



THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.02.2025

PRONOUNCED ON : 03.03.2025

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CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

**W.A.Nos.301, 435 and 436 of 2025
and
C.M.P.Nos.3629 and 3631 of 2025**

W.A.No.301 of 2025

G.Suseentharan,
S/o.Gurusamy,
No.25/A, Koodumiyanur Thottam,
Pudhupalaiyam Post,
Anthiyur, Erode.

...

Appellant /
Petitioner

versus

1.Tamil Nadu State Transport Corporation
(Coimbatore) Limited,
Rep. by its Managing Director,
37, Mettupalayam Road,
Coimbatore - 43.

2.The General Manager,
Tamil Nadu State Transport Corporation
(Coimbatore) Limited,
Erode Region,
Chennimalai Road, Erode - 1.



3. The Director,
Regional Institute Ophthalmology and
Government Ophthalmic Hospital,
Egmore, Chennai - 8.

...

Respondents /
Respondents

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Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside
the order passed in W.P.No.139 of 2022 dated 02.07.2024.

For Appellant : Mr.V.Ajoy Khose

For Respondents : Mr.M.Murali Vinodh
Standing Counsel - R1 & R2

Mr.M.Bindran
Additional Government Pleader - R3

W.A.No.435 of 2025

1. Tamil Nadu State Transport Corporation
(Coimbatore) Limited,
Rep. by its Managing Director,
37, Mettupalayam Road,
Coimbatore - 43.

2. The General Manager,
Tamil Nadu State Transport Corporation
(Coimbatore) Limited,
Erode Region,
Chennimalai Road, Erode 1.

...

Appellants /
Respondents

versus

G.Suseentharan,
S/o.Gurusamy,
No.25/A, Koodumiyannur Thottam,
Pudhupalaiyam Post,
Anthiyur, Erode.

...

Respondent /
Petitioner



Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order passed in W.P.No.33952 of 2023 dated 02.07.2024.

WEB COPY For Appellants : Mr.M.Murali Vinodh
Standing Counsel

For Respondent : Mr.V.Ajoy Khose

W.A.No.436 of 2025

1.Tamil Nadu State Transport Corporation
(Coimbatore) Limited,
Rep. by its Managing Director,
37, Mettupalayam Road,
Coimbatore - 43.

2.The General Manager,
Tamil Nadu State Transport Corporation
(Coimbatore) Limited,
Erode Region,
Chennimalai Road, Erode 1. ...

Appellants /
Respondents 1 & 2

versus

1.G.Suseentharan,
S/o.Gurusamy,
No.25/A, Koodumiyanur Thottam,
Pudhupalaiyam Post,
Anthiyur, Erode. ...

Respondent No.1 /
Petitioner

2.The Director,
Regional Institute Ophthalmology and
Government Ophthalmic Hospital,
Egmore, Chennai - 8. ...

Respondent No.2 /
Respondent No.3

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order passed in W.P.No.139 of 2022 dated 02.07.2024.



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For Appellants : Mr.M.Murali Vinodh
Standing Counsel

For Respondents : Mr.V.Ajoy Khose – R1

Mr.M.Bindran
Additional Government Pleader - R2

COMMON JUDGMENT

(Judgment of the Court was made by **G.ARUL MURUGAN, J.**)

All these three intra-court appeals are directed against the common order dated 02.07.2024 passed in two Writ Petitions viz., W.P.Nos.139 of 2022 and 33952 of 2023.

2. The writ petitioner had preferred W.A.No.301 of 2025 insofar as the salary was denied and the Transport Corporation had preferred W.A.Nos.435 and 436 of 2025 insofar as the writ petitions were allowed.

3. All these three appeals are disposed of by this common order.

4. The parties will be referred to as per the ranking in W.A.No.301 of 2025.



5. The appellant writ petitioner who was appointed as a driver of the first respondent Corporation at Anthiyur Depot, while in service, suffered from blurred vision in his left eye. Since there was difficulty in driving the bus, he got his eyes tested wherein he was diagnosed with “Rhegmatogenous Retinal Detachment” in the left eye and he was advised for a surgery. Due to his ailment in the eye, he had submitted an application seeking for an alternative employment.

