



W.P.No.27151 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Order	Date of Pronouncing the Order
04.12.2024	03.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.27151 of 2017
and
W.M.P.No.29008 of 2017

S.Mohan

... Petitioner

-VS-

1.Tamilnadu State
Transport Corporation
(Villupuram) Ltd.,
rep.by its Managing Director
Vazhudhareddy
Villupuram

2.The General Manager
Tamilnadu State Transport
Corporation (Villupuram) Ltd.,
Villupuram Region
Salamedu, Villupuram

3.The General Manager
Tamilnadu State Transport
Corporation (Villupuram) Ltd.,
Cuddalore Region
Cuddalore

... Respondents



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WEB COPY **PRAYER:** Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records pertaining to the order dated 10.04.2012 in Letter No.53/6496/Ni.7/TNSTC(Villu)/2011, passed by the first respondent and the order dated 28.11.2012, issued by the second respondent in Proceedings No.70/15880/E3/TNSTC(VPM)/2012, quash the same insofar as not treating the period from 07.02.2010 to 27.11.2012 as duty for all purposes and with all consequential benefits and consequently direct the respondents to treat the period from 07.02.2010 to 27.11.2012 as duty with pay for all purposes together with backwages and other attendant benefits including P.F.Contributions, by granting the petitioner annual increments, special increment for completion of 10 years / 20 years, review benefits from the due dates, wage revision etc., on par with the petitioner's colleagues, who have joined as Driver along with the petitioner and also to revise petitioner's pay from 28.11.2012 based on such pay fixation with all consequential benefits and to pay the petitioner the difference in wages from 28.11.2012 together with interest based on his representation dated 09.09.2015 together with interest, award costs.

For Petitioner : Mr.K.Krishnaswamy

For Respondents : Mr.M.Aswin
Standing Counsel



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ORDER

The brief facts that are relevant for disposal of this writ petition are as under:

1. The petitioner herein joined in the respondent – Corporation as Driver in the year 1996 and thereafter, his service was regularized on 28.10.1999 and he was made permanent on 01.07.2000. While so, on 06.02.2010, the bus that was driven by the petitioner met with an accident and as a result, the petitioner sustained injuries and was admitted in a Hospital for leg injury. The petitioner was operated for the leg injury on 12.02.2010 and was discharged from the Hospital on 28.02.2010. While the petitioner was in Hospital, the respondent – Transport Corporation, namely, the second respondent placed him under suspension and an enquiry was initiated against the the petitioner and consequently, a show cause notice was served on him proposing to impose a punishment of increment cut for one year without cumulative effect and also to treat the period of suspension as leave available to the credit of the petitioner, besides ordering for recovery of a sum of Rs.43,150/- towards damages caused to the bus.

2.



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1.2. In response to the said show cause notice, the petitioner submitted his explanation on 19.07.2011 and also submitted further representation dated 19.08.2011 and 07.09.2011, requesting the respondent – Transport Corporation to provide suitable alternative employment. As the said representations were not considered by the respondent – Transport Corporation, the petitioner, on an earlier occasion, approached this Court by filing a writ petition in W.P.(MD) No.25780 of 2011.

1.3. Pursuant to the orders dated 15.12.2011 passed in the said writ petition, the respondent – Transport Corporation issued a proceedings No.53/6496/Ni.7/TNSTC(Villu)/2011, dated 10.04.2012 permitting the petitioner to do light duty and thereafter, through proceedings No.70/15880/E3/TNSTC(VPM)/2012, dated 06.10.2012, provided alternative employment as Helper (Non ITI), with all consequential benefits in the light of the provisions contained in Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter, referred to as “the Act, 1995”) with immediate effect and he was directed to report duty before the second respondent.



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1.4. Accordingly, the second respondent issued yet another proceedings No.70/15880/E3/TNSTC(VPM)/2012, dated 28.11.2012, admitting the petitioner for duty on the afternoon of 28.11.2012 and allotted staff No.TM0160 and posted to Puducherry Branch.

