



W.P.No.36158 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2024

CORAM:

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

W.P.No.36158 of 2023 and
WMP.No.36123 of 2023

D.Vijila

... Petitioner

Vs.

- 1.Metropolitan Transport Corporation
(Chennai) Ltd., rep. By its
Managing Director,
Pallavan Salai, Chennai-2
- 2.The General Manager,
Metropolitan Transport Corporation
(Chennai) Ltd.,
Pallavan Salai, Chennai-2
- 3.The Senior Deputy Manager(HR),
Metropolitan Transport Corporation
(Chennai) Ltd., rep. By its
Pallavan Salai, Chennai-2
- 4.The Branch Manager,
Metropolitan Transport Corporation
(Chennai) Ltd.,
Avadi Depot, Chennai-53

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India
praying to issue a writ of mandamus directing the respondents to provide



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the petitioner suitable alternative employment on permanent basis is commensurate with his health condition with continuity of service, pay protection, back wages and other service benefits and to treat the entire period from 01.01.2023 till date during which he was not given light duty as duty with pay for all purposes, award costs.

For Petitioner : Mr.S.Sakthivel

For Respondents : Mr.A.Vinoth Raj,
Standing Counsel

ORDER

This writ petition has been filed for direction to the respondents to provide the petitioner suitable alternative employment on permanent basis due to her illness.

2. The petitioner had joined as Conductor in the respondents Corporation. On 01.06.2010, she was made permanent and she received all benefits and remuneration of permanent employee. While she was working as Senior Conductor under the fourth respondent, she had fell down from steps and she got injury in her spinal card. Due to the said



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injury, she was unable to do her Conductor work. Therefore, the petitioner made representation to the first respondent to assign a lighter duty. Considering the said request, she was subjected for medical examination before the Medical Officer, Metropolitan Transport Corporation. Thereafter, she was referred to Regional Medical Board at Rajiv Gandhi Government General Hospital, where she was assessed by report dated 22.12.2017 stating that 'vijila is not fit' and the petitioner is not fit for the appointed post of Conductor and her disability is partial and permanent and amounts to around 40%'. Considering the said report, the respondents Management assigned her lighter duty for a period of six months from 15.09.2018. Once again on 18.06.2019, she was referred before the Regional Medical Board, Rajiv Gandhi Government General Hospital and once again she was assessed to be unfit for the post of Conductor. Accordingly, a lighter duty was assigned to the petitioner. While being so, on 03.09.2021, the petitioner was charged under Section 11C of Certified Standing Order of Metropolitan Transport Corporation. After submitting explanation, enquiry was conducted. Finally, she was punished with suspending her increment for a period of three months



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without cumulative effect. Thereafter, once again the petitioner was subjected for medical examination and opined that 40% disability patient is unfit for Conductor job. Therefore, finally she was given lighter duty from 21.06.2023 to 30.07.2023. From 31.07.2023 onwards, she was not assigned any duty. Though the petitioner submitted several representations, they were not considered by the respondents.

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

4. 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.

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



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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. 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.

6. In fact, on medical examination, it has been stated that 'opinion 40% disability patient is unfit for conductor job'. Though the petitioner was given alternative employment earlier, but subsequently she was not given the said alternative employment.

7. In view of the above, the respondents are directed to provide the petitioner a suitable alternative employment on permanent basis forthwith. It is also made clear that she is entitled for continuity of service, pay protection, backwages and other attendant benefits.



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8. With the above directions, this writ petition is allowed.

Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
lok

To

- 1.Managing Director,
Metropolitan Transport Corporation
(Chennai) Ltd.,
Pallavan Salai, Chennai-2
- 2.The General Manager,
Metropolitan Transport Corporation
(Chennai) Ltd.,
Pallavan Salai, Chennai-2
- 3.The Senior Deputy Manager(HR),
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G.K.ILANTHIRAIYAN, J.

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