

(2013) 04 MAD CK 0031

In the Madras High Court

Case No : W.A. No. 2070 of 2011 and M.P. No's. 1 and 2 of 2012

A.M. Selvaraj

APPELLANT

Vs

The Managing Director and The General Manager,
Administration, Metropolitan Transport Corporation

RESPONDENT

Date of Decision : 26-04-2013

Acts Referred:

Constitution of India, 1950 — Article 21
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 2(e), 2(i)(v), 2(o), 22

Citation : (2013) LabIC 4425 : (2013) WritLR 675

Hon'ble Judges : M. Venugopal, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : G. Jayasri, for the Appellant; V.R. Kamalanathan, Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

M. Venugopal, J.—The Appellant/Writ Petitioner has filed the present Writ Appeal as against the order dated 18.08.2011 made in W.P.

No. 1606 of 2011 passed by the Learned Single Judge. The Learned Single Judge, while passing the Common Order in W.P. No. 1606 of 2011

on 18.08.2011 [filed by the Appellant/Petitioner] has, among other things, observed that "...the respondent Corporation cannot be put up at a peril

for the petitioner's inaction for nearly six years. However, ultimately this Court in the earlier Writ Petition in W.P. No. 11641 of 2009, set aside

the order of dismissal from service. Thus considering the above facts, this Court is of the view that the petitioner is entitled to backwages at least

from the date when he sought for protection u/s 47 of the Act i.e. during September 2008. In fact in the order passed in W.P. No. 27736 of 2008,

this Court has specifically observed that it is open to the petitioner to workout his remedy under the provisions of the Act. The liberty granted by this Court was availed by the petitioner. However, the respondent Corporation chose to reject the petitioner's appeal petition though it would have been appropriate for them to have considered the case of the petitioner u/s 47 of the Act. For reasons best known, the Corporation did not extend the benefit of Section 47 of the Act to the petitioner though they were statutorily bound to do so in terms of the provisions of the Act. This resulted in the filing of the second Writ Petition, which was allowed by this Court on 5.2.2010. It is only thereafter, the respondent Corporation extended the benefit of Section 47(1) of the Act and granted light duty to the petitioner with full pay protection and other benefits which the petitioner is entitled to u/s 47 of the Act. Therefore, this is a fit case where the petitioner should be entitled for backwages from September 2008 onwards till he was reinstated in service" and set aside the impugned order dated 31.12.2010 in so far as it denies the backwages and further directed the respondent Management to pay backwages from September 2008 onwards to the petitioner and treat the period of absence from 29.07.2002, till the date of reinstatement for all other purposes including for computing the length of service, etc., except for monetary benefits and allowed the Writ Petition in part and consequently, closed the Contempt and Miscellaneous Petitions.

2. According to the Learned Counsel for the Appellant/Petitioner, the Learned Single Judge failed to consider the fact that keeping in view of the total disabilities sustained by the Appellant/Petitioner, whether the Alternative Employment provided by the Respondent/Management is a Suitable Alternative Employment to him.

3. The Learned Counsel for the Appellant/Petitioner urges before this Court that the Appellant/Petitioner has acquired permanent total disability, while discharging his duties on 29.07.2002 and he could not do anything on his own, since he was in a bedridden condition. As such, the Learned Single Judge ought to have quashed the impugned order passed by the Respondent/Management dated 31.12.2010.

4. The plea taken on behalf of the Appellant/Petitioner is that the Learned Single Judge should have passed an order in M.P. No. 1 of 2011 [filed

by the Appellant/Petitioner] in W.P. No. 1606 of 2011 seeking for his full physical medical assessment report from the Medical Board instead of

closing it.

5. Also, it is contended on behalf of the Appellant/Petitioner that the Learned Single Judge, in reality, ought to have called for an overall General

Physical Assessment Report of the Medical Board from the Respondent/Management, instead of placing reliance on the Medical Report sought

for in regard to the fitness status of the Appellant/Petitioner to the post of driver alone.