6. However, charge memo dated 22.12.2021 came to be issued for absenting from the work and a second charge memo also came to be issued on 05.08.2022 for having got the employment by not disclosing his congenital eye disability. The appellant had submitted his reply, pursuant to which he was referred for medical examination before the Regional Institute of Ophthalmology and Government Ophthalmology Hospital, Egmore, Chennai.

7. As per the report dated 17.04.2024, the appellant suffered from two defects and further in the report it was mentioned that the first defect could only be at birth and not by accident or during intermediate period wherein the second defect may have occurred in intermediate period.



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8. The Corporation proceeded with the enquiry and notice was issued to the appellant proposing to dismiss him from service, consequent upon which the appellant had come up with two separate writ petitions, one to direct the Corporation to refer him to the Medical Board to assess his percentage of disability and provide an alternate employment and the other writ petition challenging the charge memos and the consequential notice served proposing a punishment of dismissal from service.

9. The learned Judge had taken note of the fact that when the appellant had originally joined in the year 2015 and had been in service for nearly 7 years till the year 2021, he had only suffered this defect in 2021. The learned Judge had also taken note of the opinion of the Regional Medical Board obtained by the appellant under the Right to Information Act, wherein it was mentioned that insofar as the first defect, the period of time cannot be mentioned as to when it had occurred.

10. In such circumstances, the learned Judge by placing reliance on the decision of the Hon'ble Supreme Court in the case of ***Bhagwan Dass and another Vs. Punjab State Electricity Board*** reported in (2008) 1 SCC 579, wherein by placing reliance on Section 47 of The Persons with

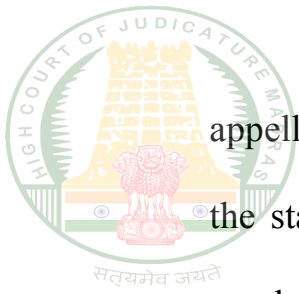


Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 [hereinafter referred to as “the 1995 Act”], the benefits were provided to the employee and also by considering Section 20(4) of “The Rights of Persons with Disabilities Act, 2016” (Act 49 of 2016) [hereinafter referred to as “the 2016 Act”] had come to the conclusion that the respondents are bound to provide alternative employment to the appellant.

11. However, on arriving at such a conclusion, the learned Judge after quashing the charge memos, had directed the Transport Corporation to provide an alternative employment for one year and thereafter, refer him for medical examination and accordingly extend the further period of alternative employment. Further while directing the period of absence as duty for all purposes, the benefits of salary had been denied.

12. Assailing the orders passed in the writ petitions, the above writ appeals are preferred both by the employee and the Corporation.

13. Mr.V.Ajoy Khose, learned counsel appearing for the appellant contended that when once the learned Judge came to the conclusion that the

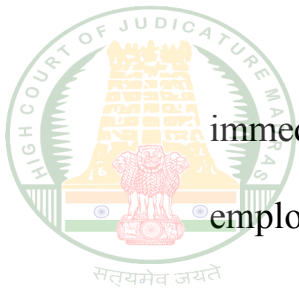


appellant had suffered the disability while in service and by taking note of the statutory provisions had directed the authorities to provide alternative employment, the denial of salary to the appellant when he is statutorily protected, cannot be sustained.

14. He further contended that it was not a choice of the employer to allow the employee to work due to disability but there was a mandatory duty on the part of the employer under the 2016 Act to provide alternative employment with pay protection.

15. The learned counsel by placing reliance on the decision in the case of *The Director General of Police and others Vs. K.Sakthivel* dated **19.02.2025 [W.A.Nos.1102 and 1173 of 2024]** reported in **CDJ 2025 MHC 928** sought for interference of this Court insofar as the salary was denied.

