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W.P.Nos.139 of 2022 and 33952 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.139 of 2022 and 33952 of 2023
and W.M.P.Nos.151 of 2022 and 33834 of 2023

W.P.No.139 of 2022:-

G.Suseentharan

... Petitioner

Vs

1. Tamil Nadu State Transport Corporation,
(Coimbatore) Limited, Erode Region,
represented by its Managing Director,
37, Mettupalayam Road,
Coimbatore – 43.

2. The General Manager,
Tamil Nadu State Transport Corporation,
(Coimbatore) Limited, Erode Region,
Chennimalai Road,
Erode – 1.

3. The Director,
Regional Institute Ophthalmology and Government
Ophthalmic Hospital, Egmore,
Chennai – 8.

.... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,
praying for issuance of a Writ of Mandamus, directing the first and second
respondents to refer the petitioner to the third respondent Government Eye
Hospital to find out and submit a report regarding his eye/ vision fitness for



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driving, directing the third respondent to submit a report with regard to his eye/ vision fitness for driving, with percentage of disability and directing the respondents 1 and 2 to provide the petitioner any office/ desk work / alternative employment with continuity of service, pay protection and all other service benefits on permanent and regular basis with effect from 23.11.2021 within a specified time limit as may be fixed by this Hon'ble Court.

W.P.No.33952 of 2023:-

G.Suseentharan

... Petitioner

Vs

1. Tamil Nadu State Transport Corporation,
(Coimbatore) Limited, Erode Region,
represented by its Managing Director,
37, Mettupalayam Road,
Coimbatore – 43.

2. The General Manager,
Tamil Nadu State Transport Corporation,
(Coimbatore) Limited, Erode Region,
Chennimalai Road,
Erode – 1.

.... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, after calling for the records pertaining to the charge memos No.Pa. No. 1 / T3 / 664 / Law / TNSTC / EMA / 2021 dated 22.12.2021 and Memo No. 1 / T3 / 474 / Law / TNSTC / EMA / 2022, 05.08.2022, issued by the second respondent and the second show cause notices Ku. No. 1 / T3 / 664 / TNSTC / EMA / 2021, dated 22.12.2022 and Pa. No. 1 / T3 / 474 / TNSTC / EMA / 2022, 23.12.2022 issued by the second respondent proposing to dismiss the petitioner from service, quash the same and consequently direct the respondents to provide the petitioner any



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office/desk work/alternative employment with continuity of service, pay protection and all other service benefits on permanent and regular basis with effect from 23.11.2021.

In W.P.No.139 of 2022

For Petitioner : Mr.V.Ajoy Khose
For R1 and R2 : Mr.M.Murali Vinodh
Standing counsel
For R3 : Mr.V.P.P.Elamparithi
Additional Government Pleader

In W.P.No.33952 of 2023

For Petitioner : Mr.V.Ajay Khose
For Respondents : Mr.M.Murali Vinodh
Standing counsel

COMMON ORDER

W.P.No.139 of 2022 has been filed for direction directing the first and second respondents to refer the petitioner to the third respondent Government Eye Hospital to find out and submit a report regarding his eye/ vision fitness for driving, directing the third respondent to submit a report with regard to his eye/ vision fitness for driving, with percentage of disability and directing the respondents 1 and 2 to provide the petitioner any office/ desk work / alternative employment with continuity of service, pay protection and all other service benefits on permanent and regular basis with effect from 23.11.2021 within a specified time limit as may be fixed by this Hon'ble Court.



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2.W.P.No.33952 of 2023 has been filed for issuance of Writ of Certiorarified Mandamus, after calling for the records pertaining to the charge memos No.Pa. No. 1 / T3 / 664 / Law / TNSTC / EMA / 2021 dated 22.12.2021 and Memo No. 1 / T3 / 474 / Law / TNSTC / EMA / 2022, 05.08.2022, issued by the second respondent and the second show cause notices Ku. No. 1 / T3 / 664 / TNSTC / EMA / 2021, dated 22.12.2022 and Pa. No. 1 / T3 / 474 / TNSTC / EMA / 2022, 23.12.2022 issued by the second respondent proposing to dismiss the petitioner from service, quash the same and consequently direct the respondents to provide the petitioner any office/desk work/alternative employment with continuity of service, pay protection and all other service benefits on permanent and regular basis with effect from 23.11.2021.

