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IN THE HIGH COURT OF JUDICATURE AT MADRAS

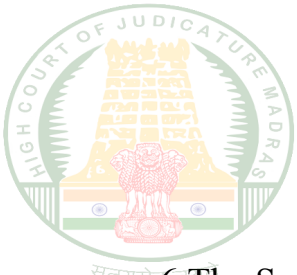
Reserved On	26.11.2024
Pronounced On	09.05.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.A.No.1864 of 2024
and
C.M.P.No.13470 of 2024

- 1.Union of India,
Rep by The Chairman,
Railway Board,
New Delhi.
- 2.The General Manager,
Southern Railway,
Chennai – 3.
- 3.The Principal Chief Personnel Officer,
Southern Railway,
Chennai – 3.
- 4.The Principal Chief Materials Manager,
Southern Railway,
Chennai – 3.
- 5.The Chief Material Manager,
General Stores Depot (PER),
Ayanavaram, Chennai – 600 023.



W.A.No.1864 of 2024

6. The Senior Material Manager,
Loco Stores Depot (PER),
Ayanavaram,
Chennai – 600 023.

... Appellants/Petitioners

Vs.

1.A.Marimuthu

2.The Chief Commissioner for Persons with Disabilities,
Sarojini House,
Bhagavandas Road,
New Delhi – 110 001.

... Respondents/Respondents

Prayer: Appeal under Clause 15 of the Letters Patent, pleased to set aside the
Order dated 20.09.2023 passed in W.P.No.16796 of 2022.

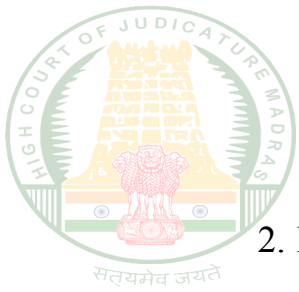
For Appellants : Mr.A.R.L.Sundaresan
Additional Solicitor General of India
for Mr.S.Janarthanam

For Respondents : Mr.K.Venkataramani
Senior Counsel
for Mr.M.Muthappan

JUDGMENT

(Judgment of the Court was delivered by **C.SARAVANAN, J.**)

This intra Court appeal is directed against the impugned order dated
20.09.2023 made in W.P.No.16796 of 2022.



2. By the impugned order, the Writ Court has dismissed the Writ Petition

WEB COPIED filed by the appellants/petitioners. Operative portion of the order of the Writ

Court reads as under:-

“8. In Civil Appeal No.9324 of 2022 dated 02.07.2013 [Geetaben Ratilal Patel vs. District Primary Education Officer] the Honourable Apex Court after considering various provisions under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, in para 16 held as follows:

"16. The provisions of Sections 47 and 62 of the Act, when read together, empower the Commissioner, to look into the complaint with respect to the matters relating to deprivation of rights of persons with disabilities and non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions issued by the appropriate Governments or local authorities and to take up the matter with the appropriate authorities for the welfare and protection of rights of persons with disabilities including matter relating to dispensation with service or reduction in rank. The power of the Commissioner "to look into the complaints with respect to the matters relating to deprivation of rights" as provided under Section 62 of the Act is not an empty formality and the Commissioner is required to apply his mind on the question raised by the complainant to find out the truth behind the complaint. If so necessary, the Commissioner may suo motu inquire into the matter and/or after giving notice, hearing the concerned parties and going through the records may decide the complaint. If it comes to the notice of the Commissioner that a person with disability has been deprived of his rights or that the authorities have flouted any law, rule, guideline, instruction, etc., issued by the appropriate



Government or local authorities, the Commissioner is required to take up the matter with the appropriate authority to ensure restoration of rights of such disabled person and/or to implement the law, rule, guideline, instruction if not followed. A complaint may be made by any disabled person himself or any person on behalf of disabled persons or by any person in the interest of disabled persons. Thus the issue as involved is decided affirmatively in favour of the appellant and against the respondent."

9. As per the above dictum of Apex Court and Section 20 of the Rights of Persons with Disabilities Act, 2016, this Court is of the view that the recommendation made by the 2nd Respondent cannot be found fault with.

10. It is an admitted case of the Petitioner that since there was no post available in Grade Pay of Rs.2,400/- which was the Grade Pay drawn by the 1st Respondent, at the time of medical decategorisation he was accommodated as Junior Clerk with Grade Pay Rs.1,900/-. In view of the above factual aspect the very act of the Writ Petitioner reducing the pay scale from Rs. 2,400/- to Rs.1,900/- is not valid as per the Section 20 of the Rights of Persons with Disabilities Act, 2016.

