



W.P.(MD).No.28290 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

DATED : 20.03.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.28290 of 2023

and WMP(MD)Nos.24364 to 24366, 24368 of 2023

B.Kathiresan

... Petitioner

Vs

1. The Management of State Express Transport Corporation
(Tamil Nadu) Ltd.,
Rep. by its Managing Director,
Pallavan Salai, Chennai-2.

2. The Regional Medical Board,
Rajiv Gandhi General Hospital,
Chennai-600 003.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, after calling for the records pertaining to the impugned report in Proc.No. 134/RMB/RGGGH/2022, dated 21.12.2022 of the 2nd Respondent and also the impugned charge memo in Ku.No.215320/DL2/Aa Vi PO KA/2023, dated 28.08.2023 of the 1st respondent, quash the same and consequently direct the 1st respondent to provide the petitioner permanent alternative employment based on the report of the medical authority under the Rights of Persons with Disabilities Act, 2016 as to petitioner's disability and health condition and to



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give him all benefits including wages from 2016 and also to treat the period from 2016 to the date of providing him permanent alternative employment as duty period for all purpose.

For Petitioner : Mr. V.Rajiv Rufus

For Respondents : Mr.S.C.Herold Singh (R1)
Standing Counsel

Mr.S.Shaji Bino (R2)
Special Government Pleader

ORDER

The present writ petition has been filed challenging the impugned report in Proc.No.134/RMB/RGGGH/2022, dated 21.12.2022 of the 2nd Respondent and also the impugned charge memo in Ku.No.215320/DL2/Aa Vi PO KA/2023, dated 28.08.2023 of the 1st respondent and consequently direct the 1st respondent to provide permanent alternative employment to the petitioner based on the report of the medical authority under the Rights of Persons with Disabilities Act, 2016 as to petitioner's disability and health condition and to give him all benefits including wages from the year 2016 and also to treat the period from 2016 to the date of providing him permanent alternative employment as duty period for all purpose.



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2.(i).The petitioner was appointed as permanent Driver cum Conductor in the respondent Corporation from the year 2007 and presently, he is working in the first respondent's branch at Thoothukudi. During 2016 January, he felt sick with severe neck and disc pain. On medical advice he made a representation to the first respondent to refer him to the Medical Board and the same was considered and he was directed to appear before the Medical Board. Based on the examination conducted by the Medical Board, a report, dated 25.11.2016 was given, recording that the petitioner's spinal cord was affected due to disc prolapse in C5-C6, C6-C7 with radiculopathy and disc bulge in L5-S1 and his condition required bed rest.

(ii).Despite receiving the report from the Medical Board, the first respondent did not take further steps to provide him with alternative employment. Hence, the petitioner filed a writ petition in W.P(MD) No.4303 of 2017 before this Court seeking to direct the first respondent to provide him with alternative employment. This Court vide order, dated 15.03.2017 directed the first respondent to consider the representation of the petitioner, dated 13.02.2017 and forthwith provide him with alternative employment in the light of Section 47 of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. However, without providing with



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alternative employment, the first respondent again referred the petitioner to the Medical Board.

(iii).The Medical Board after examining the petitioner issued a Certificate, dated 05.06.2017 stating that the petitioner is suffering with 15% of disability, but noting that his clinical condition required avoidance of heavy work and declared that he was temporarily unfit to perform his duties. Despite the continuous representations made by the petitioner, the first respondent did not heed to it.

(iv).In the meanwhile, without providing the petitioner with alternative employment and without considering the report of the Medical Board, the petitioner was visited with a charge memo by the first respondent, following which, disciplinary proceeding was initiated against him for unauthorised absence. After enquiry, the same was proved and the petitioner was admonished for the charges framed against him. Despite the continuous medical condition, which prevented the petitioner from attending the regular duty, the respondent Corporation failed to provide him with alternative employment all along these eight years, except for 11 months.

(v).Yet another issue brought to the notice of this Court by the learned counsel for the petitioner is that in the medical report, dated 21.12.2012



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issued by the Medical Board constituted at Rajiv Gandhi Medical Hospital, the petitioner has been diagnosed with Cervical spondylosis due to disc degenerative disease. However, it was certified that the petitioner is fit for job. The said assessment has been made on the basis of percentage of disability which has been mentioned as 40 % cervical disc disease, Lumbar disc disease with left sciatica.

(vi).The learned counsel for the petitioner placed yet another proceedings of the Medical Board, dated 04.01.2023 before this Court, in which, the petitioner was diagnosed as unfit for job, since he suffered with Cervical spondylosis. However, to arrive at a conclusion, the petitioner had been referred to three departments namely Orthopaedic, Neurosurgery and Rehabilitation. The Department of Neuro Surgery recommended Ortho Spine Surgery for the petitioner and Rehabilitation department has advised the petitioner to take bed rest. In view of the medical condition of the petitioner, it is clear that neuro surgical intervention is needed.

(vii). This writ petition has been filed challenging the impugned report, dated dated 21.12.2022 and also the impugned charge memo, dated 28.08.2023.



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3.The learned counsel for the petitioner submitted that the petitioner is suffering with Cervical & Lumbar disc disease for more than 8 years and he is entitled to be provided with alternative employment as per Section 20(4) of the Right of persons with Disabilities Act, 2016. However instead of providing him with an alternative job, the respondents have taken departmental action as against him for the offence of unauthorised absence, that too, twice. Though in the first charge memo, the petitioner was admonished, the second charge memo, which has been issued by the department is still pending.

4.The learned Standing Counsel appearing for the respondent Corporation submitted that the respondent Corporation has to act upon the report of the Medical Board, since the Medical Board has issued a certificate on 22.12.2022 that the petitioner is fit for the job. Therefore, obviously the respondent Corporation cannot provide him with an alternative job. Accordingly, prayed for dismissal of the writ petition.

5.Heard, the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents. Perused the materials on record.



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6.However, considering the medical condition of the petitioner and the detailed medical report of the three departments namely Orthopaedic, Neuro Surgery and Rehabilitation of Rajiv Gandhi Government Hospital, this Court is of the considered view that the petitioner's health condition should be assessed afresh by a properly constituted Medical Board.

7.In the facts and circumstances of the case, this Court directs the Dean of Thoothukudi Medical College Hospital to constitute a Special Medical Board within a period of two weeks from the date of receipt of copy of this order, to assess the medical condition of the petitioner, thereafter, the petitioner is directed to appear before the said Medical Board for medical examination on the date fixed by the Board and on receipt of the report, the respondent Corporation should provide him with an alternative job, if he is found unfit for the job of Driver cum Conductor. So far as, the charge memo impugned is concerned the respondents are directed to keep the same in abeyance, till the medical report is received from the specially constituted Medical Board and thereafter, act in accordance with the report.



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8. With the above observations, this writ petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

20.03.2024

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

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To

1. The Managing Director,
Management of State Express Transport Corporation
(Tamil Nadu) Ltd.,
Pallavan Salai, Chennai-2.
2. The Regional Medical Board,
Rajiv Gandhi General Hospital,
Chennai-600 003.
3. The Dean,
Thoothukudi Medical College Hospital, Thoothukudi.



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L.VICTORIA GOWRI, J.

PNM

**ORDER IN
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