

Madras High Court

C.Edwin Joshua vs The State Transport Corporation on 11 January, 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.01.2018

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD) No.8248 of 2014

and

W.M.P.(MD)No.15747 of 2017

C.Edwin Joshua

... Petitioner

The State Transport Corporation
(Madurai) Ltd.,
represented by its Managing Director,
Bye pass Road,
Madurai.

... Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring the action of the respondent in discharging the service of the petitioner on medical grounds from 18.06.1998 and re-appointing him as Non-ITI Helper with effect from 01.04.2000 and action of the respondent in refusing to give pay protection, continuity of service to him in the post of driver by an order of the respondent dated 30.06.2015 passed in Ref No:Sattam/W.P.No.3649 of 2012 as illegal, arbitrary and consequently directing the respondent to give him continuity of service and pay protection in the post of Driver with effect from 18.06.1998 and to re-fix his scale of pay from 18.06.1998 on par with his co-workman P.Thangaraj, S/o.K.Pitchai Special Grade Driver, Staff No.DR06613, Ellis Nagar Branch of the respondent corporation as per section 47(1) Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 by counting his earlier service rendered in the post of Driver from 08.08.1988 to 18.06.1998 and to pay him all consequential benefits including arrears of difference in wages.

!For Petitioner : Mr.A.Rahul
^For Respondent : Mr.A.P.Muthu Pandian

:ORDER

The writ petitioner was appointed as Driver in the respondent corporation. He suffered medical disability and was physically unfit to work as Driver. Based on the report of the Medical Board, he was discharged from service with effect from 18.06.1998. The respondent Corporation was statutorily bound to give him an alternative employment. However, his request was complied with belatedly. He was appointed as Helper (Non-ITI) by an order dated 30.03.2000. Unfortunately, he was treated as fresh entrant. He was not given pay protection. The writ petitioner gave a representation seeking pay protection.

2.Since the said representation was not considered, the writ petitioner earlier moved this Court and a direction was given to consider the petitioner's request. Pursuant to the direction given by order dated 08.01.2015 in W.P.(MD)No.3649 of 2012, the impugned order dated 30.06.2015 came to be passed. The respondent had stated in the impugned order that based on the request of the writ petitioner, he was given alternative employment with effect from 01.04.2000 and that the writ petitioner accepted the same.

3.The stand of the respondent cannot be appreciated. There is no question or waiver or estoppel in these cases. When Section 47 (1) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, gives a statutory protection to the disabled employee, the same will have to be adhered to in letter and spirit. The impugned order is violative of the said statutory provision.

4.The impugned order is therefore quashed and the respondent is directed to refix the petitioner's pay by giving pay protection and continuity of service from 18.06.1998.

5.The learned standing counsel appearing for the respondent submitted that considering the financial crisis which Transport Corporation is facing 50% of the back wages alone should be directed to be paid. The learned counsel for the petitioner on instructions submits that the writ petitioner relinquishes his claim for 50% of the arrears in respect of difference in wages. The said submission is recorded. The Transport Corporation is directed to disburse the arrears in six equal monthly installments commencing from 01.03.2018.

6.This writ petition is allowed as indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

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