



W.P(MD)No.18930 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.(MD)No.18930 of 2016

Monickaraj

...Petitioner

Vs.

1.The General Manager (O&A),
State Express Transport Corporation (Tamilnadu)Ltd.,
Pallavan Salai,
Chennai 600 002.

2.State Express Transport
Corporation (Tamilnadu)Ltd.,
Pallavan Salai,
Chennai 600 002
Represented by its Managing Director

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings of the first respondent in Memo No.003889/HR3/SETC TN /2014 dated 28.06.2016 and quash the same and consequently directing the respondents to treat the period of absence of the petitioner from



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17.08.2013 till 03.09.2014 as duty period and to pay salary for the said period and to review his pay scale from the date when it was due and to grant the review benefits, weightage, increments and other service and monetary benefits due to him under law with interest within the period that may be stipulated by this Court.

For Petitioner : Mr. V.Kannan
For Respondents : Mr. K.Sathyasingh
Standing Counsel

ORDER

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents and perused the materials available on record.

2. The petitioner worked as Conductor in the respondent Corporation. The petitioner was appointed as Conductor in the respondent Corporation on 07.04.1989. On 03.08.2009, while the petitioner was attending the duty in the Bus bound for Trichy from



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Nagercoil (Route No.125), he was not able to move move his right hand and leg suddenly at Nagercoil Vadaseri Bus stand. He was taken to nearby Vasantham Hospital, Nagercoil, by the officials of the respondent Corporation for treatment. The petitioner has undergone medical treatment for about 20 days. Thereafter, the petitioner was provided with light duty of time keeper at Vadasery bus stand that too after 59 days after his repeated representations and then the traffic regulation duty at Valliyoor Bus stand. But from 17.08.2013 onwards no duty was provided to him and that period was treated as leave with loss of pay.

3. The petitioner made a representation on 16.09.2013 to provide him a suitable alternative employment and to pay salary arrears and other monetary and service benefits from the date he was denied duty. Since there was no response from the respondents, the petitioner filed a Writ Petition in W.P.No.16568 of 2013 seeking a direction to the respondents to provide alternative employment. This



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Court passed an order on 11.12.2013 directing the respondents to refer the petitioner to the medical board and based on the report of the medical board, the respondent was directed to take further action. After filing a Contempt Petition in Cont.P.No.936 of 2014, the petitioner was posted in the alternative post of Helper (Non ITI) from 04.09.2014.

4. It is also stated that no duty was given to the petitioner from 17.08.2013 to 03.09.2014 and the period in which the petitioner was under medical treatment has been treated as leave with loss of pay. It ought to have been treated as duty period. The petitioner submitted a representation to the respondents to treat the period from 17.08.2013 to 03.09.2014 as the duty period and to provide all service and monetary benefits.

5. As the said representation was not considered by the respondents, the petitioner filed another Writ Petition in



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W.P(MD)No.7229 of 2016. The said Writ Petition was disposed of by order dated 13.04.2016 directing the first respondent therein to dispose of the representation of the petitioner dated 07.03.2016 on merits and in accordance with law within a period of four weeks from the date of receipt of copy of the order. In pursuance of the said order, the first respondent passed the present impugned order. As the impugned order is not a speaking order and the same was passed without assigning any reasons, the petitioner is constrained to file this Writ Petition.

6. On behalf of the respondents, a counter affidavit has been filed.

7. Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondents and perused the materials available on record.



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8. The learned counsel for the petitioner submits that though this Court by order dated 11.12.2013 in W.P.No.16568 of 2013 directed the respondents to refer the petitioner to the medical board within two weeks from the date of receipt of copy of the order and take further action basing on the report of the medical board, the respondents did not take any action to comply the said order. Accordingly, the petitioner filed Contempt Petition and only after filing of the Contempt Petition, the respondents posted the petitioner in the alternative post as Helper and as such the petitioner is entitled to be considered to be on duty during the period from 17.08.2013 to 03.09.2014.

9. The learned counsel for the petitioner further submits that though this Court directed in W.P(MD)No.7229 of 2016 to consider the representation of the petitioner on merits and in accordance with law, the respondents did not pass orders on merits and in accordance with law. The respondents passed non-speaking



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order which is unsustainable under law. Finally, the learned counsel for the petitioner sought to allow this Writ Petition with consequential direction.

