



W.P.(MD)No.14615 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.03.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.14615 of 2018

and

W.M.P.(MD) No.13161 of 2018

G.Mathiyazhagan

... Petitioner

Vs.

1.The Management of
Tamilnadu State Transport Corporation(Kumbakonam) Ltd.,
Represented by its Managing Director,
Kumbakonam.

2.The General Manager,
Tamilnadu State Transport Corporation (Kumbakonam) Ltd.,
Nagapattinam Region,
Nagapattinam.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, calling for the records relating to the impugned order of the 2nd Respondent dated 28.11.2016 passed in Ku.Aa.No. 43/Papi-E5/TNSTC(K)/Nagai/2016, quash the portion of the same in so far as not providing the petitioner suitable alternative post, wages and other attendant benefits and consequently to direct the respondents to provide him a alternative



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employment suitable to his health condition, disability, post of conductor held by him and his education qualification and also wages and all other attendant benefits for the period from 25.05.2013 to 16.09.2016 in accordance with Section 20 of the Rights of the Persons with Disabilities Act, 2016, award cost.

For Petitioner : No appearance

For Respondents : Mr.D.Sivakumar
Standing Counsel

ORDER

This writ petition is filed challenging the impugned order, dated 28.11.2016 to quash that portion of the order, where the respondents have not granted suitable alternate post and consequential direction to the respondents to provide alternate post suitable to the petitioner and all other attendant benefits for the period from 25.05.2013 to 16.09.2016.

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

3. The petitioner was appointed as Conductor on 02.05.2008 and made permanent with effect from 01.04.2009. On 24.05.2013, when the petitioner



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was in duty, the bus was running between Thiruthuraipoondi and Thiruppur. One Balasubramani was allotted to work as Driver. At about 05.15 a.m., the bus was crossing Olappalayam, near Kangeyam met with an accident. In the said accident, 11 passengers, driver and conductor had sustained serious injuries. The petitioner was admitted in the Hospital and underwent bone surgeries etc. After completion of treatment, the petitioner was not able to walk as a normal person and he was able to move with the stick alone. The said disability was opinioned as permanent disability by the doctor. The petitioner was in continuous treatment and incurred more than Rs.2,50,000/- for medical expenses. The petitioner sought an alternate employment and filed a writ petition in W.P(MD)No.10108 of 2014 for Writ of Mandamus to direct the respondents to provide suitable alternate permanent employment. This Court, vide order, dated 25.06.2014 directed the respondents to provide alternate employment under Section 47(1) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act.

4. The petitioner was sent for medical examination based on the Medical Report, dated 06.04.2015 and the petitioner was granted alternate



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employment on 28.11.2016 and he was allotted the work of “Diesel Supplier” in Thiruthuraipoondi, through the impugned order. The contention of the petitioner is that since he is injured in his legs, even the Diesel supplier work cannot be carried out.

5. The contention of the respondents is that based on the available vacancy, alternate employment can be provided. Moreover, the petitioner is seeking Junior Assistant post or equable post. The petitioner was working as Conductor and his qualification was only passed +2. The petitioner is not having any degree qualification, even for the appointment of Junior Assistant the educational qualification prescribed is possession of degree. Since the petitioner is not a degree holder, the petitioner cannot be considered for the post of Junior Assistant. Moreover, Junior Assistant post is higher post than the Conductor post. Hence, the petitioner cannot seek higher post for alternate employment.

6. After hearing the rival submissions, this Court is of the considered opinion that the respondents have granted alternate employment based on the available vacancies. The petitioner is not having any right to claim a post.



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Moreover, the qualification prescribed for the post of Junior Assistant is degree. Since the petitioner is not having degree qualification, the petitioner cannot be granted the post of Junior Assistant. Therefore, the relief sought by the petitioner is declined.

7. At this juncture the Learned Counsel appearing for the petitioner submitted that the respondents have not paid the salary for the period from the date of accident till the date of alternative employment and hence prayed for a direction to pay backwages. However, the respondents submitted that the petitioner met with accident on 24.05.2013. The Medical Board examination was conducted on 06.04.2015. In between period, the petitioner was under medical leave along with the wages. Therefore, the petitioner cannot claim backwages for the period since the wages was already paid. On perusal of the records, it is seen that the petitioner did not get wages from 2014 onwards. The petitioner ought to be paid wages for the period from 01.01.2014 to 28.11.2016 and the respondents are directed to pay the wages for the said period from 01.01.2014 to 28.11.2016. Also directed to pay wages to any period if it is left out.



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8. With these observations and directions, this Writ Petition is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
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To

- 1.The Secretary to Government,
State of Tamil Nadu,
Personnel and Administrative Reforms Department,
Fort St.George,
Chennai – 600 009.
- 2.The Chairman,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C. Nagar,
Park Town,
Chennai – 600 003.
- 3.The Deputy Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C. Nagar,
Park Town,
Chennai – 600 003.
- 4.The Controller of Examinations,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C. Nagar,
Park Town,
Chennai – 600 003.



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S.SRIMATHY, J

ksa

**Order made in
W.P.(MD)No. 14615 of 2018**

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