



W.P(MD)No.7387 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.(MD)No.7387 of 2016
and W.M.P(MD)No.6215 of 2016

S.Elango

...Petitioner

Vs.

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

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

3.Govt.Rajaji Hospital,
Represented by its Dean,
Madurai – 625 020

4.Government Eye Hospital and Regional
Eye Research Institution,
Egmore, Chennai – 600 008.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari calling for



W.P(MD)No.7387 of 2016

the records relating to the proceedings of the 2nd respondent in Admn/A4/11495/2015 dated 19.03.2016 and quash the same.

For Petitioner : Mr. A.Rahul
For R3 : Mr.P.Subbaraj
Special Government Pleader
For R1 & R2 : Mr.N.Rajsekar
for Mr.J.Senthil Kumaraiah

ORDER

This Writ Petition has been filed seeking a Writ of Certiorari to quash the proceedings of the 2nd respondent in Admn/A4/11495/2015 dated 19.03.2016

2. The case of the petitioner is that since 08.03.1993, he served as Driver in the respondent Corporation. While the petitioner on duty, he suffered with colour vision defect in his eyes and he was referred to the medical board of the third respondent hospital by the second respondent. The medical board sent a report dated 16.02.1999. Based on the said report, the petitioner was terminated from services on medical grounds. Thereafter, the petitioner was re-appointed as Helper.



W.P(MD)No.7387 of 2016

WEB COPY

3. While that being so, the impugned order was passed stating that the second respondent referred the petitioner to the third respondent hospital to ascertain the physical fitness and percentage of disability to work as Driver or Conductor. It is relevant to state that the Medical Board of the third respondent Hospital has already certified that the petitioner was unfit for the post of Driver. Despite the same, the second respondent has passed the impugned order referring the petitioner again to the medical board. Aggrieved by the same, the petitioner is before this Court.

4. The learned counsel for the petitioner has relied on the order passed by this Court in **W.P(MD)No.20528 of 2016**, dated **01.11.2016**, wherein this Court dealt it with the similar issue and set aside the impugned order.

5. Heard the learned counsel for the petitioner, the learned Special Government Pleader appearing for the third respondent and



W.P(MD)No.7387 of 2016

the learned counsel appearing for the respondents 1 and 2.

WEB COPY

6. The learned counsel for the petitioner would rely upon Rules 575 and 576 of Tamil Nadu Medical Board, under which a person cannot be referred to second medical opinion without the permission of the Government and same are extracted here-under:

“575.Appeal to a Medical Board: Subject to provisions of the paragraphs 490b and 568 above an appeal to a medical board against a Medical Officer's certificate should be allowed only at the request of Head of the Department and subject to the approval of the Director of Health Services and Family Planning / Director of Medical Education.

576.Appeal to a second Medical Board: There should no right of appeal from a Medical Board as it is not always possible to improve on the original Board, and as if it would be difficult to declare even if a second board is constituted, that the second Board is better than the first and should therefore carry more weight. But, if the Government are satisfied on the evidence produced to them of the possibility of an error of judgment in the decision of the first Board, it would be open to Government to allow an appeal to a second Board”.



W.P(MD)No.7387 of 2016

WEB COPY

7. It is not the case of the second respondent that they have obtained permission from the Government to refer the petitioner to the opinion of the second medical board. Reference to the opinion of the second medical board itself is illegal as at that point of time, the second respondent had not obtained the permission from the Government. There is not even an indication reflecting reasons, as to what propelled the administration to refer the petitioner for second medical opinion. In other words, whether the report suffered from any infirmity or whether it was suspicious or it suffered from non-consideration of materials etc.

8. The learned counsel for the petitioner has contended that driving a person to repeated opinions of the Medical Board without passing any final order is illegal.

9. Accordingly, the impugned order directing the petitioner to subject himself for the opinion of the Medical Board of the third respondent is hereby set aside.



W.P(MD)No.7387 of 2016

WEB COPY

10. The respondents 1 and 2 are directed to act upon the opinion of the First Medical Board and treat him as a person under disability and to provide all the benefits which are available to him under Section 47(1) of Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1985.

11. The respondents 1 and 2 are also directed to provide the petitioner with alternative employment with pay protection within a period of two weeks from the date of receipt of a copy of this order.

12. Since the impugned order is quashed, the petitioner is at liberty to give a representation to the respondents 1 and 2 seeking back wages, if any. The respondents 1 and 2 will consider the same and pass orders on merits and in accordance with law, within a period of two weeks from the date of receipt of the representation.

13. Accordingly, this writ petition is allowed on the above terms.

14. No costs.



WEB COPY



W.P(MD)No.7387 of 2016

15. Consequently, connected Miscellaneous Petition is closed.

24.07.2023

Index : Yes / No

NCC : Yes / No

CM

To,

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

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

3.Govt.Rajaji Hospital,
Represented by its Dean,
Madurai – 625 020

4.Government Eye Hospital and Regional
Eye Research Institution,
Egmore, Chennai – 600 008.



WEB COPY



W.P(MD)No.7387 of 2016

BATTU DEVANAND, J.

CM

W.P.(MD)No.7387 of 2016
and W.M.P(MD)No.6215 of 2016

24.07.2023