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THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.02.2025

PRONOUNCED ON : 19.02.2025

CORAM:

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

**W.A.Nos.1102 and 1173 of 2024
and
C.M.P.Nos.7929 and 8487 of 2024**

1.The Director General of Police,
Kamaraj Salai, Mylapore,
Chennai - 600 004.

2.The Commissioner of Police,
Egmore, Chennai - 600 008.

3.The Deputy Commissioner of Police,
Armed Force in-charge Motor Vehicles,
Pudupet,
Chennai - 600 002.

...

Appellants /Respondents
[in W.A.No.1102 of 2024]

1.The Director General of Police,
Mylapore, Chennai - 600 004.

2.The Commissioner of Police,
Vepery, Chennai - 600 007.

3.The Deputy Commissioner of Police (Administration),
Office of Commissioner of Chennai City Police,
Vepery, Chennai - 600 007.

...

Appellants /Respondents
[in W.A.No.1173 of 2024]



versus

K.Sakthivel
S/o.K.Kuppusamy,
42/56, Thambuchetti Lane,
Kalmandapam,
Royapuram,
Chennai - 600 013.

...

Respondent / Petitioner
[in both W.As]

Common Prayer: Writ Appeals filed under Clause 15 of the Letters Patent, to set aside the common order passed in W.P.Nos.17080 of 2013 & 36667 of 2016 dated 29.03.2023.

For Appellants : Mr.P.Kumaresan,
Additional Advocate General
Assisted by Mr.S.Yashwanth
Additional Government Pleader

For Respondent : Mr.D.Ashok Kumar
for Mr.D.Bennington for Caveator

COMMON JUDGMENT

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

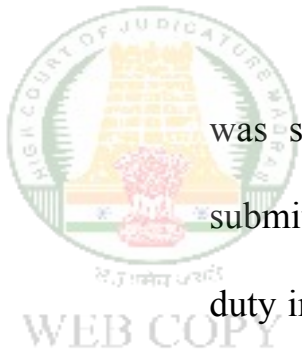
These two intra-court appeals arise out of the common order dated 29.03.2023 in W.P.Nos.17080 of 2013 and 36667 of 2016, whereby the Writ Court had quashed the charge memo dated 23.05.2016 and directed the appellants / respondents to consider the writ petitioner's health condition and give him a job in a lighter post particularly as Helper or Assistant due to 40% disability.



2. The respondent / writ petitioner was originally selected and appointed as Syces for Chennai City Police, Mounted Branch on 29.06.2005. In fact, the posts of Syces were created for taking care of the horses that were available with the City Police which were used for patrol duties particularly at the Marina Beach for crowd control.

3. The respondent had joined in the services on 01.07.2005 and after his probation was declared, his services were regularised on 01.07.2008. Till the end of 2009, there was no issue and the respondent reported to duty and took care of the horses entrusted to him. Due to his medical ailment, he had made a representation to the second appellant in the year 2010, based on which the third appellant by proceedings dated 09.06.2010 had assigned him the duties as Office Assistant in which he was working till 09.06.2011. However, the third appellant on 09.06.2011 had instructed the respondent to report back and perform the duty as Syces by maintaining the horses.

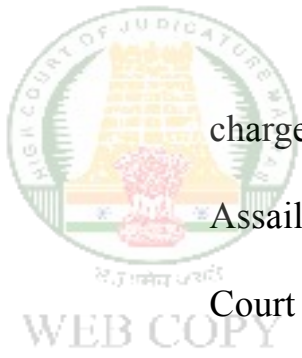
4. The respondent had reported for the Syces duty till March 2013 though after availing certain medical leave. Since he was advised six months rest by the medical officer, he had applied for medical leave which



was sanctioned from 26.03.2013 upto 27.09.2013. The respondent had submitted a representation on 04.05.2013, requesting to provide an alternate duty in view of the medical conditions. Since the same was not considered, the respondent approached this Court in W.P.No.17080 of 2013. While the Writ Petition was pending, the respondent was not able to perform the duties as Syces due to his medical condition and the appellants had also not provided an alternate duty.

5. While so, a charge memo came to be issued to the respondent on 23.05.2016 on the ground that he was unauthorisedly absent from 29.09.2013 to 17.11.2013. He had submitted an explanation on 02.06.2016 and not satisfied with the same, the appellants proceeded with the enquiry and in such circumstances, the respondent herein had preferred another Writ Petition in W.P.No.36667 of 2016 challenging the charge memo and for a consequential prayer to give him alternate employment as Helper with all consequential monetary and service benefits.