6. Added further, the Learned Counsel for the Appellant/Petitioner submits that the Learned Single Judge should have directed the

Respondent/Management to the effect that if suitable alternative employment was not feasible, then, the Appellant/Petitioner must be kept on a

supernumerary post until he attains the age of superannuation as per Section 47 of the Persons with Disabilities [Equal opportunities, Protection of

Rights and Full Participation] Act, 1995 (1 of 1996).

7. It is the contention of the Learned Counsel for the Appellant/Petitioner that the Learned Single Judge has committed an error in coming to the

conclusion that the Appellant/Petitioner has remained silent for many years after sustaining disability. Moreover, the Learned Single Judge has also

incorrectly held that the Appellant/Petitioner after lapse of 1-1/2 years from the date of dismissal order passed against him on 04.05.2006 filed an

Appeal and therefore, he is not eligible to obtain the relief of monetary benefits and in this regard, the views so taken defeats the very purpose of

the Persons with Disabilities [Equal opportunities, Protection of Rights and Full Participation] Act, 1995.

8. Per contra, it is the submission of the Learned Additional Government Pleader for the Respondent/Transport Corporation that the

Appellant/Petitioner was appointed as Driver on 28.12.1989 in the Respondent/Corporation and that while he was duty on 29.07.2002, he

caused an accident with cyclist and that he was hospitalised and availed earned leave from 30.07.2002 to 20.08.2002.

9. That apart, the Learned Additional Government Pleader brings it to the notice of this Court that the Appellant/Petitioner submitted a petition on

10.01.2003 to the General Manager to grant him medical leave from 21.08.2002

to 19.12.2002 for 121 days. As such, the Appellant/Petitioner was directed to appear before the Chief Medical Officer, Head Quarters on 31.01.2003. He was also required to appear before the General Manager as per Memo dated 18.11.2003. But he neither turned up nor sent any leave letter.

10. The Learned Additional Government Pleader for the Respondents proceeds to submit that for the Appellant/Petitioner's unauthorised absence, disciplinary proceedings were initiated against him, by issuing a Charge Memo which was returned by the Postal Department as "Left". As a matter of fact, in the enquiry proceedings, ample opportunities were provided to the Appellant/Petitioner to appear before the Enquiry Officer. However, he had not participated in the enquiry and the Enquiry Officer completed the enquiry, by closing the enquiry as "Set Exparte". A show cause notice was issued to the Appellant/Petitioner together with enquiry findings which got returned with a postal endorsement as "Left". Once again, another show cause notice was issued to the Appellant/Petitioner on 23.05.2005 along with provisional conclusion for his removal from service. On receipt of the memorandum, the Appellant/Petitioner submitted a Petition mentioning that he was sick and therefore, the provisional conclusion for removal order may be cancelled. But his plea, in this regard, was not accepted by the Respondents and based on the outcome of domestic enquiry findings, he was removed from service, by virtue of an order dated 04.05.2006.

11. Apart from the above, the Learned Additional Government Pleader for the Respondents invites the attention of this Court to a factual aspect that the Appellant/Petitioner, as against the order dated 04.05.2006 removing him from service, passed by the 2nd Respondent, filed W.P. No. 27736 of 2008 before this Court praying to quash the removal order and resultantly, to direct the Transport Corporation to pay all arrears of salary with effect from 29.07.2002 till alternative employment is identified to him. On 21.11.2008, this Court directed the Appellant/Petitioner to prefer an Appeal to the 1st Respondent against the removal order dated 04.05.2006 within 10 days and further, the Respondents were directed to decide the said Appeal on merits and in accordance with law etc.

12. It is not in dispute that the Appellant/Petitioner filed Appeal Petitions on 10.12.2008 and 03.02.2009 which were rejected on 15.04.2009,

which compelled the Appellant/Petitioner to file another W.P. No. 11641 of 2009 before this Court seeking to quash the dismissal order dated

04.05.2006 passed by the 2nd Respondent and confirmed in Appeal by the 1st Respondent as per Order dated 15.04.2009. Also, the

Appellant/Petitioner has prayed for issuance of direction to the Respondents to invoke the ingredients of Section 47 of the Persons with Disabilities

[Equal opportunities, Protection of Rights and Full Participation] Act, 1995. This Court, on 05.02.2010, allowed W.P. No. 11641 of 2009 [filed

by the Appellant/Petitioner] by setting aside the impugned order of dismissal dated 04.05.2006 on the ground of "Violation of Principles of Natural

Justice". However, this Court observed that it was open to the Respondent/Transport Corporation to issue a fresh notice of enquiry to the

Appellant/Petitioner, if they proposed to do so in which event directed the Appellant/Petitioner to submit a written request to the 1st Respondent

enclosing all records in support of his contention that he suffered disability and that he was entitled to protection u/s 47 of the Act etc.

