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W.P.No.26844 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.05.2024

CORAM

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

W.P.No.26844 of 2015

and M.P.Nos.1 and 2 of 2015

N. Vadivel

...Petitioner

vs.

1. Tamil Nadu State Transport Corporation
(Villupuram) Ltd. represented by its Managing
Director, Vazhuthareddy, Salamedu,
Villupuram.
2. The General Manager,
Kancheepuram Region,
Tamil Nadu State Transport Corporation,
(Villupuram) Ltd, Kancheepuram.
3. The District Medical Board,
Represented by its Dean,
Rajiv Gandhi Government General Hospital,
Park Town, Chennai – 3. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus directing the respondents 1 and 2 to provide me forthwith suitable alternative employment/light job without involving in heavy stress and strain, with continuity of service, pay protection, arrears and all other service and attendant benefits with effect from 23.12.2014, together with interest at the



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rate of 12% per annum, award costs.

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For Petitioner : Mr.V.Ajay Khose
for Mr.R. Krishnaswamy
For R1 and R2 : Mr.M. Aswin
Standing Counsel
For R3 : Mr.E. Sundaram
Government Advocate

ORDER

The writ petitioner met with an accident on 23.12.2014 in the course of employment and became unfit for the post of conductor. During the pendency of this writ petition, he was provided with alternative employment on 08.05.2019. He seeks a direction to order for continuity of service, pay protection, arrears and all other service and attendant benefits with effect from 23.12.2014 together with interest at the rate of 12% per annum. Hence this writ petition.

2. The petitioner joined as a conductor in the respondent Transport Corporation on daily wages and subsequently, he was given temporary scale of pay from 23.09.1997.

(i) While he was on duty as conductor he met with an accident on 23.12.2014 and due to which he sustained fractures on both hands (above the wrist) and on the left side of the head (above the ear). He was under



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treatment as an inpatient from 23.12.2014 till 29.12.2014.

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(ii) The petitioner gave a representation to the respondents 1 and 2 requesting to provide alternative employment. During pendency of this writ petition, he was provided with alternate employment.

(iii) He was paid salary for the month of January 2015 and after adjusting leave to his credit from February 2015 onwards he was not paid any salary. He was given alternative employment on 08.05.2019 as a Helper-Non ITI in the same scale of pay which he was drawing in the year 2015 seeks for a direction to grant continuity of service, pay protection, arrears and all other attendant benefits with effect from 23.12.2014 together with interest at the rate of 12% per annum.

3. Mr.V.Ajay Khose, the learned counsel for the writ petitioner took this Court to the details of Sections 2(i), 2(i)(v), 2(k), 2(o) and Section 24 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. It is his further contention that though he was provided with alternative employment only during the pendency of this writ petition, Section 47 of the above said Act was not fully complied with.

4. To strengthen his arguments, the following judgments were referred to:

1. Kunal Singh Vs. Union of India and another [2003 (4) SCC



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2. A. Subramani Vs. The Management of Tamil Nadu State Transport Corporation, (Coimbatore Division-I) Limited, Udthagamandalam, and another [2007 (5) CTC 386]
3. Vikas Vs. State of Maharashtra [2021 (2) Mh.L.J. 131]
4. G. Muthu Vs. The Management of Tamil Nadu State Transport Corporation (Madurai) Ltd. [2006 (5) CTC 413]
5. Balasubramanian and others Vs. The Management of Tamil Nadu State Transport Corporation Ltd. (Madurai Division – II) Ltd., Tirunelveli [W.P.Nos.24435 and 24918 of 2003 etc. batch cases dated 04.09.2007]
6. Managing Director, Tamil Nadu State Transport Corporation (Salem) Limited Vs. A. Kannan [2014 (1) TN MAC 808]

5. Per contra, Mr.M.Aswin, learned Standing Counsel for the respondents 1 and 2 / Tamil Nadu State Transport Corporation, would stoutly object by stating that on the strength of the disability certificate, the petitioner was given with alternative employment and re-designated as Helper-Non ITI and permitted to continue his work at Kalpakkam branch vide in Ku.No.06/Pa2/ThaAaPoKa(Vizu)/Kanchi/2018 dated 08.05.2019 with pay protection. It was further contended that the employee moved a



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petition before the Commissioner under Workmen's Commission Act, 1923 in W.C.No.32 of 2018 and an amount of Rs.10,51,792/- with 12% interest was ordered as compensation. Against which, the management has preferred an appeal in C.M.A.No.2977 of 2022 by depositing the entire compensation amount before the Authority. The main contention of the Transport Corporation is that he was given continuity of service and in respect of arrears of salary he has filed W.C.No.32 of 2018 and the entire award amount is deposited. Therefore, he is not eligible to claim arrears in this writ petition. The respondents 1 and 2 / Transport Corporation is not liable to pay any amount to the employee.

