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W.P.No.20556 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2024

CORAM:

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

W.P.No.20556 of 2022
W.M.P.Nos.19666 & 19668 of 2022

K.Chokkalingam

...Petitioner

-Vs -

1. Tamil Nadu State Transport
Corporation (Salem) Ltd.,
Rep. by its Managing Director,
No.12, Ramakrishna Salai,
Salem – 7.

2. The General Manager,
Tamil Nadu State Transport
Corporation (Salem) Ltd.,
No.12, Ramakrishna Salai,
Salem – 7.

3. The Dean,
Rajiv Gandhi Government
General Hospital,
Chennai – 600 003.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order dated 10.02.2022 passed by the first respondent in letter No.E4/3882/TNSTC/Salem/2022, quash the same and consequently direct the respondents 1-2 to provide the petitioner



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forthwith suitable alternative employment/light duty on permanent basis, in commensurate with his health condition w.e.f., 01.06.2021, with continuity of service, back wages and all other attendant benefits, without reference to an without insisting for any report, with regard to the percentage of disability from the Medical Board and without insisting for other conditions mentioned in the order dated 10.02.2022 and to restore the petitioner leave, which was adjusted during the period from 01.06.2021 to 31.12.2021, award costs.

For Petitioner : Mr.V.Ajoy Khose
For Respondents
For R1 & R2 : Mr.K.Raja
Standing Counsel
For R3 : Mr.S.Rajesh
Government Advocate.

ORDER

This writ petition has been filed challenging the order passed by the first respondent dated 10.02.2022, thereby refused to give alternative employment to the petitioner.

2. The petitioner had appointed as Driver under the second respondent corporation on temporary basis. He was made permanent with effect from 01.09.2008. Thereafter, the petitioner was suffering with various ailments and since he became unfit for the post of Driver. The



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first respondent corporation provided him light duty as Time Keeper with effect from 29.10.2020 at Nangavalli bus stand. Thereafter, the petitioner was not provided with light work from 01.06.2021. The petitioner was diagnosed with kidney cancer tumour in the renal cell carcinoma. Therefore, it was removed and he is living with one kidney. Thereafter he made representation along with medical report seeking lighter duty. Hence, the petitioner was referred to Regional Medical Board in Rajiv Gandhi Government General Hospital, Chennai.

3. Accordingly, the petitioner was subjected for medical examination before the Medical Board on 19.11.2021, 22.11.2021 and 23.11.2021. After examining him, the Medical Board certified that he was unfit to continue the job as Driver and he may be considered for an alternative light job. However, it was not accepted by the second respondent and rejected the request made by the petitioner to give alternative employment.

4. Heard the learned counsel on either side and perused the materials available on records.

5. On perusal of report of the third respondent revealed that as



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per the opinion given by Nephrologist and Diabetologist in view of brittle diabetes and syncopal episodes and reccurent hypoglycemia and multiple comorbidites and complaints, the petitioner is unfit for driver duty. However, the second respondent instead of providing alternative employment stated that the medical report is not in Form-IV as per the Rights of Persons with Disabilities Act, 2016.

6. Further as per communication dated 31.03.2022 issued by the first respondent to the third respondent, the petitioner was once again subjected for medical examination and he was issued certificate that the petitioner has kidney cancer tumour and he is unfit for driver and he may be given alternative duty. Even then, the petitioner was not provided with alternative duty so far.

7. The learned Standing Counsel appearing for the respondents 1 & 2 submitted that the Regional Medical Board certificate doesn't mention about the percentage of disability. That apart it is also not mentioned whether it is curable or not.

8. When the certificate is very clear that the petitioner is unfit



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for driver post, he may be given alternative duty. It is permanent disability and no need to mention the level of disability. If it is not mentioned about the stage of disability and curable or not, it can be construed that it is permanent disability and not curable one. Admittedly, the petitioner is suffering with cancer tumour on his kidney and it was removed. Now he is living with one kidney and also other ailments. Therefore, it is not curable in nature and no need to state the level of disability.

9. Further as per Section 20(4) of the Rights of Persons with Disabilities Act, 2016, 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. Further provided 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. So far, the second respondent failed to provide any employment to the petitioner. Hence, the impugned order cannot be sustained and it is liable to be quashed



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10. Accordingly, the impugned order dated 10.02.2022 passed by the first respondent in letter No.E4/3882/TNSTC/Salem/2022, is hereby quashed. The second respondent is directed to provide the petitioner with suitable alternative employment/duty with same scale of pay and service benefits forthwith.

11. With the above directions, the Writ Petition stands allowed. Consequently, connected Miscellaneous Petitions are closed. There shall be no order as to costs.

01.02.2024

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

rts



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