13. The Respondent/Transport Corporation looked into the Appellant/Petitioner's case and had not chosen to conduct a fresh enquiry into the

charges levelled against him, but a fresh notice on 29.04.2010 was issued by the Respondent/Transport Corporation requiring the

Appellant/Petitioner to appear before the Chief Medical Officer of the Transport Corporation with original medical records and then, he was

directed to appear before the Medical Board to ascertain whether he was fit or unfit to hold the post of Driver. The Medical Board gave its Report

on 14.12.2010 stating that the Appellant/Petitioner was unfit to drive the bus as he was suffering from weakness of the right upper limb and right

lower limb as disclosed by the Neuro Medical opinion. Based on the said Medical Report and as per the direction issued by this Court in W.P.

No. 11641 of 2009 on 05.02.2010, the Appellant was given an alternative light duty as Assistant (Non-Technical) at Adyar Depot, by an order

dated 31.12.2010.

14. At this juncture, the Learned Additional Government Pleader for the Respondents strenuously contends that the Appellant/Petitioner after

causing/an accident on 29.07.2002, fell sick and applied for medical leave for some period and not appeared before the Chief Medical Officer, as

directed by the Respondent/Corporation. Therefore, he was not granted any medical leave. Furthermore, the Respondent/Corporation had not received any further leave intimation/letter from the Appellant in regard to his treatment. Under these circumstances, the Respondent/Corporation commenced disciplinary proceedings against the Appellant/Petitioner and finally, dismissed him from service on 04.05.2006. His Appeal was also dismissed on 05.02.2009.

15. The main contention advanced by the Learned Additional Government Pleader for the Respondents is that the Respondent/Corporation, after satisfying the requisite formalities, provided an alternative employment [Helper-Non-ITI] to the Appellant/Petitioner on 31.12.2010, instead of discharging him from service. As such, he is entitled, in law, to salary only from the date of discharge on medical grounds and not entitled to be paid any backwages for the period from 29.07.2002 to 31.12.2010. Besides this, there is no provision in the Persons with Disabilities [Equal opportunities, Protection of Rights and Full Participation] Act, 1995 to pay full backwages pertaining to the period from 29.07.2002 till date of Appellant/Petitioner's superannuation, when he had not reported for duty and work him the Transport Corporation till date of his retirement.

16. The Learned Counsel for the Appellant/Petitioner, in support of her contention that "In construing a provision for Social benefit enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and fulfils its purpose is to be preferred render the one which hinders the aim and paralyses the purpose of the Act", relies on the decision of the Hon'ble Supreme Court in Kunal Singh Vs. Union of India (UOI) and Another, at special page 525 & 526, wherein it is observed and laid down as follows:

Admittedly that Act applies to the establishment of the respondents and is not exempted u/s 47 thereof. From the facts, it is clear that the disability suffered by the appellant is covered by Section 2(i)(v) read with Section 2(o) of the Act. That disability was admittedly acquired by the appellant during service. Chapter VI of the Act containing Sections 32, 33 and 38 deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an

employee, who is already in service and acquires a disability during his service. Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. A person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected u/s 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. The language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service.

Also, in the aforesaid decision at page 529, in paragraph 9, it is held as follows:

9. Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected u/s 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of Section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The Section further provides 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; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available

or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his

disability as is evident from sub-section (2) of Section 47. Section 47 contains- a clear directive that the employer shall not dispense with or reduce

in rank an employee who acquires a disability during the service. In construing a provision of social beneficial enactment that too dealing with

disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act

and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is

plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service.