16. Contending contra, Mr.M.Murali Vinodh, learned Standing Counsel for the respondent Corporation submitted that the appellant who was having the defect right from his birth had purposely suppressed the same till his services came to be regularised in the year 2021 and



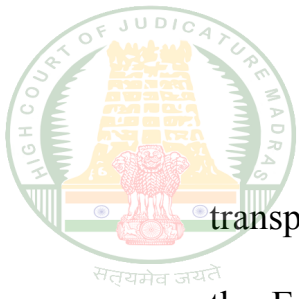
immediately on regularisation had come up with the claim for alternative employment taking shelter under the 2016 Act.

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17. It is his vehement contention that when the defect in the left eye is by birth, the appellant is not entitled for any benefits under the 2016 Act. The suppression of the defect is fortified by the medical opinion submitted on 17.04.2024 which categorically mentioned that the first defect could only be by birth and not by accident or during intermediate period.

18. It is his further contention that only since the appellant absented for duty and had availed employment by suppressing the defects, disciplinary proceedings came to be issued by two separate charge memos and the writ court by wrongly granting the benefits of the 2016 Act to the appellant had quashed the charge memos and directed for an alternative employment to be provided which is erroneous he contended and sought for allowing the writ appeals preferred by the Corporation.

19. Heard the rival submissions and perused the materials available on record.



20. The appellant, who possessed a heavy vehicle passenger transport driving license with badge and eligible to drive was sponsored by the Employment Exchange to the respondent Corporation for the post of driver. Pursuant to which, the appellant joined as driver in the Corporation at Anthiyur Depot on 10.02.2015.

21. It is not in dispute that from 29.01.2020 the appellant was made as a daily wage driver in regular vacancy and his services also came to be regularised with effect from 15.07.2021. In the course of employment, the appellant found it difficult to drive the bus as there was a blurred vision in his left eye. Immediately, he got himself examined in a private hospital on 19.11.2021 where he was diagnosed as suffering from Rhegmatogenous Retinal Detachment in the left eye and was advised for surgery. The appellant by enclosing the medical report had requested for an alternative employment due to the ailment suffered in the left eye.

22. However without considering the same, a charge memo dated 22.12.2021 was issued to the appellant with three charges mainly on the ground that he has absented for work. The appellant had represented to refer him to a Medical Board for assessing his disability and for providing an

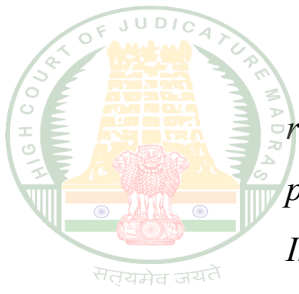


alternative employment. But a second charge memo dated 05.08.2022 also was issued primarily on the ground that he has suppressed the birth defect in the eye and obtained employment and had intentionally not disclosed the same till he was regularised.

23. After conducting enquiry, a second show cause notice was issued to the appellant proposing to dismiss him from service, after writ petition was preferred challenging these proceedings. While the writ petition was pending, the Corporation had referred the appellant to the Medical Board where the appellant was assessed with 80% disability in the left eye and again when he was referred to the Medical Board on 27.05.2022, it was opined that the appellant is totally unfit for driving.

24. The nature of the disability as detailed by the respondent Corporation in the counter affidavit before the writ court in para 7 is extracted hereunder for easy reference:-

“7. I humbly submit that subsequent to the same, the writ petitioner has filed the present writ petition. During the pendency of the writ petition, the writ petitioner was been referred to the medical boards on 16.02.2022 and 23.03.2022. The Medical Board has given a report that " Left Eye Loss of Vision 80% disability", again the writ petitioner was been referred to the medical Board on 27.05.2022 and



received report as *“The Patient totally unfit for driving as he has progressive visual disability due to RE Retinitis Pigmentosa and LE Inferior Retinal Detachment.”*

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25. From the above, it is clear that the appellant had suffered from 80% disability in the left eye and he has also been declared as unfit for driving. Now, it is the contention of the respondent Corporation by relying on the proceedings dated 17.04.2024 that the appellant is suffering from two defects viz., *“(i) Right Eye Retinitis Pigmentosa Optic Atrophy and (ii) LE Inferior Retinal Detachment.”*

26. Further as per the report, the first defect could only be by birth and not by accident or in the intermediate period, while the second defect could have occurred in intermediate period. As such, it is contended that when the defect is by birth, the same has been suppressed for securing an employment and therefore, disciplinary proceedings has been rightly undertaken and the appellant cannot have any shelter or benefit under the 2016 Act.