11. In such a view of the matter, the Writ Petitioner cannot deny the Pay Scale and it is an obligation on the part of the Writ Petitioner to protect the pay scale and service benefits to the 1st Respondent who acquired disability during the employment. Even there is no alternative post available in the same Grade Pay, it is an obligation on the part of the Writ Petitioner to keep the 1st Respondent on a supernumerary post until suitable post is available or he attains the age of superannuation, whichever is earlier as per Section 20 of the Rights of Persons with Disabilities Act 2016.

12. In such a view of the matter the Writ



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W.A.No.1864 of 2024

Petition has to fail. The Writ Petitioner has to comply with the mandate of Section 20 of the Rights of Persons with Disabilities Act 2016 by granting protection to the same pay scale and service benefits to the 1st Respondent.

13. With the above observation the Writ Petition is dismissed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.”

3. The Appellants had filed the above Writ Petition for the following relief:-

“to quash the impugned order dated 06.01.2021 of the 2nd Respondent, passed in Complaint No.12086/1021/2020 as the same is unsustainable in law and also against the Principles of Natural Justice.”

4. The said order was not passed by the second respondent namely, the Chief Commissioner for Persons with Disabilities. It was actually passed by the Commissioner for Persons with Disabilities in the office of the Chief Commissioner for Persons with Disabilities. Operative portion of the said order dated 06.01.2021 of the Commissioner for Persons with Disabilities, impugned before the Writ Court reads as under:-

“4.Before proceeding further, it is pertinent to mention Section 20(4) of Rights of Persons with Disabilities Act, 2016. Provision is reproduced below:-

Section 20(4) – No Government establishment shall dispense with or reduce in rank, an employee who



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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.Two important elements of this provision which are relevant in the present complaint are that – a) employee who has acquired disability shall not be reduced in rank and b) if he is not suitable for the post he was holding, he may be shifted to other post but his pay scale and service benefits have to be kept intact.

6.In the present complaint, pay scale of the Complainant was reduced from 2400 to 1900. Pay scale at the time of appointment of the Complainant was 2000. Hence the new pay scale, i.e. 1900 is lesser than the pay scale at which he was appointed and also less than the pay scale he was employed upon at the time of acquiring disability.

7.Hon'ble Kerala High Court in SAJIMON KB V. KERALA STATE ROAD TRANSPORT CORPORATION 2019 SCC Online Ker 7139: (2020) 1 KLJ 513 held that when as per Section 20(4) of RPWD Act, 2016, an employee is eligible for lower category change, it does not stipulate anything to the lower scale of pay hence such employee would be eligible for protection of pay before the category change.

8.Hence, this Court concludes that reducing pay scale of the Complaint from 2400 to 1900 is gross violation of provisions of RPWD Act, 2016. This Court recommends that the Respondent shall secure and restore the pay scale and other service benefits of the complainant to the level at which they existed on the day before the Complainant was declared not suitable for the post he was holding just before acquiring disability.”



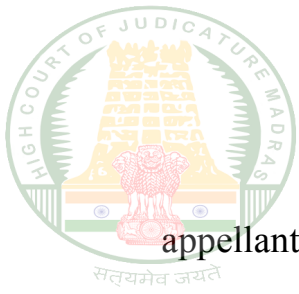
W.A.No.1864 of 2024

WEB COPY 5. By an order dated 06.01.2021, the Commissioner for Persons with Disabilities had passed an order in Case No.12086/1021/2020 and rejected the request of the first respondent for being considered to the post of Senior Clerk.

6. The brief facts of the case are that the 1st respondent was appointed as a Constable on 25.09.1984 with a grade pay of Rs.2000/- in the Railway Protection Force. Thereafter, he was promoted as a Head Constable on 21.12.2006 with a Grade Pay of Rs.2,400/-. While serving as a Head Constable, the 1st respondent met with an accident in the year 2013 and with another accident on 10.07.2014. The 1st respondent was assessed with disabilities and therefore could not continue to work as a Head Constable.

7. Under these circumstances, the 1st respondent was accommodated as a Junior Clerk with a Grade Pay of Rs.1,900/-. However, the 1st respondent was given a pay protection in accordance with Section 20 of the Rights of the Persons with Disabilities Act, 2016.