6. The relevant governing provision is Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (herein after mentioned as the Disabilities Act, 1995), an Act came into effect based on the proclamation on the full participation and equality of the people with disabilities in the Asian and Pacific region which was held at Beijing from 1st to 5th December, 1992. The said meeting was convened by the Economic and Social Commission for Asia and Pacific. In order to implement the Proclamation, this Act was enacted by the Parliament and came into effect on 01.01.1996. It is beneficial to extract Section 47 of the Disabilities Act, 1995:



“47. Non-discrimination in Government employment:-

(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could 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.

(2) No promotion shall be denied to a person merely on the ground of his disability:

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

7. From a bare reading of the said provision, it transpires that it is a mandatory provision that the establishments which are covered under this Act shall not reduce in rank of an employee who acquires disability during his employment.

8. The first proviso mandates that if an employee after acquiring



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disability, if he is not suitable for the post he was holding, he could be shifted to some other post with the same scale of pay and service benefits. The second proviso provides 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. Section 47(2) of the Disabilities Act mandates that his promotion shall not be denied merely on the ground of his disability.

9. The Disabilities Act, 1995 was amended in the year 2016 and the Act is called as the Rights of Persons with Disabilities Act, 2016. Much earlier to the enactment of the Disabilities Act, 1995, it is interesting to note that the Hon'ble Supreme Court ordered to evolve a scheme in order to provide relief to workmen who became unfit or incapacitated to work during the course of employment in **Anand Bihari Vs. Rajasthan State Road Transport Corporation, Jaipur** reported in **AIR 1991 SC 1003**. The Hon'ble Supreme Court formulated certain guidelines and it was observed that:

“... there is no justification in treating the cases of workmen like drivers who are exposed to occupational diseases and disabilities on par with the other employees. The injustice, inequity and discrimination is writ large in such cases and is indefensible. The service conditions of the



workmen such as the drivers in the present case, therefore, must provide for adequate safeguards to remedy the situation by compensating them in some form for the all-round loss they suffer for no fault of them.” Thirdly, as argued by the learned counsel for the appellant, there will not be too many claims on false pretext. The Corporation can very well refer the persons to the Medical Board to verify their plea of disability and take all precautions to ensure that no false claim is entertained. On that score, deserving persons cannot be denied the benefits under the Act.”

10. In ***Kunal Singh vs. Union of India and another*** reported in **2003 (4) SCC 524**, the appellant was a constable in the Special Service Bureau. When he was on duty, he suffered injury in his left leg which led to permanently incapacitated for service by the medical board's report and consequently he was terminated from the service. Challenging the termination order, he claimed that he should have been assigned with alternative duty, which was dismissed by the High Court and he preferred an appeal before the Hon'ble Supreme Court. It was observed that although no argument was advanced before the High Court on the basis of Section 47 of the Act, it was heard and concluded that merely because under Rule 38 of the CCS (Pension) Rules, 1972, the appellant got invalid pension is no ground to deny the protection mandatorily made available to the appellant under Section 47 of the Act. It was further held that as the



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appellant acquired disability during his service and if he was found to be unsuitable for the post he was holding, he could have been shifted to some other post with same pay scale and service benefits. It is relevant to note that based on the provision of Section 47, the Hon'ble Supreme Court also held that if it is not possible to adjust him against any post, a direction was given that he could be kept on a supernumery post until a suitable post was available or he attains the age of Superannuation, whichever is earlier.

