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W.P.No.29186 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2024

CORAM:

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

W.P.No.29186 of 2023
and W.M.P.No.28788 of 2023

Mariyapillai

...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 the Constitution of India praying to issue a Writ of Ceritorarified Mandamus, to quash the order of the first respondent vide proceedings Ka.Ku.No.05/80/Nee7/TNSTC (Villupuram)/2022 dated 29.08.2023, quash the same and consequentially to direct the first respondent to assign an alternate work without any break and also disburse the salary from 01.01.2017 to 01.05.2022 (five years, six months, two days) and from 02.07.2022 to 16.10.2022 (three months) and from 18.01.2023 to till date (eight months) in total six years five months along with 24% interest.



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For Petitioner : Mr.N.Beulah John Selvaraj

For Respondents : Ms.S.Pavithra
Standing Counsel

ORDER

This writ petition has been filed challenging the order dated 29.08.2023 passed by the first respondent, thereby rejecting the request made by the petitioner for alternative employment.

2. The petitioner had joined in the respondents' corporation on 09.06.1993 as driver on a daily wage basis. Thereafter, he was made permanent on 01.02.1995. While being so, on 30.11.2016 when the petitioner was driving a bus bearing No.TN32N3398 from Chennai to Kallakurichi met with an accident. Due to which, he sustained server injury and lost his right vision and also multiple fractures in his left leg. Immediately he was admitted in Ramachandra Medical Center and a plate was fixed in his left leg.

3. While being so, an FIR also registered against the petitioner in Crime No.845 of 2016 for the offence under Sections 279, 337, 338 and 304(A) of IPC. Therefore, the petitioner was assigned with alternative job of Security from 02.05.2022 to 01.07.2022. However, he



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was not given any alternative employment from 17.01.2023. Thereafter, the alternative employment was given only for three months. Once again, the petitioner referred to medical board and he was assigned with 30% visual disability and recorded as not fit for driving. Insofar as the left leg is concerned, he was assigned with 20% disability and not fit for driver post. However, the petitioner was not assigned with any alternative employment. Hence, the petitioner filed this writ petition with the above said prayer.

4. The learned counsel appearing for the petitioner submitted that due to accident, the petitioner is sustained permanent disabilities of 30% visual disability, 20% left leg disability and therefore he is unfit for the post of driver and he could not be able to drive the vehicle. Hence, the respondents ought to have assigned alternative job to the petitioner. In support of his contention, he relied upon the following judgments :-

(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



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5. 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 30% of visual disability, 20% of left leg disability and as such, the request made by the petitioner rightly rejected by the first respondent.

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

7. 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 :-

“.....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



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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.

8. 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



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acquired disability during service and it is not necessary that he should have suffered 40% disability. The petitioner became unfit for the duty of the driver as he is suffering with 30% visual disability, 20% left leg disability 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.

9. In fact, the petitioner was assessed with 30% visual disability, 20% left leg disability by the Medical Board and certified that the petitioner is unfit to the post of driver. When the petitioner was suffering with 30% visual disability, 20% left leg disability, he cannot drive the vehicle and to continue his post as driver. When the petitioner is suffering with illness, it is not at all possible for him to drive the vehicle. Though the petitioner was given alternative employment to the post of Security, subsequently he was not given the said alternative employment. Therefore, the impugned order cannot be sustained and it is liable to be quashed.

10. Accordingly, the impugned order dated 29.08.2023, passed



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by the first respondent in Ka.Ku.No.05/80/Nee7/TNSTC(Villupuram)/
2022 is hereby quashed. The respondents are directed to provide
alternative employment to the petitioner depends upon his disability
subject to medical review once in a year. Insofar as the salary for earlier
period for which he was not allotted any alternative employment, the
respondents are directed to consider the same and pass orders on merits
and in accordance with law.

11. With the above directions, the Writ Petition stands allowed.
Consequently, connected miscellaneous petition is allowed. There shall be
no orders as to costs.

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Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

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G.K.ILANTHIRAIYAN. J.

rts

To

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