



W.P.No.9588 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2024

CORAM :

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.No.9588 of 2015

and

M.P.No.1 of 2015

P.K.Paneerselvam

...Petitioner

Vs.

1. The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Villupuram.
2. The General Manager
Tamil Nadu State Transport Corporation Ltd.,
Cuddalore Zone,
Cuddalore.
3. The Branch Manager
Tamil Nadu State Transport Corporation Ltd.,
Virudhachalam Branch – I
Virudhachalam.

...Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a writ of mandamus, directing the Managing Director, Tamil Nadu State Transport Corporation, Villupuram, the first respondent herein to afford a permanent post to the petitioner in accordance with Section 47 of The



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Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955 with all attendant benefits and continuity in service and arrears of salary.

For petitioner : Mr.A.V.Arun

For respondent : Mr.Aswin

ORDER

This writ petition is filed seeking for a mandamus directing the Managing Director, Tamil Nadu State Transport Corporation, Villupuram, the first respondent to afford a permanent post to the petitioner in accordance with Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955 with all attendant benefits and continuity in service and arrears of salary

2. It is submitted by the learned counsel for the petitioner that the petitioner has joined the respondents Corporation in the year 1987 and rendered unblemished service. During the year 2000 the petitioner fell down and developed complications and subsequently, after the clearance by the Medical Board, he joined duty and attained special grade as well.



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2.1. On 20.02.2011 while the petitioner was in duty he developed swelling and pain in his left hand and leg and on medical examination it was found that he had I GPS 'O' Ankylosing Spondylitis and hence, due to his physical condition he could not continue his service as a Driver. Considering his illness, the petitioner requested the third respondent to provide a suitable alternative job for him without reduction in pay, rank, continuance of service and other attendant benefits. Subsequently, the petitioner was allotted an alternative employment with light duties and continued to work in that post till 15.08.2013.

2.2. On 18.09.2013, the petitioner was prevented from attending duty by the third respondent and was directed to get permission from the second respondent to join duty. Though, the petitioner reported to duty on the said date, he was marked absent.

2.3. The petitioner submitted several representations but there was no response. The second respondent by a letter dated 31.07.2014 directed the



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petitioner to appear before the Special Cell constituted for the purpose of examining the candidates for allotting alternative work and the date of examination was fixed on 02.08.2014 and the petitioner also appeared. While so, the second respondent addressed a letter to the Joint Director of the Government General Hospital, Health Department Cuddalore, to form a Medical team consisting of three members to examine the petitioner and submit their report within a period of three weeks from the date of examination. Aggrieved by the same the petitioner filed a writ petition in W.P.No.26627 of 2017 before this Court and by an order dated 07.10.2014 this Court directed the second respondent to consider the petitioner's representation dated 02.08.2014.

2.4. Subsequent to the order passed by this Court, the second respondent by letter dated 19.12.2014 directed the third respondent to provide lighter duty tot the petitioner for a period of only 6 months between 13.12.2014 and 12.06.2015. The petitioner was directed to join the duty on 01.01.2015 but he was not given any increment of special grade pay hike. The petitioner submitted a representation dated 12.03.2015 to the respondents but there was no response. Hence, this writ petition.



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3. Counter affidavit has been filed by the respondents.

4. The contention of the petitioner is that the petitioner has been working as a Driver in the respondent Corporation and had developed I GPS 'O' Ankylosing Spondylitis, on account of which he was not able to drive vehicle and requested for lighter duty. The petitioner was allotted alternative duty and subsequently retired from service.

5. The proceedings before this Court show that in the month of August 2013 itself the petitioner was sent for medical examination and it is found that he is medically unfit to drive vehicle, under Section 47 of the Persons with Disability (Equal Opportunities Protection of rights and full participation) Act, 1955 mandates that the petitioner should be provided with suitable alternate employment and to provide wages which he used to get earlier. The petitioner was absent from November 2013 to December 2014 and the respondents have given alternate employment from Jan 2014. The petitioner worked in the alternate employment and ultimately retired. On account of absence from November 2013 to December 2014, the petitioner is



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getting only 70% of the pension.

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6. Though, the learned counsel for the respondents submitted that since the petitioner was not working from November 2013 to December 2014 the petitioner cannot be paid back wages, Section 47 of the Act mandates that it is the responsibility of the respondents to provide suitable alternative employment with same pay which he used to get and the same was not provided for which the petitioner was absent.

7. In view of the above, the services of the petitioner which is shown to be unauthorized from November 2013 to December 2014 has to be regularized and back wages have to be provided. Further, the period from November 2013 to December 2014 shall be treated as continuity in service and the said period of absence will have to be calculated for providing pension.

8. Accordingly, with the above findings, this writ petition is allowed. Connected M.P. is closed. Costs made easy.



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Index : Yes/No
Internet : Yes/No
Citation : Yes/No

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