11. The main objection put forth by Mr.M.Aswin, learned Standing Counsel for the respondents 1 and 2 is that since the petitioner was provided with compensation under Workmen's Compensation Act, he has been precluded from claiming benefits as provided under Section 47 of the Disabilities Act, 1995, and at present he is working as a Helper Non ITI since 08.05.2019. In this regard Section 72 of the Disabilities Act, 1995 is extracted hereunder for proper appreciation:

“72.Act to be in addition to and not in derogation of any other law:

The provisions of this Act, or the rules made thereunder shall be in addition to, and not in derogation of any other law for the time being in force or any rules, order or any



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instructions issued thereunder, enacted or issued for the benefit of persons with disabilities.”

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12. On perusal of the above said Section, it explicates that the provisions of the Disabilities Act have to be considered in addition to any other law or order and not in derogation of any law or order or instructions issued for the benefits of persons with disabilities.

13. The object of the Workmen's Compensation Act is that it provides for payment of compensation to workmen and their families in the case of personal injury caused by accident or by certain occupational diseases arising out of and in the course of employment resulting in disablement or death.

14. Insofar as Section 72 of the Disabilities Act, 1995 is concerned, it puts an embargo on the employer to the effect that the provisions of the Disabilities Act are to be considered in addition to any other law or order, which means the protection and benefits envisaged under Section 47 of the Disabilities Act must be conferred on the employee in addition to the benefits provided under the Workmen's Compensation Act.



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15. My views are well fortified by the Hon'ble Division Bench of this Court in *A. Subramani Vs. The Management of Tamil Nadu State Transport Corporation (TNSTC) and another* reported in 2007 (5) CTC 386. In the said case, the appellant was working as a conductor in the Tamil Nadu State Transport Corporation. On 15.09.1996, when he was on duty on the route from Mettupalayam to Coimbatore, he fell down from the running bus and suffered grievous injury on his head. He was in coma for a period of 45 days and he was under treatment for nearly about four months and he was referred to the Medical Board at Udhagamandalam Government Hospital after he joined his service. The Medical Board opined that he was unfit to take up the work involving prolonged standing or walking. A notice was issued by the Corporation as he has become disabled and therefore, he should be discharged from the post of Conductor and he was so discharged from the service on 29.09.1998. But the Claim Petition in W.C.No.205 of 1999, the authority under Workmen's Compensation Act, Coimbatore passed an award for Rs.2,30,568/-. The appellant raised an industrial dispute in I.D.No.254 of 2000 under Section 2-A(2) of the Industrial Dispute Act for alternative employment with continuity of service. The Labour Court, Coimbatore vide Award dated 08.02.2005 declared that the appellant is entitled for the same under Section 47 of the Disabilities Act, 1995 and issued direction to reinstate



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the appellant with full back wages.

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16. The objection now sought to be raised by the respondent Corporation was also raised in the writ petition filed by the respondent corporation by challenging the award of the Labour Court to the effect that workman having received the compensation under the Workmen's Compensation Act cannot again claim alternative employment in terms of Section 47 of the Disabilities Act as he cannot pursue both the remedies. The learned Single Judge accepted the contention of the management and concluded that the workmen is not entitled to enjoy both the benefits i.e. the compensation under Workmen's Compensation Act and alternative employment under the Disabilities Act and ordered to recover Rs.5,000/- per month from his salary. In appeal, the Hon'ble Division Bench of this Court has held that the benefit conferred under Section 47 of the Disabilities Act, 1995 must be considered in addition to the benefits conferred under the Workmen's Compensation Act and the impugned order of the learned Single Judge was ordered to be set aside by directing the Corporation to pay arrears of back wages to the appellant as per the award of the Labour Court within a period of six weeks.

17. It is relevant to note that the Labour Court passed an award for



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the Workmen who is entitled for the relief sought for under Section 47 of the Disabilities Act and directed that the 1st respondent to reinstate the appellant with full back wages.

18. In yet another similar case, the Hon'ble Division Bench of this Court in **G.Muthu Vs. The Management of Tamil Nadu State Transport Corporation** reported in **2006 (5) CTC 413**, it was held that the appellant is entitled for the benefit of alternative employment as provided under Section 47 of the Disabilities Act and directed the respondent to provide such alternative employment from the date of his discharge with pay protection, continuity of service, back wages and all other attendant benefits for which he is legally entitled to.