8. The endeavour of the 1st respondent before the second respondent was that he should be absorbed as a Senior Clerk. However, it is the contention of



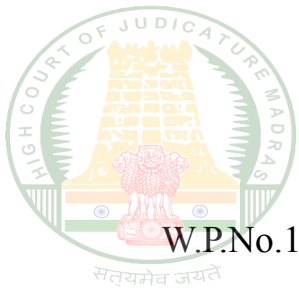
W.A.No.1864 of 2024

appellants that there was no monetary loss to the 1st respondent when the petitioner was accommodated as a Junior Clerk with a Grade Pay of Rs.1,900/-.

9. That apart, it is the contention of the appellants that there is no post with Grade pay of Rs.2,400/- and therefore the 1st respondent was accommodated in the post of Junior Clerk with a Grade Pay of Rs.1,900/- while protecting the pay grade of Rs.2400/-.

10. Pursuant to the aforesaid directions of the Commissioner for Persons with Disabilities dated 06.01.2021, copy of the complaint dated 15.03.2021 of the 1st Petitioner was forwarded to the 2nd Respondent, the Chief Commissioner for Persons with Disabilities to restore the pay scale and service benefits as recommended by the Commissioner for Persons with Disabilities in its order dated 06.01.2021.

11. The 2nd Respondent, the Chief Commissioner for Persons with Disabilities took a decision in Case No.12086/1021/2020 dated 15.03.2021 to implement the decision of the Commissioner for Persons with Disabilities dated 06.01.2021. Aggrieved by the decision of the 2nd Respondent Chief Commissioner for Persons with Disabilities in Writ Petition, the appellant filed

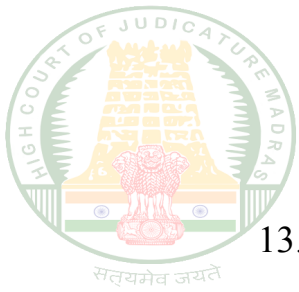


W.A.No.1864 of 2024

W.P.No.16796 of 2024. The Writ Court has dismissed the Writ Petition with the above observations.

12. Although copy of the proceedings dated 15.03.2021 of the 2nd Respondent Chief Commissioner for Persons with Disabilities bearing reference No.12086/1021/2020 has not been filed, its content is discernible from a reading of Para No.23 of the affidavit filed in CMP.No.9725 of 2024 in W.A.No.1864 of 2024 and order in W.P.No.16796 of 2022. Paragraph No.23 of the affidavit filed in CMP.No.9725 of 2024 reads as under:-

23.The Learned Single Judge had failed to appreciate that the claim of the 1st Respondent had already been considered by Dy.Chief Materials Manager, General Stores Depot, Perambur, Southern Materials Manager, General Stores Depot, Perambur, Southern Railway vide his order dated 23.05.2019 duly rejecting the claim of the 1st Respondent herein with valid reasons. This order was passed in compliance with the orders dated 25.01.2019 passed by the Hon'ble Central Administrative Tribunal, Madras Bench in O.A.No.71 of 2019 and this order of Dy.Chief Materials Manager, General Stores Depot, Perambur, Southern Railway has become final and till today this order has not been challenged. Therefore, when the valid order has already been passed which has not been challenged and allowed to become final, the impugned order dated 06.01.2021 of the 2nd Respondent cannot be implemented. In such circumstances, the Appellants have brought to the notice of the 2nd Respondent on 15.03.2021 which presumably under Section 76 of the Act. However, the 2nd Respondent failed to act on the representation of the petitioners dated 15.03.2021.



W.A.No.1864 of 2024

13. It is the further case of the appellants that the demand of the 1st respondent being accommodated as a senior clerk cannot be countenanced as there is no post i.e., available with a Grade pay of Rs.2400/- and that the post of senior clerk carries grade pay of Rs.2800/- and therefore the order passed by the Writ Court was erroneous and was therefore liable to be interfered with.

14. We have considered the arguments advanced by the learned Additional Solicitor General of India for the petitioners and the learned Senior Counsel for the respondents.

15. Aggrieved by the order dated 06.01.2021 allowing the prayer of the first respondent, the fifth appellant had filed an appeal before the second respondent stating that the Commissioner for Persons with Disabilities did not have jurisdiction to pass the aforesaid order dated 06.01.2021 impugned in the Writ Petition. The appeal was filed as early as 10.03.2021.

