavit that the petitioner is ready to forego the difference in wages payable from the date of discharge i.e., 25.12.1995 to 30.04.2011 and he is seeking to refix the salary notionally by extending the pay protection and revise the retirement benefits and relies on the order passed by this Court, ***dated***



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10.03.2022, in W.P(MD)No.23157 of 2015. The facts in the present case are different and hence the said case is not applicable to the facts of the present case.

12. Since, the Disabilities Act is a welfare legislation, the petitioner is entitled to claim of Pay Protection, however, the same ought to have been claimed, within a reasonable time. Therefore, this Court in order to meet the ends of justice, directing the respondents to pay additional amount of Rs. one Lakh, to the petitioner's account in the Pension Trust, thereafter, grant applicable pension to the petitioner.

13. With the above directions, this Writ Petition is disposed of. No Costs.

Index : Yes / No
Internet : Yes
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**Order made in
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