1.5. Thereafter, the petitioner, on coming to know that the pay that is being drawn by him is lesser than the pay that is being drawn by the Drivers, who were appointed simultaneously along with him and also on the ground that the petitioner was not extended the benefit of the annual increments and special increments on completion of 10 years / 20 years, review benefits etc., approached this Court by filing the present writ petition, after having submitted representations before the respondents.

2. The respondents have filed their counter affidavit. There is no dispute on the factual aspects of the matter. The respondents, in their counter affidavit, also do not deny the entitlement of the petitioner for pay protection and other advantages in the light of the provisions contained in Section 47 of the Act, 1995. On the other hand, it is contended that though the petitioner was discharged from the Hospital on 28.02.2010, he had not



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reported for duty or sought for sanctioning of leave, but gave a representation only in the month of September, 2011 and therefore, he was treated as “Absent from Duty” with effect from 07.02.2010 to 27.11.2012 and therefore, he was not granted backwages and other benefits for the above said period. The petitioner is practically claiming for grant of all other benefits for the said period from 07.02.2010 to 27.11.2012 by treating the said period as “on duty” and also to grant pay protection on par with the persons, who were simultaneously appointed to the post of Driver in the respondent – Corporation.

3. Though the respondents have taken a specific stand in the counter affidavit that the said period from 07.02.2010 to 27.11.2012 was treated as “Absent”, as per the service records, it was stated that the said period was taken into consideration for the purpose of pay fixation and other benefits. In the light of the same, this Court, by an order dated 27.11.2024, directed the learned Standing Counsel appearing for the respondent – Transport Corporation to verify the same and confirm to this Court. The said docket order reads as follows:

*“After hearing the matter for quite some time,
Mr.M.Aswin, learned Standing Counsel appearing for
the respondent Corporation seeks time to verify, as to*



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whether the period from 07.02.2010 to 27.11.2012 has been taken into consideration for the purpose of pay fixation of the petitioner on re-employment or not?

2.Post the matter under the caption “For Orders” on 04.12.2024.”

4. Accordingly, the learned Standing Counsel appearing for the respondent – Transport Corporation submitted that the said period was taken into consideration for all purposes, including pay fixation etc. But, the grievance of the petitioner is that the said period was not taken into consideration and the same was treated as “Out of Duty” and “Absent” and thereby, the petitioner is being paid lesser pay than the pay for which he is otherwise entitled to.

5. Section 47 of the Act, 1995 reads as under:

“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,



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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.

(2) No promotion shall be denied to a person merely on the ground of his disability:

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, as may be specified in such notification, exempt any establishment from the provisions of this section."

6. From the perusal of the above provision, it is evident that the employee, who acquires disability during his service, shall not be dispensed with from service or his rank shall be reduced. It further provides for providing an alternative employment, in case if the disabled employee is not suitable to the post which he was holding at the time of incurring such disability. It also provides for creating a supernumerary post, in case suitable post is not available to accommodate the disabled employee. Sub Section (2) to Section 47 of the Act, 1995, also further mandates that no promotion shall be denied to a person merely on the ground of disability.



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7. Thus, from the language used in Section 47 of the Act, 1995, and also considering the fact that the said legislation is a socio-beneficial legislation and considering the law laid down by the Apex Court in the catena of decisions declaring that the provisions contained in Section 47 of the Act, 1995, is mandatory in nature, it is obligatory on the part of the respondent – Transport Corporation not to discriminate the petitioner on any count and it is under an obligation to provide all protections, including pay protection.

8. As already noted above, immediately after the occurrence of the accident on 06.02.2010 and while the petitioner was admitted in Hospital, he was placed under suspension and disciplinary proceedings were continued against him till he filed a writ petition before this Court in W.P.No.25780 of 2011 and it is only thereafter, the respondent – Transport Corporation provided an alternative employment to him with effect from 28.11.2012.