10. It is an admitted fact that the petitioner was working as Conductor in the respondent organisation. As the petitioner suffered with disability and could not work as Conductor, an alternative employment was sought under the Persons with Disabilities (Equal opportunities, protection of rights, participation) Act, 1955. The request of the petitioner was not considered by the respondents by referring him to the medical board. The petitioner filed W.P.No. 16568 of 2013. This Court by order dated 11.12.2013 directed the respondents to refer the petitioner to the medical board within two weeks from the date of receipt of copy of the order and as and when the petitioner is referred, the said medical board, after such reference, was directed to assess the petitioner within two weeks



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thereafter. The Court also directed the respondents to take further action basing upon the report of the medical board.

11. Though this Court passed an order date 11.12.2013, the respondents sent a letter to the medical board only on 04.02.2014. The petitioner appeared before the medical board on 19.02.2014. The medical board issued a report on 25.02.2014 wherein it is mentioned that the petitioner could not discharge his duty as Conductor and recommended for light duties. Though the medical board submitted its report on 25.02.2014, as there is no action on the part of the respondents to provide alternative employment to the petitioner, the petitioner filed a Contempt Petition in Cont.P.No.936 of 2014. Only after filing of the Contempt Petition, the petitioner was posted in the alternative post of Helper from 04.09.2014.

12. A careful examination of the dates and facts of this case, it is clear that the respondents failed to provide alternative



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employment to the petitioner immediately after receipt of the report of the medical board dated 25.02.2014 till 04.09.2014. This Court has no hesitation to record that there is no fault on the part of the petitioner. When the respondents treated the period from 17.08.2013 to 13.08.2014 as leave with loss of pay, the petitioner submitted a representation to the respondents on 07.03.2016 requesting the respondents to treat the period from 17.08.2013 to 03.09.2014 as duty period and to provide all service and monetary benefits. As the respondents failed to consider the said representation and to take any appropriate action in accordance with law, the petitioner is constrained to file a Writ Petition in W.P(MD)No.7229 of 2016 and the said Writ Petition was disposed of on 13.04.2016 with a direction to the first respondent therein to dispose of the representation of the petitioner on merits and in accordance with law within a period of four weeks from the date of receipt of the copy of the order.



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13. On a careful perusal of the order impugned in this Writ Petition, it appears that the impugned order is passed by the first respondent without following the order passed by this Court in W.P(MD)No.7229 of 2016. Admittedly, no reasons are assigned to reject the request of the petitioner to treat the period from 17.08.2013 to 03.09.2014 as duty period and there are no reasons recorded by the first respondent to consider the said period as leave with loss of pay. The first respondent failed to consider the two directions issued in W.P(MD)No.7229 of 2016. The representation of the petitioner is not considered either on merits or in accordance with law. Without application of mind, the first respondent passed the impugned order.

14. However, in view of the reasons stated in the aforesaid paragraphs that the petitioner is not at fault for not attending duties



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from 17.08.2013 to 03.09.2014 and it is the responsibility of the respondents to provide alternative employment with light work to the petitioner as per the report dated 25.02.2014 of the medical board and as per the direction of this Court in W.P.No.16568 of 2013, it is to be held that the order impugned in this Writ Petition is unsustainable under law. The petitioner is entitled for the consequential relief as sought for.

15. Accordingly, this Writ Petition is allowed with the following directions:

- i) The proceedings in Memo No.003889/HR3/SETC TN/2014 dated 28.06.2016 issued by the first respondent is hereby set aside;
- ii) The respondents are directed to treat the period from 17.08.2013 to 03.09.2014 as duty period and to pay salary for the said period and to give all consequential benefits to



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the petitioner.

iii) This order has to be complied with by the first respondent within a period of four weeks from the date of receipt of a copy of this order.

16. No costs.

24.07.2023

Index : Yes / No

NCC : Yes / No

CM

Note: Issue order copy on 26.07.2023.

To,
1.The General Manager (O&A),
State Express Transport Corporation (Tamilnadu)Ltd.,
Pallavan Salai,
Chennai 600 002.

2.State Express Transport



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Corporation (Tamilnadu)Ltd.,
Pallavan Salai,
Chennai 600 002
Represented by its Managing Director



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BATTU DEVANAND, J.

CM

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