27. Subsequent to the report dated 17.04.2024 mainly relied on by the respondent Corporation, a further report dated 02.05.2024 has been



submitted clarifying the earlier report to the effect that, insofar as the first defect “*Right Eye Retinitis Pigmentosa Optic Atrophy*”, the time period for having suffered that disability cannot be definitely given.

28. The relevant portion of the report dated 02.05.2024 is extracted hereunder:-

“பார்வை 1ல் கண்டுள்ள கடிதத்தின்படி, திரு.ஜி.சுசீந்திரன் ஓட்டுநர், ப.எண்.சி.44351, என்பவருக்கு “RE Ratinits Pigmentosa optic atrophy and LE Infuri Retinal Detachment” கண்பார்வை குறைபாட்டின் கால அளவை உறுதியாக கூற முடியாது.”

29. When the report dated 02.05.2024 makes it clear that the first defect pointed out earlier is not by birth and it could have occurred at intermediate period and the time period of disability cannot be certainly ascertained, the contention of the respondent Corporation by relying on an earlier report that the first defect is by birth and therefore the appellant had secured employment by suppressing the defect cannot be sustained.

30. The learned judge had also rightly observed that when the appellant was working as driver in the respondent Corporation itself from



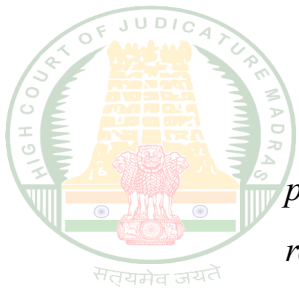
the year 2015 for nearly 7 years, only in the year 2021 due to the difficulty in driving, he got himself examined where the ailment in the eye was diagnosed.

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31. In such circumstances, we do not find any infirmity in the conclusion arrived at by the learned Judge that the appellant had suffered the disability in the course of his employment.

32. When once the disability suffered by the appellant is found to be in the course of his duties, then the appellant is entitled for an alternative employment and the respondent Corporation is bound to provide the same with pay protection as mandated under Section 20(4) of the 2016 Act.

33. In an identical issue, we had an occasion to deal with a similar situation where also disciplinary proceedings were initiated against the employee and benefits under the 2016 Act were not extended. We had intervened and directed the employer to provide alternative employment with pay protection. The relevant portion of the order in ***K.Sakthivel*** cited *supra* reads as follows:



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“25. At this juncture, it is relevant to refer the statutory provision, particularly Section 47 (1) of the 1995 Act. For easy reference, the said Section is extracted hereunder:-

“47. Non-discrimination in Government employment.-

(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided 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:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

26. The new act, “The Rights of Persons with Disabilities Act, 2016” (Act 49 of 2016) was promulgated [hereinafter referred to as “the 2016 Act”] and stands amended by the repealing and amending (Second) Act, 2017 (4 of 2018). Second 20 therein deals with non-discrimination in employment which reads as follows:-

“20. Non-discrimination in employment:

(1) No Government establishment shall discriminate against any person with disability in any matter relating to employment: Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.



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(2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

(3) No promotion shall be denied to a person merely on the ground of disability.

(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:

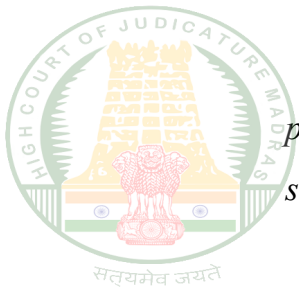
Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(5) The appropriate Government may frame policies for posting and transfer of employees with disabilities.”

