



W.P.No.19086 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2024

CORAM:

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

W.P.No.19086 of 2022

R.Palani

...Petitioner

-Vs -

1. The Managing Director,
The Metropolitan Transport Corporation
(Chennai) Limited,
“Pallavan House”,
P.B.No.390, Anna Salai,
Chennai – 600 002.

2. The Senior Deputy Manager
(Human Resources Development)
The Metropolitan Transport Corporation
(Chennai) Limited,
“Pallavan House”,
P.B.No.390, Anna Salai,
Chennai – 600 002.

3. The Branch Manager,
Avadi Bus Depot,
The Metropolitan Transport Corporation
(Chennai) Limited,
Chennai – 600 054.

4. The Branch Manager,
Broadway Bus Depot,
The Metropolitan Transport Corporation
(Chennai) Limited,
Chennai – 600 001.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the third respondent dated 27.05.2022, bearing Ka.No.253/Ki.Me/Aa.Pa/MaPoKa/2022 and to quash the same as illegal and consequently to direct the first to third respondents to provide the petitioner any alternative employment along with salary, continuity of service and other attendant benefits from 17.03.2022 till the date of providing such alternative employment, wihtin a reasonable time as this Court may deem fit and proper to the facts and circumstances of this case.

For Petitioner : Mr.S.R.Karthikeyan
For Respondents : Mr.R.Balaji
Standing Counsel

ORDER

The writ petition has been filed challenging the order passed by the third respondent dated 27.05.2022, thereby directing the petitioner to renew his driving license and to continue the post of driver.

2. The petitioner had joined as Driver in the respondents corporation and his employment was confirmed after completion of probation period. While he was in service, he suffered with sever back pain and he was diagnosed with Lambar Spondylosis with Radiculo Nuropathy. Due to his suffering, he was not able to continue his duty as a



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driver. Therefore, he requested for alternative employment. Immediately he was referred to Medical Board and the Medical Board opined that because of his illness, he is unfit for the post of driver. As per the said opinion, the petitioner was given alternative employment of Helper non-ITI. However, the petitioner was subjected for medical examination for three months once and subsequently six months once. Lastly, he was subjected for medical examination on 02.11.2020 and the Medical Board gave report that the petitioner's disability is partial and permanent and amount to around 10%. Therefore, he is unfit for the post of driver. However, the third respondent directed the petitioner to renew his license and to continue his duty as driver. Hence, the petitioner filed this writ petition with the above said prayer.

3. The learned counsel appearing for the petitioner submitted that the petitioner is sustained permanent disabilities to the tune of 10% and he is suffering with Lumber Spondylosis with Radiculo Nuroopathy and therefore he is unfit for the post of driver and he could not be able to drive the vehicle. In support of his contention, he relied upon the following judgments :-



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(i) Kunal Singh Vs. Union of India & anr in Appeal (c) No.1789 of 2000 dated 13.02.2003

(ii) Management of Tamil Nadu State Transport Corporation Vs. B.Gnanasekaran in W.A.No.860 of 2007 dated 10.07.2007

4. The learned Standing Counsel appearing for the respondents submitted that as per the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (hereinafter referred to as “the Disabilities Act”) the person who sustained disability to the tune of 40% only can be given alternative employment. Even according to the Medical Board, the petitioner sustained only 10% of disability and as such, he was directed to renew his license and to continue the post of driver.

5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. The Hon'ble Supreme Court of India in the case of **Kunal Singh Vs. Union of India & anr** in Appeal (c) No.1789 of 2000 dated 13.02.2003, held as follows :-



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“.....Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature.”

Thus it is clear that, a person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Disabilities Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer.



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7. Further the Hon'ble Division Bench of this Court in the case

of the ***Management of Tamil Nadu State Transport Corporation Vs.***

B.Gnanasekaran, in W.A.No.860 of 2007 dated 10.07.2007, held that Section 47 of the Disabilities Act, deals with an employee who has acquired disability during service and it is not necessary that he should have suffered 40% disability. The petitioner/workman became unfit for the duty of the driver as he is suffering with Lumber Spondylosis with Radiculo Nuropathy and this disability within the meaning of Section 2(o) of the Disabilities Act. Further acquisition of disability is not the same as a person with disability and it was not necessary for the workman to establish that he suffers more than 40% disability.

8. In fact, the petitioner was assessed with 10% permanent disability by the Medical Board and certified that the petitioner is unfit to the post of driver. When the petitioner was suffering with 10% permanent disability, he cannot renew his license and to continue his post as driver. When the petitioner is suffering with illness, it is not at all possible for him to renew his license or drive the vehicle. Though the petitioner was given alternative employment to the post of Helper non-



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ITI, subsequently he was not given the said alternative employment.

Therefore, the impugned order cannot be sustained and it is liable to be quashed.

9. Accordingly, the impugned order dated 27.05.2022, passed by the third respondent in Ka.No.253/Ki.Me/Aa.Pa/MaPoKa/2022 is hereby quashed. The first and second respondents are directed to engage the petitioner in the alternative employment as Helper non-ITI. The third respondent is directed to send the petitioner for Medical Board Examination six months once. However, at any cost, the third respondent shall not disengage the petitioner from the post of Helper non-ITI, while pending the medical examination. It is also made clear that the petitioner is entitled for backwages, continuity of service and other attendant benefits.

10. With the above directions, the Writ Petition stands allowed. There shall be no orders as to costs.

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

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To

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