6. The Writ Court after referring the respondent to the Medical Board for medical opinion, based on the certificate issued assessing the respondent as suffering from 40% permanent disability, had quashed the



charge memo and directed the appellants to provide alternate employment. Assailing the common order passed, the appellant Department is before this Court by way of two separate appeals.

7. Mr.P.Kumaresan, learned Additional Advocate General for the appellants contended that the respondent who had been appointed to the post of Syces which was specially created for the maintenance of horses, had failed to discharge his duties as he had been unauthorisedly absent from duty for which appropriate disciplinary proceedings has been initiated. When there is no valid ground for challenge to the charge memo, the Writ Court had erred in quashing the charge memo at the threshold.

8. It is his further contention that in the year 2010, when the respondent expressed some difficulty, the same was considered and he was given an alternate duty for a period of one year and only since he was in good health, he was again posted back in the duty of Syces for which he was selected and appointed. He further contended that if there had been any medical need, the respondent ought to have obtained a medical certificate to establish that he was not able to perform the duties which he failed to do so



and after the sanctioned leave availed by him, he failed to report to the duty which resulted in initiation of disciplinary proceedings.

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9. The learned Additional Advocate General by referring to Section 47(1) of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 [hereinafter referred to as “the 1995 Act”] contended that the respondent had not produced any medical certificate to the effect that he had acquired disability during his service. It is his further contention that the respondent was only a diabetic which is commonly found and that cannot be a reason for the respondent to claim benefits under the 1995 Act.

10. He further submitted that during the pendency of the writ petitions, the appellants by order dated 08.11.2022 had taken back the respondent for duty, but however he failed to respond and report for duty. In such circumstances, the order passed by the learned Judge quashing the charge memo and also directing to provide an alternate job particularly either as Helper or Assistant cannot be sustained. It is his further contention that insofar as the post of Assistant is concerned, it is a promotional post,



which cannot be provided to the respondent as an alternate duty and sought for indulgence of this Court.

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11. Mr.D.Ashok Kumar, learned counsel for the respondent submitted that the respondent had put in an unblemished service and only in view of his medical condition, he had requested for an alternate employment which was also granted in the year 2010. But however, the same was withdrawn within a period of one year for no reason.

12. It is his contention that even then the respondent had reported for duty and was carrying on the duties as Syces till 2013 and only due to the advice of the medical officers, he availed medical leave for a period of six months and submitted a representation seeking alternate duty. In this regard, he had also approached this Court and when the respondent was ready to work, the appellants had not provided him an alternative duty which they are bound to do in view of the statutory provisions contained under the 1995 Act.

13. He further contended that only since the respondent had approached this Court, a charge memo came to be issued on the ground of

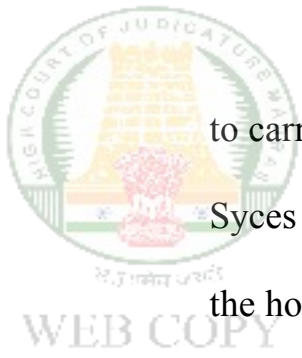


unauthorised absence which is against the very spirit of the 1995 Act and the learned Judge, in fact only after referring the respondent to the Medical Board and ascertaining the disability at 40%, had quashed the charge memo and passed the impugned order which is perfectly justified, needs no interference and sought for dismissal of the appeal.

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

15. Admittedly, the respondent was appointed as Syces in the Chennai City Police by the orders of the second appellant dated 29.06.2005 and he had reported for duty on 01.07.2005. It is not in dispute that the probation of the respondent was declared and his services came to be regularised w.e.f. 01.07.2008. It is also not in dispute that the respondent had discharged his duties effectively as Syces from the date of appointment till the beginning of 2010.

16. While so, it is the case of the respondent that he suffered medical ailment of minimal right knee joint effusion and oblique flap tear of posterior horn medial meniscus, due to which the respondent was not able



to carry weight and perform strenuous duties. In fact, the respondent being a Syces was posted in the stable and was in charge towards maintenance of the horses which requires good physical health and stamina.