3. Heard the learned counsel on either side and perused the materials available on record.

4. The petitioner possessed heavy vehicle passenger transport driving license with badge. His name was subscribed by the District Employment Exchange to the second respondent for interview to the post of Driver. The petitioner had joined as Driver at Anthiyur Depot, on 10.02.2015.



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Subsequently, he was appointed as Driver in regular vacancy on daily rated wages with effect from 29.01.2020. His service was also regularized from 31.08.2021 and he was made permanent with time scale of pay with effect from 15.07.2021.

5. All of a sudden, he suffered with blurred vision in his left eye. Therefore, he felt very difficult to drive the bus. He tested his eyes with private hospital and he was diagnosed and certified by the certificate dated 19.11.2021. He has been suffering with Rhegmatogenous Retinal Detachment in his left eye and advised him to undergo a surgery to correct the said defect. They also advised the petitioner that if the surgery fails, he may loss the total vision in the left eye. Therefore, the petitioner made a request to the second respondent seeking alternative employment and also refer him to Medical Board. However, it was not considered.

6. Therefore, the petitioner failed to report duty and the petitioner was served with a charge memo dated 22.12.2021 alleging that the petitioner was absent for work. Once again, the petitioner was served with a charge memo dated 05.08.2022. The petitioner submitted a detailed representation to the



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respondents, thereby requested to refer him before the Medical Board to find out his fitness for the post of driving. However, without considering the request made by the petitioner, the charge memos were issued to the petitioner for his unauthorized absence.

7. As per the charge memo dated 22.12.2021, the charges as follows:-

- “ 1) நீர் தொடர்ந்து பணிக்கு வராமல் இருப்பதால் ஒட்டுநர் பணி ஒதுக்கீடு செய்து பேருந்தை இயக்க மிகுந்த சிரமம் ஏற்படுகிறது.
- 2) மற்ற ஒட்டுநர்களுக்கு விடுப்பு மற்றும் வார ஓய்வு வழங்குவதில் சிரமம் ஏற்படுகிறது.
- 3) உரிய நேரத்தில் பேருந்துகளை வழித்தடத்தில் இயக்க முடியாமல் போவதால் பொது மக்களிடத்தில் கழகத்திற்கு கெட்ட பெயரும், வருமான இழப்பும் ஏற்பட ஏதுவாகிறது.”

8. As per the second charge memo dated 05.08.2022, the charges as follows:-

- “ 1) பிறப்பில் இருந்து இருக்கக்கூடிய கண் குறைபாட்டை மறைத்து இப்போக்குவரத்து கழகத்தில் ஒட்டுநர் பணியில் சேர்ந்துள்ளீர்.
- 2) பணி நிரந்தரம் செய்யப்படும் வரை திட்டமிட்டு கழகத்திற்கு தெரிவிக்காமல் கழகத்தை ஏமாற்றியுள்ளீர்.
- 3) கழக விதிகளை மீறியுள்ளீர்.”

9. After enquiry, on the basis of the first charge sheet, the petitioner was served with entire report along with second show cause notice.



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10. A perusal of the counter filed by the second respondent and the submissions made by the learned counsel for the respondents revealed that the medical records of the petitioner was verified and directed to verify whether the petitioner suffered with the disease by birth or intermediate period. Accordingly, the petitioner was subjected for medical examination before the Regional Institute of Ophthalmology and Government Ophthalmology Hospital, on 07.09.2023.

11. As per the report dated 17.04.2024, the petitioner suffered with two defects

- (i) Right Eye Retinitis Pigmentosa Optic Atrophy.
- (ii) LE Infuri Retinal Detachment.

12. The opinion says that it can only be affected by birth and not by accidental or intermediate period. Insofar as the second defect is concerned, it can be occurred in intermediate period. Therefore, the petitioner suppressed the fact that he had already suffered with this defect and obtained job and he had kept quiet till the employment is made permanent and thereafter, he disclosed the defect and asked for alternative employment. Therefore, the petitioner was rightly issued with the charge memos and yet to pass final orders.



