



WEB COPY



W.P.No.28181 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2024

CORAM:

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

W.P.No.28181 of 2023
and W.M.P.No.35107 of 2023

N.Raj Kumar

... Petitioner

-Vs-

1. The General Manager,
Tamil Nadu State Transport Corporation,
Villupuram Ltd.,
Villupuram-605 602.

2. The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram Region,
Villupuram -605 602.

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to quash the order passed by the first respondent vide proceedings Ka. Ku No.51 / 501 / Ne7 / TNSSTC (Villupuram) / 2021 dated 29.08.2023 quash the same and consequentially to direct the first respondent to assign an alternate work considering petitioner's health without any break and also disburse the salary from 28.12.2021 to 01.09.2023 (one year eight months) along with 24% interest.



W.P.No.28181 of 2023

For Petitioner : Mr.N.Beulah John Selvaraj

For Respondents : Mr.M.Aswin,
Standing Counsel

ORDER

This Writ Petition has been filed challenging the order passed by the first respondent vide proceedings Ka.Ku No.51 / 501 / Ne7 / TNSTC (Villupuram) / 2021 dated 29.08.2023, thereby provided alternative job to the post of Conductor after producing license.

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

3. The petitioner was appointed as a Driver on 07.04.2008 in the respondent Corporation. While he was in duty, on 24.11.2021, at about 2.30 p.m, when he was operating the bus bearing No.TN 32 N 4541, Route No.377/I service Kallakurichi to Tirupathi, he noticed that the door was not closing properly due to the accumulation of sand in the steps. While he was removing the sand, the Branch Manager without noticing the petitioner, suddenly operated the back side door. Therefore, the door was closed. The petitioner got stuck in between the door and sustained severe injuries in his neck, body and



W.P.No.28181 of 2023

hands. Immediately, he was taken to the Government Hospital, Kallakurichi and referred to private hospital due to lack of facilities. Therefore, he was hospitalized at Kovai Medical Center and Hospital Limited, on 23.12.2021. He was diagnosed as “C5-C6 OPLL with Myelopathy and Periarthritis in both shoulders. C5-C6 Spinal Motion Segment located in the lower cervical spine just above the C7 vertebra provides flexibility and support to much of the neck and the head above. Periarthritis is a type of arthritis that causes pain and stiffness in a single joint. The condition most often affects the shoulders, but it can affect any joints. Surgery was done on 24.12.2021 and plate was inserted in C5 and C6 Corpectomy, plate was inserted in both shoulders. Therefore, he was advised to avoid forward bending, lifting and lifting weights. He was advised to change his occupation to avoid neck and shoulder straining. However, he was not assigned any alternative employment and he was not paid any salary. The Differently Abled Welfare Officer, Kallakurichi, issued a certificate of Disability as 65%. However, the first respondent referred the petitioner to the Regional Medical Board, Rajiv Gandhi Government General Hospital, Chennai. The petitioner appeared and his disability was assessed at 40% and also recorded that he was unfit for driver job. Thereafter, the petitioner submitted a representation to provide him an alternative employment. However,



W.P.No.28181 of 2023

he was not provided with an alternative employment immediately. Once again, by the communication dated 10.01.2023, the respondents referred the petitioner to Regional Medical Board, Rajiv Gandhi Government General Hospital, Chennai. Accordingly, the petitioner had appeared and once again, he was assessed with 40% physical disability and it was also recorded that he is unfit for the post of Driver.

4. Therefore, by the order dated 18.05.2023, the first respondent had assigned a security job to the petitioner for a period of three months effecting from 25.05.2023 to 24.08.2023. Thereafter, he was not permitted to work and the impugned order dated 29.08.2023 was issued, thereby he was assigned with a Conductor post. As per the medical disability certificate, he is suffering with 40% permanent disability. A plate has been fixed in C4-C5 bone. Therefore, the Doctor advised the petitioner to avoid forward bending, lifting and lifting weights and as such, he cannot do Conductor job. Hence, this writ petition.

5. The second respondent filed counter and it revealed that the petitioner was provided with alternative employment from 01.03.2022 to 31.03.2022. Again he was provided alternative employment from 14.04.2022 to 13.05.2022.



W.P.No.28181 of 2023

Subsequently, he was given alternative employment from 05.06.2022 to 04.07.2022. Based on the Medical Board report, he was given alternative employment from 03.09.2022 to 02.02.2023. The disability certificate issued by M/s Rajiv Gandhi General Hospital, Chennai was placed in the Board Meeting. It recommended the petitioner to take Conductor license and was given Conductor post.

6. As stated supra, as per medical records, he suffered with “C5-C6 OPLL with Myelopathy and Periarthritis in both shoulders and he was fitted with plate between C5 and C6. Further, he was advised to avoid forward bending, lifting and lifting weights. Therefore, he cannot do the post of Conductor that too after obtaining license. Initially, he was provided with an alternative employment such as desk posts.

7. In view of the above, the impugned order cannot be sustained as against the petitioner and it is liable to be quashed. Accordingly, the order passed by the first respondent vide proceedings Ka. Ku No.51 / 501 / Ne7 / TNSTC (Villupuram) / 2021 dated 29.08.2023, is hereby quashed. The second respondent is directed to provide alternative employment other than Driver or Conductor posts to the petitioner forthwith.

8. It is made clear that he is entitled for all backwages if any, during non



W.P.No.28181 of 2023

employment period and respondents are directed to disburse the arrears of salary if any, forthwith.

9. Accordingly, this writ petition is allowed. Consequently, connected Miscellaneous petition is closed. There shall be no order as to costs.

31.01.2024

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
mn



WEB COPY



W.P.No.28181 of 2023

To

1. The General Manager,
Tamil Nadu State Transport Corporation,
Villupuram Ltd.,
Villupuram-605 602.
2. The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram Region,
Villupuram -605 602.



WEB COPY



W.P.No.28181 of 2023

G.K.ILANTHIRAIYAN. J,

mn

W.P.No.28181 of 2023

31.01.2024