

Madras High Court

Duraisamy vs Tamil Nadu State Transport ... on 4 January, 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.01.2016

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THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN

W.P.(MD)No.22469 of 2015

and

M.P.(MD)No.1 of 2015

Duraisamy

.. Petitioner

Vs

1.Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd.,
rep.by its Managing Director,
Kumbakonam.

2.The General Manager,
Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd.,
Trichy Region, Trichy.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the second respondent in Ref.No.Th.Aa.Po.Ka/Trichy/Niru-E7/444/2015 dated 10.09.2015, quash the same in so far as not granting alternative employment on permanent basis with pay protection, continuity of service in terms of Section 47(1) of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and consequently direct the respondents to provide alternative employment to the petitioner on permanent basis with pay protection, continuity of service and back wages payable from 03.04.2015 to 19.04.2015.

!For Petitioner : Mr.A.Rahul

^For Respondents : Mr.D.Sivaraman

:ORDER

The petitioner was a Driver employed by the respondent Transport Corporation. The respondent Transport Corporation get the drivers periodically examined by the Doctors for their fitness,

particularly with respect to their eye-sight. When the petitioner appeared for the periodical examination, as directed by the respondent Transport Corporation on 21.03.2015, M/s. Joseph Eye Hospital to which the petitioner was referred to by the respondent Corporation, certified that the petitioner was suffering from Glaucoma and he is not fit for driving. In the mean time, the petitioner was referred to the Government Ophthalmic Hospital, Egmore, Chennai by the second respondent and the Medical Board of the Government Ophthalmic Hospital at Chennai, certified that the petitioner was unfit to drive due to altitudinal field defects.

2. Thereafter, no alternative employment was given. However, subsequent to the directions of this Court, the impugned order dated 10.09.2015 was passed providing him alternative employment on temporary basis for a period of one month without changing the designation. He was provided alternative employment from 20.09.2015 and is working continuously from 20.09.2015 till date, as Bus Stand Assistant. But he was not provided alternative employment on permanent basis in terms of Section 47(1) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Hence this writ petition.

3. Heard the learned counsel on either side.

4. It is useful to extract Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 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, 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.?

5. As per Section 47 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, an employee shall not be discharged from service on a finding that he is unfit to hold the post due to medical reasons. On the other hand, he shall be provided any alternative employment, i.e., he cannot suffer due to non-employment, due to his unfitness on medical reasons. Hence, in all cases where the employees are discharged on the ground of unfitness and provided alternative employment subsequently, they are entitled to wages for the period of non-employment. It is a well settled principle.

6. In this context, it is useful to extract Paragraphs 17, 19 and 20 of the judgment of the Apex Court in Bhagwan Dass and another v. Punjab State Electricity Board, reported in 2008(2) L.L.N. 1:

17. From the materials brought before the Court by none other than the respondent-Board it is manifest that notwithstanding the clear and definite legislative mandate some officers of the Board took the view that it was not right to continue a blind, useless man on the Board's rolls and to pay him monthly salary in return of no service. They accordingly persuaded each other that the appellant had himself asked for retirement from service and, therefore, he was not entitled to the protection of the Act...

18. ...

19. We understand that the officers concerned were acting in what they believed to be the best interests of the Board. Still under the old mindset it would appear to them just not right that the Board should spend good money on someone who was no longer of any use. But they were quite wrong, seen from any angle. From the narrow point of view the officers were duty-bound to follow the law and it was not open to them to allow their bias to defeat the lawful rights of the disabled employee. From the larger point of view the officers failed to realise that the disabled too are equal citizens of the country and have as much share in its resources as any other citizen. The denial of their rights would not only be unjust and unfair to them and their families but would create larger and graver problems for the society at large. What the law permits to them is no charity of largesse but their right as equal citizens of the country.

20. In light of the discussions made above, the action of the Board in terminating the service of the disabled employee (appellant 1) with effect from 21 March 1997 must be held to be bad and illegal. In view of the provisions of S.47 of the Act, the appellant must be deemed to be in service and he would be entitled to all service benefits including annual increments and promotions, etc. till the date of his retirement. The amount of terminal benefits paid to him should be adjusted against the amount of his salary from 22 March 1997 till date. If any balance remains, that should be adjusted in easy monthly instalments from his future salary. The appellant shall continue in service till his date of superannuation according to the service records. He should be reinstated and all due payments, after adjustments as directed, should be made to him within six weeks from the date of presentation of a copy of the judgment before the Secretary of the Board.?

7. In view of the discussions of the Apex Court, the respondent- Corporation is directed not to discharge any workman, who is found not suitable for the post due to the acquiring of disability, but to provide alternative employment with pay protection, as per Section 47 of the Act. Particularly in cases where workmen acquired disability during and out of employment and the same is very well known to the Corporation, the respondent Corporation has also moral responsibility besides the legal duty under Section 47 of the Act to provide alternative employment and the workmen shall be paid wages during the interregnum, if any.

8. However, the learned counsel for the petitioner has prayed for counting the service from 03.04.2015 till the petitioner was given alternative employment, for all purposes, except for actual

payment of wages. Thus, according to the learned counsel for the petitioner, if the service after he was declared unfit by the Medical Board is counted till the petitioner was given alternative employment, for the purpose of fixing of pay, promotion, review, increment, pension etc., the petitioner would be satisfied. Therefore, according to him, the petitioner is not claiming any actual monetary benefit for the said period.

9. In these circumstances, the following directions are given:

(a) The writ petitioner shall be continued in the alternative employment without any interruption and his pay as Driver shall be protected as if he continued in service without any interruption in service.

(b) It is reiterated that the petitioner shall be continued in the alternative employment as stated above, and the pay shall be protected and the service from 03.04.2015 till he was provided alternative employment shall be counted for all purposes, except for making actual monetary benefits.

10. The writ petition is disposed of in the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

To

1. The Managing Director, Tamil Nadu State Transport Corporation (Kumbakonam) Ltd., Kumbakonam.

2. The General Manager, Tamil Nadu State Transport Corporation (Kumbakonam) Ltd., Trichy Region, Trichy. .