



W.P.(MD).No.1604 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.01.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.1604 of 2024

and

W.M.P.(MD)Nos.1628 and 1629 of 2024

M.Lokachandar

... Petitioner

Vs.

1.The Tamilnadu State Transport
Corporation (Kumbakonam) Ltd.,
Represented by its Managing Director,
Kumbakonam.

2.The General Manager,
Tamilnadu State Transport
Corporation (Kumbakonam) Ltd.,
Trichy Region,
Trichy.

3.The Branch Manager,
Dheeran Nagar Town Branch,
Tamilnadu State Transport
Corporation (Kumbakonam) Ltd.,
Trichy.

... Respondents



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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 11.12.2023 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 that may be fixed by this Court.

For Petitioner : Mr.A.Rahul

For Respondents : Mr.K.Ramaiah,
Standing Counsel

ORDER

The present writ petition has been filed to direct 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 11.12.2023 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 that may be fixed by this Court.



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2. The brief facts which are necessary for the disposal of this Writ Petition is as follows:-

(i) The petitioner was employed as Driver in the 1st respondent Corporation on temporary basis in May 2007 and the petitioner's service in the post of Driver was confirmed with effect from 27.05.2008. While the petitioner was travelling in a two wheeler, he met with an accident on 29.07.2021. As a result of which, he sustained fracture on his hip, right leg and nerve complaint in his right heel. Accordingly, he is not able to discharge his duties continuously as the driver. The petitioner underwent surgery in a private hospital at Trichy and steel plates have been inserted in his hip and right leg. In the meanwhile, the petitioner was referred by the 2nd respondent to the Regional Medical Board of Rajiv Gandhi Government General Hospital, Chennai in the month of April 2022 to ascertain the medical fitness to work as driver. Hence, the petitioner received a letter dated 09.05.2022 to appear before the Medical Board on 18.05.2022. In furtherance to the same, the medical examination was conducted by the Medical Board on the petitioner and the report was issued by the Medical Board on 28.05.2022.



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(ii) On 28.05.2022, the Assistant Professor of Rajiv Gandhi Government General Hospital, Chennai certified that the petitioner suffered from right foot drop and so he is not fit for Driver. Accordingly, the petitioner is entitled for an alternative employment as Security Guard in 3rd respondent branch w.e.f 16.09.2022. He continued to work as Security Guard from the said date without any break. However, the period from 29.07.2021 to 15.09.2022 was treated as leave on loss of pay. While so, the 2nd respondent by proceeding dated 13.06.2023 again referred the petitioner to the same Rajiv Gandhi Government General Hospital, Chennai to ascertain his physical fitness to work as Driver. Therefore, the petitioner appeared before the Medical Board on 19.07.2023, 10.08.2023 and on 16.08.2023. The Professor of Institute of Orthopaedics and Traumatology of Rajiv Gandhi Government General Hospital, Chennai, on examining the petitioner's medical condition certified that he is suffered from right foot drop hence he is not fit for Driver job. Despite this report issued, the 3rd respondent stopped the petitioner from work w.e.f 11.12.2023. Hence, the writ petition came to filed seeking an alternative employment.



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3. Heard the learned Counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents and perused the materials available on record.

4. The learned Standing Counsel appearing for the respondents on instructions placed the proceedings of the Rajiv Gandhi Government General Hospital, Chennai dated 16.08.2023. No doubt, it has been certified that the petitioner has physical disability to the tune of 38% (temporary). As advised by the doctor, the petitioner is to undertake the light job. However, the learned Standing Counsel appearing for the respondents vehemently submitted that in view of the partial and also temporary nature of the disability, the petitioner has to take up the duty as driver and he was not provided with an alternative employment.

5. The learned Counsel appearing for the petitioner relied upon the order passed by this Court in W.P.No.2794 of 2004 reported in 2008 (0) Supreme



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(Mad) 274 2008 (3) MLJ 787 and submitted that the respondents attitude of refusing to provide the petitioner with an alternative employment, considering the temporary nature of the physical disability is not sustainable. For better clarification, the relevant portion of the said order is extracted as follows:

“11. Admittedly, the Tamil Nadu Civil Supplies Corpotion has not obtained any of the Act, till date. Therefot, Section 47 governs the respondent Corporation also. The three medical certificates referred above clearly demonstrate petitioners disability and his inability to perform Electrician Duty as before, due to the loss of grip in his left hand fings. The only objection as to whether under the service rules has to be considered as sustainable in the light of the above statutory provisions and various decisions of the Supreme Court and of this Court.

12. The service rules will not prevail over Act 1 of 196, Therefore, the said reason given by the respondents to deny alternat employment to the petitioner cannot be sustained.

(a) A person acquiring disability is entitled to get protection under section 47 of the Act was considered by the Supreme Court in the decision reported in (2003) 4 SCC 524 (Kunal Singh v. Union of India). Paragraph 9 of the decision reads as follows:



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"9.....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. The very opening part of Section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The Section further provides that if an employee after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this, no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service."

(b) A question arose before this Court as to whether the Transport Corporations are bound to provide alternative employment to its employees, who sustain disability during the course of the employment. A Division Bench of this Court reported in 2007 (5) MLJ 1 (Management of Tamil Nadu State Transport Corporation v. B.Gnanasekaran) considered the benevolent provisions contained in the Persons with Disabilities (Equal Opportunities, Protection of Rights and full



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Participation) Act, 1995, the interpretation given by the Supreme Court in the above referred case and whether the disability should be to an extent of 40% for getting alternate employment and whether awarding compensation under the Motor Accident Claims Tribunal will be a bar for seeking alternate employment, were considered.”

6. This Court in yet another case in W.P.(MD)No.5858 of 2011 dated 19.12.2011 has dealt with a similar case and has passed an order favour of the petitioner therein, thereby, directing the respondent Corporation to provide the employee with an alternative employment. That apart, the report of the Medical Board reveals that the nature of the disability of petitioner is physical disability to tune of 38%. In view of the same, the respondent is directed to provide with the duty of Security Guard or any other suitable job to the petitioner within a period of twelve (12) weeks from the date of receipt of a copy of this order.

7. However, the liberty is given to the respondent Corporation to reassess the petitioner's health condition after six months to assess the nature of disability with respect to his right foot. The respondent is further directed to pay wages with effect from 11.12.2023 till the date of providing an alternative job.



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8. Accordingly, this Writ Petition stands disposed of. No costs.

Consequently, connected miscellaneous petitions are closed.

30.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

To

- 1.The Tamilnadu State Transport Corporation (Kumbakonam) Ltd.,
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- 2.The General Manager,
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L.VICTORIA GOWRI, J.

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