16. Meanwhile, the first respondent had filed Writ Petition in W.P.No.15182 of 2021, wherein, the first respondent herein prayed for a mandamus to direct the respondents therein namely The Chairman, Railway Board, Railway Bhavan, Raisana Road, New Delhi and The Commissioner for



W.A.No.1864 of 2024

Persons with Disability, Court of Chief Commissioner for Persons with Disabilities (DIVYANGJAN), Sarojini House, Bhagavandas Road, New Delhi to implement the order dated 06.01.2021.

17. The said Writ Petition was disposed of on 23.07.2021 by directing the Chairman of the Railway Board, the first respondent therein to consider and dispose of the petitioner's representations dated 04.02.2021 and 19.04.2021 in the light of the order dated 06.01.2021 of the Commissioner for Persons with Disabilities.

18. The said Writ Petition was disposed on 23.07.2021 without making any observations on merits. It was not brought to the knowledge of the Court regarding pendency of the appeal against the order dated 06.01.2021 of the Commissioner for Persons with Disabilities, the second respondent on 10.03.2021. The appellants herein had subsequently filed W.P.No.16796 of 2022, wherein, the order of the aforesaid order dated 06.01.2021 was challenged. The second Writ Petition challenging the same ought not to have been entertained by the Writ Court in the first place in view of the order dated 23.07.2021 in W.P.No.15182 of 2021 at the behest of the first respondent. Even otherwise, it was incumbent on the part of the appellants to have brought

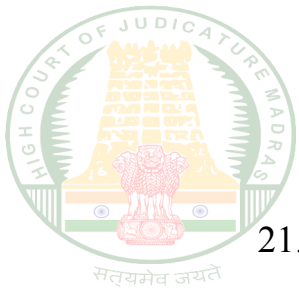


W.A.No.1864 of 2024

to the notice of the Writ Court on 23.07.2021 that already an appeal was pending before the second respondent herein against the order dated 06.01.2021.

19. Suffice to state that further orders to be passed pursuant to omnibus order dated 23.07.2021 passed in W.P.No.15182 of 2021 would have settled all the pending issues. Instead, the appellants chose to file W.P.No.16796 of 2022 before the Writ Court. The Writ Court could have simply closed the Writ Petition as infructuous, in the light of omnibus order dated 23.07.2021 in W.P.No.15182 of 2021.

20. In case, the appellants wanted to challenge the order dated 06.01.2021 of the Commissioner for Persons with Disabilities independently which was subject matter of the aforesaid order dated 23.07.2021 in W.P.No.15182 of 2021, the appellants ought to have first filed an application to review the aforesaid order dated 23.07.2021 passed in W.P.No.15182 of 2021 to have it recalled. Instead, the appellants challenged order dated 06.01.2021 of the Commissioner for Persons with Disabilities in W.P.No.16796 of 2022 independently.



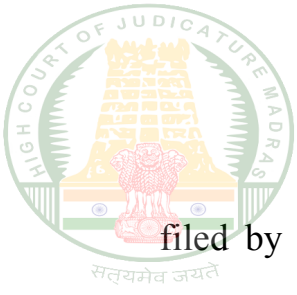
W.A.No.1864 of 2024

21. The Writ Court has come to a fair conclusion on merits holding that the appellants cannot deny the Pay Scale and it is an obligation on the part of the appellants to protect the Pay Scale and service benefits to the first respondent who acquired disability during the employment.

22. In our view, the reasoning of the Writ Court that even if there is no alternative post was available in the same Grade Pay, it was obligation to keep the first respondent in a supernumerary post until suitable post was available for accommodating the first respondent or till the first respondent attains the age of superannuation, whichever was earlier as per Section 20 of the Rights of Persons with Disabilities Act, 2016.

23. We find no reasons to take a different stand taken by the Writ Court to deny the relief that has already been granted to the first respondent by the Writ Court twice once in W.P.No.15182 of 2021 vide its order dated 23.07.2021 and for 2nd time vide impugned order dated 20.09.2023 in W.P.No.16796 of 2022.

24. The Writ Court has applied its mind. Thus, it does not merit any interference in the hands of this Court in this Appeal. Thus, the Writ Petition



W.A.No.1864 of 2024

filed by the appellants was devoid of merits in W.P.No.16796 of 2022 vide

impugned order dated 20.09.2023.

25. Therefore, this Writ Appeal is liable to be dismissed. It is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

[R.S.K., J.]

[C.S.N., J.]

09.05.2025

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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To

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Rep by The Chairman,
Railway Board,
New Delhi.

2.The General Manager,
Southern Railway,
Chennai – 3.

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W.A.No.1864 of 2024

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