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13. Pending writ petitions, the petitioner obtained information under the Right to Information Act with regard to opinion of the Regional Medical Board and it says that insofar as the first defect is concerned, the period of time cannot be mentioned when the defect has been occurred. That apart, admittedly, the petitioner had joined in the service in the year 2015 and till the year 2021, he had driven the bus. It shows that only in the year 2021, the petitioner had suffered with this defect. Therefore, the petitioner was unable to report duty, since the petitioner repeatedly made request for providing alternative employment.

14. It is relevant to rely upon the Judgment of the Hon'ble Supreme Court of India reported in **2008 1 SCC 579** in the case of ***Bhagwan Dass and another Vs Punjab State Electricity Board***, wherein it was held as follows:-

“ 19. We understand that the officers concerned were acting in what they believed to be the best interests of the Board. Still under the old mindset it would appear to them just not right that the Board should spend good money on someone who was no longer of any use. But they were quite wrong, seen from any angle. From the narrow point of view the officers were duty-bound to follow the law and it was not open to them to allow their bias to defeat the lawful rights of the disabled employee. From the larger point of view the officers failed to realise that the disabled too are equal citizens of the country



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and have as much share in its resources as any other citizen. The denial of their rights would not only be unjust and unfair to them and their families but would create larger and graver problems for the society at large. What the law permits to them is no charity or largesse but their right as equal citizens of the country.

20. In light of the discussions made above, the action of the Board in terminating the service of the disabled employee (Appellant 1) with effect from 21.03.1997 must be held to be bad and illegal. In view of the provisions of Section 47 of the Act, the appellant must be deemed to be in service and he would be entitled to all service benefits including annual increments and promotions, etc. till the date of his retirement. The amount of terminal benefits paid to him should be adjusted against the amount of his salary from 22.03.1997 till date. If any balance remains, that should be adjusted in easy monthly instalments from his future salary. The appellant shall continue in service till his date of superannuation according to the service records. He should be reinstated and all due payments, after adjustments as directed, should be made to him within six weeks from the date of presentation of a copy of the Judgment before the Secretary of the Board.”

15. It is relevant to extract the provisions under Section 20(5) of the Rights of Persons with Disabilities Act, 2016 as follows:-

“20. Non-discrimination in employment.—(1) No Government establishment shall discriminate against any person with disability in any matter relating to employment:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.

(2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.



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(3) No promotion shall be denied to a person merely on the ground of disability.

(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service.

Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(5) The appropriate Government may frame policies for posting and transfer of employees with disabilities.”

16. Accordingly, no Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service: The proviso also states that if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits.

17. In view of the above, the charge memos cannot be sustained and are liable to be quashed. Accordingly, the charge memos No.Pa. No. 1 / T3 / 664 / Law / TNSTC / EMA / 2021 dated 22.12.2021 and Memo No. 1 / T3 / 474 / Law / TNSTC / EMA / 2022, 05.08.2022, issued by the second respondent and the second show cause notices Ku. No. 1 / T3 / 664 / TNSTC / EMA / 2021, dated 22.12.2022 and Pa. No. 1 / T3 / 474 / TNSTC / EMA / 2022, 23.12.2022



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issued by the second respondent are hereby quashed. The respondents are directed to provide alternative employment to the petitioner, for a period of one year, within a period of two weeks from the date of receipt of a copy of this order, as per the medical report dated 17.04.2024 and as per the information obtained by the petitioner under the Right to Information Act, dated 02.05.2024. Thereafter, the respondents can direct the petitioner for medical examination and accordingly, alternative employment may be extended for further period. It is made clear that the period of absence may be treated as duty for all purpose except the salary.

18. Accordingly, these Writ Petitions stand allowed. Consequently, connected Miscellaneous petitions are closed. No costs.

02.07.2024

Internet: Yes
Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order
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G.K.ILANTHIRAIYAN. J,

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To

1. The Managing Director,
Tamil Nadu State Transport Corporation,
(Coimbatore) Limited, Erode Region,
37, Mettupalayam Road,
Coimbatore – 43.
2. The General Manager,
Tamil Nadu State Transport Corporation,
(Coimbatore) Limited, Erode Region,
Chennimalai Road,
Erode – 1.
3. The Director,
Regional Institute Ophthalmology and Government
Ophthalmic Hospital, Egmore,
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