17. Due to the ailment suffered by him during the course of his employment, the respondent had represented to the second appellant to provide him an alternate employment on medical grounds. The same was considered and the third appellant by proceedings in Na.Ka.No.29/Dy.Com. Motor Vehicle Dept/camp/2010 dated 09.06.2010 had directed the Assistant Commissioner of Police (Head Quarters) not to assign the work of maintaining the horses in the stable to the Respondent and instead give him the work of Helper in the Head Office.

18. Pursuant to which, the respondent was given the alternative employment as Helper in which he was working till 09.06.2011. However, on 09.06.2011, the third appellant all of a sudden had instructed the respondent to revert back to the earlier work as Syces by maintaining the horses in the stable.



19. Even though the respondent was suffering from medical ailment, still in compliance to the directions he reported to duty as Syces and had been working till February, 2013. As he was not able to cope up with the strenuous duties as syces due to the ailment, he had sought for medical leave which had been sanctioned from 26.03.2013 to 27.09.2013. Due to the health condition, he further sought extension of leave from 28.09.2013 to 27.03.2014.

20. In the meantime, the respondent had submitted a representation on 04.05.2013 setting out the details of his health issues particularly the ailment he suffered during the course of employment and requested to permit him to work as Office Assistant or any other light duty by considering the earlier memo dated 09.06.2010 and relieve him from the duties of Syces at the earliest.

21. He had also listed out the representations submitted by him on 29.05.2012 and 25.10.2012, the difficulties faced by him due to his health condition in discharging the duties as Syces and only since he was not provided with an alternate duty, he had approached this Court earlier in W.P.No.17080 of 2013.



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22. It is the vehement contention of the learned Additional Advocate General that even though an alternate duty was provided in 2010 as Assistant where the respondent was working for a year, only since his medical health condition was found to be fit he was directed to resume his duties as Syces and if at all the respondent had any further health complications, he ought to have submitted necessary medical records to establish the same.

23. This argument of the Additional Advocate General cannot be accepted for the simple reason that once the disability acquired by the respondent in the year 2010 while in service had been acknowledged by the appellants and a specific order was passed on the instructions of the second appellant who is the head of the City Police Force, that too particularly directing the subordinates not to assign the respondent with the duties in the stable, there is no proceedings placed before this Court whereby the earlier order was reviewed which permitted the subordinates to assign the respondent with duties as Syces in the stable.



24. Further, when it is the stand of the appellants that the health condition of the respondent had improved in 2011, then the duty was cast upon them to refer the respondent to the Medical Board to ascertain his physical fitness only pursuant to which a decision could have been taken in this regard. In the absence of the respondent having been referred to any medical opinion or any materials submitted before this Court in this regard, it is clear that the third appellant had simply, in deviance from the instructions issued by the second appellant, directed the respondent to resume duty as Syces without even obtaining a medical opinion. As such the third appellant had prevented the respondent to be in employment by discharging duties as Assistant as was entrusted to him and in which he had been working for a period of one year.

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.

(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.



29. In the instant case, when the disability acquired by the respondent was acknowledged and also an alternate duty has been provided in the year 2010, then there was no reason for the third appellant to retract and instruct the respondent to revert back to the original duty as Syces without any medical opinion in this regard.

30. In fact the respondent had also been working again in the same post as Syces from 2011 to 2013 and only when he was advised to take rest due to his worsened health condition, further since his representations for providing alternate duty were not fruitful, he availed medical leave from 26.03.2013 to 27.09.2013. He had further submitted a representation on 04.05.2013 explaining his health condition and also the family circumstances and requested to permit him to work as Office Assistant or provide any other light duty as per the earlier proceedings issued by the appellants.

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.

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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.

33. Before the Writ Court the appellants have filed a counter affidavit contending that it is for the respondent to provide satisfactory evidence to grant any relief under the 1995 Act and further he has to prove that he was suffering not less than 40% disability as certified by the Board. When the duty was cast upon the appellants to refer the respondent to the Medical Board when he had acquired disability which had also been acknowledged by them, still the learned Judge had referred the respondent to the Medical Board constituted at Rajiv Gandhi Government General Hospital, Chennai. Pursuant to the directions, the respondent was examined by the Board on 24.02.2023. The report by the Medical Board as referred in the order dated 29.03.2023 is extracted hereunder:-



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“The report has been filed by the medical board - Sakthivel No.001410, Chair Person: Dr.M.Bharatha Mohan and the Team of Doctors. The petitioner’s age was evaluated as about 55 years by Orthopaedics Department, Rajiv Gandhi Government General Hospital, Chennai [Dated 21.02.2023] and he was diagnosed with right knee post traumatic sequelae. According to them, the petitioner is suffering from permanent disability of 40% and he is advised to avoid carrying heavy weight activities and to do light activities/Job. The Medical Board also advises him to be assigned light duty/job.”