27. Section 20(4) of the 2016 Act is almost in pari materia with Section 47(1) of the 1995 Act.

28. The above provisions safeguard the employees who acquire any disability during their service from being dispensed with, or reduced in rank by any employer and the provision mandates the employer to shift the employee who had acquired a disability to some other post and in doing so, the pay scale and service benefits of the concerned employee are also protected. Even if no suitable post is available as alternate to the one which the employee was holding, it was mandatory on the part of the employer to create a supernumerary



post until a suitable post is made available or till the employee attains superannuation.

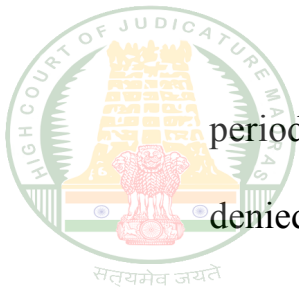
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31. The appellant Department, which was under a legal obligation to provide an alternative employment by considering the health condition particularly the disability acquired, had failed to discharge their duties as mandated under the provisions of the Act, particularly Section 47(1) of the 1995 Act and Section 20(4) of the 2016 Act and had not provided an alternate duty.

32. The appellants while failing in their duties to comply with the statutory provisions, had gone to the extent of issuing a charge memo dated 23.05.2016 charging the respondent for unauthorised absence from 18.11.2013, after the sanctioned medical leave from 29.09.2013 to 17.11.2013 was over.”

34. In the instant case, after having ascertained the disability of the appellant, the learned Judge had rightly quashed the charge memos and had directed the respondent Corporation to provide an alternative employment. However, a direction has been issued to provide alternative employment for a period of one year and thereafter to refer the appellant for medical examination and accordingly extend the further period of alternative employment. While doing so, the learned Judge had directed to treat the



period of absence as the period in duty for all purposes but however has denied the salary.

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35. To this extent, we find that the denial of salary was not in consonance with the statutory provisions referred above. When the 2016 Act mandates the employer to provide an alternative employment to the employee if he has acquired any disability and found not suitable for the post he was holding, with the same pay scale and service benefits, the denial of the salary cannot be justified.

36. Further, when already the appellant has been assessed with 80% disability in the eye and had been declared unsuitable for the driver job, then restriction of alternative employment to a period of one year and further reference to Medical Board and thereafter again to consider extension of the alternative employment may not be required in the facts of the present case. To this extent, we are not convinced with the order of the writ court and the same is accordingly interfered with.

37. The portion of the order insofar as restricting the alternative employment and denying the salary is set aside and the respondent



Corporation is directed to provide alternative employment to the appellant with the same pay scale and service benefits as mandated under Section 20(4) of the 2016 Act. The appellant is entitled to the salary for the entire period during which he has been not allowed to work. The respondent Corporation shall forthwith provide an alternative employment, calculate and pay salary along with all service and monetary benefits within a period of six (6) weeks from the date of receipt of a copy of this order.

38. In view of the above, W.A.No.301 of 2025 stands ***allowed*** with the aforesaid direction and W.A.Nos.435 and 436 of 2025 stand ***dismissed***.

39. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

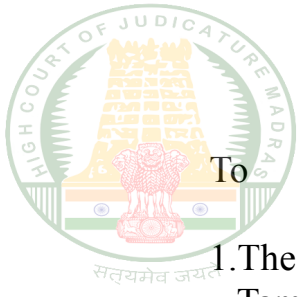
(R.S.M., J.) (G.A.M., J.)
03.03.2025

Speaking order

Index : Yes

Neutral Citation : Yes

sri



To

1. The Managing Director,
Tamil Nadu State Transport Corporation
(Coimbatore) Limited,
37, Mettupalayam Road,
Coimbatore - 43.
2. The General Manager,
Tamil Nadu State Transport Corporation
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W.A.Nos.301, 435 and 436 of 2025



R.SUBRAMANIAN, J.
and
G.ARUL MURUGAN, J.

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Pre-Delivery Common Judgment made in
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03.03.2025