Furthermore, in paragraph 12 of the aforesaid decision of the Hon"ble Supreme Court at page 530, it is, inter alia, observed as follows:

12. Merely because under Rule 38 of CCS Pension Rules, 1972, the appellant got invalidity pension is no ground to deny the protection,

mandatorily made available to the appellant u/s 47 of the Act. Once it is held that the appellant has acquired disability during his service and if

found not suitable for the post he was holding, he could be shifted to some other post with same pay-scale and service benefits; if it was not

possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of

superannuation, whichever is earlier. It appears no such efforts were made by the respondents. They have proceeded to hold that he was

permanently incapacitated to continue in service without considering the effect of other provisions of Section 47 of the Act.

17. She also cites the decision of the Hon"ble Supreme Court in Bhagwan Dass and Another Vs. Punjab State Electricity Board, in paragraph 18

to 20, it is held hereunder:

18. Appellant No. 1 was a Class IV employee, a Lineman. He completely lost his vision. He was not aware of any protection that the law afforded

him and apparently believed that the blindness would cause him to lose his job, the source of livelihood of his family. The enormous mental pressure under which he would have been at that time is not difficult to imagine. In those circumstances it was the duty of the superior officers to explain to him the correct legal position and to tell him about his legal rights. Instead of doing that they threw him out of service by picking up a sentence from his letter, completely out of context. The action of the concerned officers of the Board, to our mind, was deprecable.

19. We understand that the concerned officers were acting in what they believed to be the best interests of the Board. Still under the old mind-set 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 or largess 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 No. 1) with effect from March 21, 1997 must be held to be bad and illegal. In view of the provisions of Section 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 March 22, 1997 till date. If any balance remains, that should be adjusted in easy monthly installments 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.

18. Yet another decision of this Court in V. Balasubramaniam Vs. Tamil Nadu

State Express Transport Corporation] is relied on the side of the Appellant/Petitioner to the effect that The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 being a beneficial legislation, it is the duty cast upon the State Corporation to give backwages to the Petitioner, who was discharged from service on 06.12.2004, after the Act came into force. Also, it was held that the Petitioner was entitled to claim not only an alternative employment, but also benefits conferred u/s 47 of the Act".

19. Expatiating her contentions, the Learned Counsel for the Appellant/Petitioner projects a legal plea that the Appellant/Petitioner cannot be forced to join in an unsuitable alternative post because of the fact that he is in continuous medical treatment and cannot do any work on his own volition. Repelling the stand of the Respondent/Corporation that a totally disabled employee, who is in continuous treatment, cannot be paid full salary till his retirement "without reporting duty", the Learned Counsel for the Appellant/Petitioner submits that the plea of "No Work-No Pay" cannot be pressed into service in case of an Employee who has sustained total permanent disability and also in bedridden condition without any capacity to do active productive work.

20. It is further contended on behalf of the Appellant/Petitioner that when he is in bedridden, one cannot expect him report for duty and to discharge his functions either in the reinstated post or in any suitable alternative post.

21. In this connection, we relevantly point out that this Court, on 21.11.2011, passed an order in the Writ Appeal, directing "the Respondents to issue a communication, with regard to the appearance of the appellant before the Medial Board, to the learned counsel for the appellant to enable her to take appropriate steps for the appearance of the appellant before the Medical Board for examination. We also direct the respondents to arrange for the transport to bring the appellant from his native place for the purpose of conducting medical examination by the Board. The above exercise shall be completed within a period of four weeks from today. Post the matter after four weeks".

22. Further, on 24.01.2012 in W.A. No. 2070 of 2011, this Court, has, inter alia, directed Dr. N. Gunasekaran, M.D., Medical Superintendent,

Government Royapettah Hospital, Royapettah, Chennai-600 014, is directed to fix a date for the examination of the appellant and intimate the same to the respondents as well as the appellant within a period of one week.

23. On 13.02.2012, this Court has, among other things, observed that "...also the fact that he is entitled to be continued in service from

29.07.2002 viz., the date of accident, we consider it appropriate to direct the respondents to settle the matter by paying salary to the appellant for

the remaining period of service with all terminal benefits". Also, on 13.03.2012 this Court passed an order reiterating its direction to arrange for

payment of Rs. 5,51,000/- to the Appellant/Petitioner by the Respondent Corporation within a period of two weeks.