34. From the report furnished by the Medical Board, the respondent was diagnosed with right knee post traumatic sequelae and the Board has assessed a 40% permanent disability and had advised the respondent to refrain from carrying heavy weight activities and further the Board had advised that he might be assigned light duty job.

35. Only after ascertaining the medical conditions of the respondent and the disabilities suffered by him pursuant to the report of the Medical Board, the Writ Court had quashed the charge memo and directed the appellants to provide a lighter post particularly as Helper or Assistant considering his 40% disability.



36. When the representation made by the respondent was considered and his disability having been acknowledged by the second appellant in the year 2010 itself, pursuant to which an alternate duty as Assistant was assigned and the disability acquired by him during the course of his employment is assessed at 40% permanent disability by the Medical Board, in such circumstances, there was no reason for the third appellant to all of a sudden instruct the respondent to report for the original duty as Syces ignoring his acquired disability.

37. The act of the third appellant is in complete contravention of the provisions of the Act. At least when the respondent had submitted a representation on 04.05.2013, the same could have been considered and an alternate duty as originally given in 2010 could have been restored or at the best he could have been referred to the Medical Board for opinion. But the fact remains that inspite of the respondent approaching this Court and filing a Writ Petition in the year 2013 itself, nothing was forthcoming and the respondent was not allowed to carry on the duties as Assistant or any other light post. Atleast after the orders were passed in the Writ Petitions on 29.03.2023, the appellants could have allowed the respondent to report for duty as Assistant or any other alternate post, of course with the same pay



benefits but they did not choose to do so and have chosen to only file the present writ appeals belatedly now.

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38. It is only the submissions of the learned Additional Advocate General by referring to the proceedings dated 08.11.2022 that even though an order was passed to take him back for duty he has not reported to the same. The perusal of the order dated 08.11.2022 reveals that the third appellant even on 08.11.2022 had only directed the respondent to report for duty as Syces which only exposes the indifferent attitude of the third appellant.

39. The third appellant not only ignored the specific instructions of his superior officer, the second appellant, particularly directing not to assign the duties as Syces to the respondent in the stable and provide an alternate duty based on which the respondent was working as Assistant for a period of one year, but also had contravened the statutory provisions of the Disabilities Act and prevented the respondent from working as Assistant or in any other post. To make things worse, the 3rd appellant had also gone to the extent of issuing a charge memo on the ground of unauthorised absence.



40. Even though since the respondent in effect was not allowed to continue with the duties as Assistant or any other post from 18.11.2013 and he is entitled to be reposted as Assistant with full backwages and all other attendant benefits, still by considering the fact that he had not been in service, we feel that to balance the interests of both parties, the respondent could be taken back into service with 50% of the backwages and continuity in service.

41. Since the orders were passed in the Writ Petition on 29.03.2023, there was no reason for the appellants to deny employment even thereafter by posting him as Assistant or Helper. Therefore, the respondent is entitled to full wages at least post the orders passed in the Writ Petition.

42. In such circumstances, we see no infirmity in the common order passed by the learned Judge which requires no interference and accordingly stands confirmed, however with certain modifications.

43. In view of the above, the Writ Appeals stand ***dismissed*** with the following directions:-



(i) The appellants are directed to post the respondent as Assistant or Helper or in any other alternate office duty with the same pay protection and benefits as mandated under Section 20(4) of the 2016 Act, within a period of four weeks from the date of receipt of a copy of this order.

(ii) The appellants shall pay 50% backwages from 18.11.2013 to 29.03.2023 i.e., till the date of disposal of the Writ Petitions.

(iii) The appellants shall pay full wages from 29.03.2023 till the date of posting him in any of the post as mentioned in Clause (i).

(iv) The respondent shall be entitled to continuity of service from 18.11.2013 and all other benefits, except the restriction made in clause (ii).

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



(R.S.M., J.) (G.A.M., J.)
19.02.2025

Speaking order

Index : Yes

Neutral Citation : Yes

sri

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