19. The petitioner is already a physically challenged person, was appointed as a conductor on temporary basis with effect from 14.09.1993 under the disability quota and his services were regularised on 23.09.1997 with effect from 26.02.1997.

20. On perusal of records, it appears that when the respondent bus proceeded towards Trichy from Kalpakkam along the G.S.T. Road on 23.12.2014, just opposite to Villupuram Depot-II while a pedestrian



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crossed the road from the right side by climbing on the median and jumped towards left side of the road, in order to avoid hitting him the driver of the bus tried to turn the bus to the left side. But the bus lost its control and dragged towards the left and came to a halt after hitting the tamarind tree on the left side of the road. The petitioner was standing near the steps by issuing tickets to the passengers and he was thrown out from the bus and lost consciousness.

21. From the perusal of medical records, it transpires that the petitioner suffered cranial vault fracture, displaced fracture of bilateral nasal bones, fracture of distal radius left and right. For both the wrist, implants were fixed / for the fracture of nasal bone, he was managed conservatively. On 15.07.2015 for the problem of neck pain, he took treatment at the same Parvathy hospital, Chennai, wherein the neurosurgeon had recommended to provide him alternative job. The said certificate is extracted hereunder:-

“This is to certify that Mr.N.Vadivel, 41 years/Male, has an unstable right hip due to old septic sequalae and he sustained bilateral distal radius fractures 6 months ago. He underwent surgery and now has deficient grip strength in both hands. So he is advised and recommended to be given a sitting job.”



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22. Just 12 days thereafter grant of the said certificate, the petitioner had sent requisition to the managing director of the Tamil Nadu State Transport Corporation, Villupuram dated 27.07.2015 claiming for alternative employment and medical expanses with full benefits, which was received by the management on 29.07.2015. After a month on 26.08.2015, the present writ was sought to be filed to order to provide him alternative employment with full attendant benefits with effect from the date of accident with interest at the rate of 12% per annum.

23. The date of accident was 23.12.2014. He suffered fracture over head and fracture of both hands besides nasal bone fracture. After eight months, he sent the requisition to provide for alternative employment. Having suffered these fractures, one cannot expect injured person to act immediately. Therefore, in the given circumstances, the eight months delay need not be seriously looked into.

24. Mr.V.Ajaykhose, learned counsel for the petitioner submitted that though an interim order to provide alternative employment to the petitioner was passed on 27.08.2015 itself, he was only given alternative employment as Helper-Non ITI on 08.05.2019.



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25. When one reads Section 47 of the Disabilities Act, it does not envisage any time lag for shifting him to other post. But in this case, after five years and seven months from the date of order of this Court, the petitioner was provided with alternative employment. In the opinion of this Court, it is a clear violation of welfare legislation.

26. Though, Disabilities Act is a comprehensive Legislation, the beneficiaries in order to get the benefits of this Act, at the earliest and to oblivate their sufferings, the below said directives would enable the employer/Medical Board to achieve the object of the welfare/special legislation namely Disabilities Act.

i) When once the Employer comes to the notice about the disability of an employee suffered during the course of employment, the process of medical examination and disability assessment shall be completed within a period of four weeks from such notice.

ii) The Employer may take all precautions to ensure that no false claim is entertained.

iii) The Employer to refer the persons to Medical Board to verify the plea of disability.

iv) The Medical Board shall give opinion within two weeks from the



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date of referral to oblivate any delay.

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v) Time taken by the Medical Board for medical examination / for disability assessment / for providing alternative posts ought to be treated as part of employment. Obviously, the employee shall be entitled to be paid back wages for the entire period.

27. In fine, this writ petition stands allowed. The respondent 1 and 2 are directed to pay all the attendant benefits with effect from 24.12.2014 after adjusting the payment made, if any. This exercise shall be completed within a period of six [6] weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed. No costs.

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Index : Yes/No
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Speaking Order / Non-Speaking Order
mac/ssn

To

1. The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram) Ltd., Vazhuthareddy, Salamedu,
Villupuram



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2. The General Manager,
Kancheepuram Region,
Tamil Nadu State Transport Corporation,
(Villupuram) Ltd, Kancheepuram.
3. Dean, District Medical Board,
Rajiv Gandhi Government General Hospital,
Park Town, Chennai – 3

R.KALAIMATHI, J.,
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