



W.P.(MD).No.1550 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

DATED : 19.03.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.1550 of 2024
and WMP(MD) Nos.1552, 1554 of 2024

D.Chandra Mohan

... Petitioner

Vs

1. The Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Represented by its Managing Director,
Kumbakonam.
2. The General Manager,
The Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Trichy Region, Trichy.
3. The Branch Manager,
Dheeran Nagar Town Branch,
The Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Trichy.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to forthwith continue to provide suitable alternative employment to the petitioner with pay protection, continuity of service and back wages from the date of disengagement i.e., from 08.12.2023 to till the date on which he is provided



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with alternative light duty as per Section 20(4) of the Rights of the Persons with Disabilities Act, 2016 within a time frame fixed by this Court.

For Petitioners : Mr.A.Rahul

For Respondents : Mr.K.Ramaiah
Standing Counsel

ORDER

The present writ petition has been filed for the issue of a writ of mandamus, directing the respondents to forthwith continue to provide suitable alternative employment to the petitioner with pay protection, continuity of service and back wages from the date of disengagement i.e., from 08.12.2023 to till the date on which he is provided with alternative light duty as per Section 20(4) of the Rights of the Persons with Disabilities Act, 2016 within a time frame fixed by this Court.

2.(i).The petitioner was appointed as a Conductor in the First Respondent Corporation on 02.08.2010. While in service, during November, 2021, he suffered with severe back pain. To that extent, he was unable to continue the work of Conductor and he was diagnosed by the Doctors for Lumbar Disc disorder. In view of the same, he made a representation to the respondents requesting alternate employment to him. Pursuant to the said



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request, the second respondent referred the petitioner to the Regional Medical Board of Rajiv Gandhi Government General Hospital, Chennai by the proceedings, dated 25.03.2022 to ascertain the petitioner's fitness to continue as Conductor. The petitioner was called for by the Medical Board vide letter, dated 19.05.2022 to appear before the Board on 18.05.2022. Accordingly, the petitioner appeared before the Board and the Assistant Professor of the Rajiv Gandhi Government General Hospital, Chennai by Certificate, dated 28.05.2022 certified that the petitioner is not fit for the duty of Conductor.

(ii).In view of the same, the petitioner was given with an alternative employment as Security Guard in the third respondent branch with effect from 16.09.2022. The petitioner continued as Security Guard from the said date without any break. The period from November, 2021 to 15.09.2022 was treated as leave on loss of pay. While so, the second respondent by proceedings, dated 19.07.2023 referred the petitioner again to the Medical Board at Rajiv Gandhi Government General Hospital at Chennai to ascertain his fitness. However, on appearance before the Medical Board on 26.07.2023 and 03.08.2023 after due medical examination, the Board further certified that the petitioner is not fit for the Conductor job. Following which, the second



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respondent assigned him with the job of Security Guard in the third respondent branch.

(iii).While so, the third respondent suddenly stopped the petitioner from work with effect from 08.12.2023 by stating that few employees of the category of ex-servicemen has been recruited to work as Security Guard and hence, the service of the petitioner is no more required. However, the said stoppage of work as against the petitioner came to be made without issuing any notice. Hence, the petitioner made a representation, dated 12.01.2024 to the respondents 1 and 2 to provide him with alternate employment without any break and to pay him wages for the disengagement period. However, the same was not considered, but in the attendance register, the respondents marked as if, the petitioner has absented from duty.

(iv).Having given alternate employment for about 15 months, the respondents ought not to have stopped the petitioner from continuing duty. The action on the part of the respondents is contrary to Section 20(4) of the Right of the persons with Disabilities Act, 2016. The petitioner without being provided with alternative employment has been orally refused and kept out of alternative duty from 18.12.2023 thereby, marking him as absent in the attendance register. The respondents has to be directed to pay wages from



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18.12.2023 till the date on which the alternative employment is provided to the petitioner. In view of the same, this writ petition came to be filed.

3.The learned counsel for the petitioner submitted that the respondents ought not to have orally discontinued the petitioner from alternative work denying him with light duty. Insisted that the petitioner is also entitled for wages during the period of disengagement, since the same cannot be attributed to the petitioner, but it is wholly on the whims and fancies of the respondent corporation. On that basis, he pressed for allowing the petition.

4.The learned Standing counsel for the respondent submitted that the petitioner's representation would be considered in accordance with law.

5.Heard, the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents. Perused the materials available on record.



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6.The petitioner has been duly certified by a competent medical Board functioning in the Rajiv Gandhi Government General Hospital, Chennai as unfit to continue the work of Conductor. Only on the reference of the second respondent, the petitioner was referred to the medical Board and after due examination, the Board has also certified the petitioner as not fit to continue in the job of conductor. Having assigned the petitioner with the alternative job of Security Guard in the third respondent branch with effect from 16.09.2022 and having treated the period from November, 2021 to 15.09.2022 as leave on loss of pay during the period of pendency of medical examination by the medical Board, now the act of the second respondent from orally disengaging the petitioner without providing alternate job and salary is sheer violation of principles of natural justice.

7.It is needless to state that Section 41(1) of the Persons with Disabilities Act, 1995, which is, in pari materia with Section 20(4) of the Rights of the Persons with Disabilities Act, 2016 is an injunction against the employer from dispensing with the services of the employee, on the ground that he has suffered disability while in service, Shifting of such employee, who has suffered disability while in service to an alternative employment on being



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properly assessed medically by a competent Board and duly certified as not fit for the earlier job is automatic. If no suitable post is available, he has to be kept in a supernumerary post with paid salary. An employer before dispensing with the services of a workman is bound to put him on notice and give him an opportunity of hearing before such disengagement. Oral disengagement of an employee is totally against the mandates of the constitution of India, since an employee of the public sector corporation enjoys a status and he cannot be treated as a mere chattel. Disengagement of an employee orally without putting him on notice and without giving him an opportunity of hearing is certainly a colourable exercise of power of the Management.

8.This Court in the case of ***A. Mani versus the Managing Director, Tamil Nadu State Transport Corporation, Kumbakonam*** in ***W.P(MD) No.5858 of 2011*** by its order, dated 19.12.2011 has dealt with a similar case and the relevant portion of which, is extracted as follows:

“4.The learned counsel for the petitioner has been given a copy of the said order. However, the learned counsel for the petitioner stated that this order did not talk about any back wages. It is needless to state that already this Court in more than one writ petition emphasized that Section 47(1) is an injunction against the employer from dispensing with the service of a person who has



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become disabled. The disability has to be considered under the provisions of the Act. Therefore, it is needless to state that such person, if the services were dispensed with or discontinued or denial of alternative employment, is also entitled for wages, as if, there was no denial of employment. Taking note of this direction issued by this Court, since the respondents offered the alternative employment, it is for the petitioner to make any representation in case the wages are not paid and the respondents have positively response to such representation. If any adverse orders are passed, it is always open to the petitioner to make the grievance of the same before an appropriate forum."

9. Fully fortified by the order of this Court discussed *supra*, the respondents are forthwith directed to provide the petitioner with a suitable alternate employment with pay protection, continuity of service and back wages from the date of disengagement i.e., from 08.12.2023 to till the date on which he is provided with alternate light duty as per Section 24 of the Right of persons with Disabilities Act, 2016. The said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.



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10. Accordingly, this writ petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

19.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

1. The Managing Director,
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Represented by its,
Kumbakonam.
2. The General Manager,
The Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Trichy Region, Trichy.
3. The Branch Manager,
Dheeran Nagar Town Branch,
The Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
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L.VICTORIA GOWRI, J.

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