9. The respondent – Transport Corporation, having placed the petitioner under suspension, in an arbitrary manner, contended that the petitioner has not reported to duty after he was discharged from Hospital on 28.02.2010. When the petitioner was placed under suspension and subjected to disciplinary proceedings, the question of reporting to duty after he was



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discharged from the Hospital does not arise. Admittedly, the respondents are fully aware of the factum of accident that took place on 06.02.2010 and the treatment taken by him in the Hospital till 28.02.2010. The petitioner also participated in the enquiry before the respondents till July, 2011 i.e., when he submitted his explanation to the final show cause notice. Thus, the respondents are fully aware of the condition of the petitioner. But, for the reasons best known, the respondents have not taken any steps to provide an alternative employment to the petitioner in terms of Section 47 of the Act, 1995. But, it is only after the intervention by this Court, by order dated 15.12.2011, the respondents have provided an alternative employment to the petitioner through proceedings dated 10.04.2012 and finally through proceedings dated 28.11.2012. Thus, the respondents are responsible for not providing an alternative employment to the petitioner, when admittedly the petitioner has suffered a disability during the course of his employment and is not fit to be continued in the post of Driver, which he was holding at the time of sustaining such disability.

10. Though the learned Standing Counsel appearing for the respondent – Transport Corporation contended that the period from 07.02.2010 to 27.11.2012 is taken into consideration for fixation of pay and other purposes, the respondents failed to deny the specific contention raised



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by the petitioner in the affidavit filed in support of this writ petition contending that he petitioner is drawing lesser pay than the others, who were appointed simultaneously with the petitioner.

11. As seen from the counter affidavit, the disputed period is admittedly treated as “Absent” and therefore, the contention of the learned Standing Counsel appearing for the respondent – Transport Corporation that the said period was taken into consideration for all purposes cannot be accepted. As the respondents themselves are responsible for not providing alternative employment, as mandated under Section 47 of the Act, 1995, though the petitioner is entitled to for such benefit and for the delay caused in extending the benefit of Section 47 of the Act, 1995, to the petitioner, the respondents cannot blame the petitioner on the ground that the petitioner has not reported to duty. There is no justification for the respondents to contend that the petitioner has not reported for duty after having placed him under suspension.

12. In the light of the mandatory provisions contained in Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the petitioner is entitled for treating the entire period, during which he was out of employment because of the disability



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13. As the respondents have already provided alternative employment through proceedings of the second respondent dated 28.11.2012, they are directed to treat the period from 07.02.2010 till 27.11.2012 as “in service” and extend all the consequential benefits, including pay protection, grant of special increments on completion of 10 years / 20 years to the petitioner as was extended to the drivers, who were simultaneously appointed along with him, as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a copy of this order.

14. Insofar as the backwages for the period from 07.02.2010 till 27.11.2012 are concerned, the respondents are directed to pay the backwages, after duly adjusting the subsisting allowance, if any paid during the said period.

15. Accordingly, this writ petition is allowed and the order, dated



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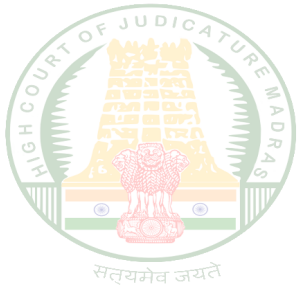
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10.04.2012, in Letter No.53/6496/Ni.7/TNSTC (Villu)/2011, passed by the first respondent and the order dated 28.11.2012, in proceedings No.70/15880/E3/TNSTC(VPM)/2012, passed by the second respondent, insofar as it relates to refusing to treat the period from 07.02.2010 to 27.11.2012 as duty period, are quashed. No costs. Consequently, connected miscellaneous petition is closed.

03.03.2025

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

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MUMMINENI SUDHEER KUMAR, J.

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PRE-DELIVERY ORDER
IN
W.P.No.27151 of 2017
and
W.M.P.No.29008 of 2017

03.03.2025