24. On 09.04.2012, this Court has passed an order in the Writ Appeal by considering the peculiar facts and circumstances of the case and the

pathetic condition of the Appellant, in issuing directions to the Respondents to pay half of the calculated amount i.e. a sum of Rs. 17,00,000/- to

the Appellant within a period of two weeks from the date of receipt of a copy of this order.

25. The Respondents filed SLP No. 18439 of 2012 before the Hon"ble Supreme Court of India, being aggrieved against the order dated

13.02.2012 and 09.04.2012 in W.A. No. 2070 of 2011 on the file of this Court and the Hon"ble Supreme Court, on 05.07.2012, has ordered

issuance of notice on SLP as also on the petitioner's prayer for interim relief, returnable on 31.08.2012. Further, the Hon"ble Supreme Court of

India, till the next date of hearing, stayed the operation of the impugned order subject to the condition that the Petitioners (Respondent/Transport

Corporation) shall pay Rs. 5,51,026.80 to the Respondent (Appellant) within a period of two weeks from 05.07.2012. Subsequently, on

12.09.2012 the Hon"ble Supreme Court has disposed of SLP No. 18439 of 2012 by observing that "In our view, ends of justice will be served if

a request is made to the High Court to decide the writ appeal on merits at an early date" and further, requested the Division Bench of this Court to

make an endeavour to finally dispose of Writ Appeal No. 2070 of 2011 within a period of three months from the date of production of a copy of

this order. Also, the Hon"ble Supreme Court passed an order that Till the disposal of the Writ Appeal by the High Court, interim order passed by

this Court on 05.07.2012 shall remain operative.

26. According to the Appellant/Petitioner, as per his calculation on 03.04.2012, the arrears of pay and allowances for the period from 29.07.2002

to 31.03.2016 comes to Rs. 35,92,908/- excluding the benefits from the year 2002 to 2016 to be paid by the Respondent/Transport Corporation.

However, the Respondents, in their calculation, in respect of backwages pertaining to the Appellant/Petitioner has worked out a sum of Rs.

6,22,785.80 and if statutory deductions of Rs. 71,759/- are deducted, then, a sum of Rs. 5,51,026.80 is only due to be paid to him by the

Transport Corporation.

27. The Deputy Commissioner of Labour -I, Chennai- 6, in his letter dated 26.11.2012 addressed to the Managing Director, Metropolitan

Transport Corporation, Chennai-2, by a reply to the Management's letter dated 15.09.2012, has stated that as per the documents filed by the

Management, the age of the Appellant, his 100% loss of earning power, the salary of Rs. 4,000/- (defined one) received by him have been taken

into account and on that basis, has arrived at a sum of Rs. 4,14,048/- as compensation to be paid by the Transport Corporation. Further, it is seen

from the letter dated 26.11.2012 of the Deputy Commissioner of Labour-I, Chennai that at the time of accident, the Appellant's age is mentioned

as "44" (22.03.1958) and the correct factor in preparation of his age is 172.52 and taking into account the Appellant/Petitioner's salary as Rs.

4,000/-(restricted), his loss of earning capacity being 100%, it has arrived at a sum of Rs. 4,14,048/- as compensation in the following manner:

$4000 \times 100/100 \times 60/100 \times 172.52 : \text{Rs. } 4,14,048/-$.

28. At this stage, we deem it appropriate to make a useful reference to the definition of Section 2(e) of the Persons with Disabilities (Equal

Opportunities, Protection of Rights and Full Participation) Act, 1995 which speaks of "Cerebral Palsy" which means "a group of non-progressive

conditions of a person characterised by abnormal motor control posture resulting from brain insult or injuries occurring in the pre-natal, peri-natal

or infant period of development". Also, Section 2(i)(v) of the Act defines "Disability" which means "locomotor disability". In fact, Section 2(o) of

the Act refers to "locomotor disability" which means "disability of the bones, joints or muscles leading to substantial restriction of the movement of

the limbs or any form of cerebral palsy".

29. The Learned Counsel for the Appellant/Petitioner contends that in view of the aforesaid definitions relating to Section 2(e) "Cerebral palsy",

refers to 2(i)(v) "locomotor disability" coupled with Section 2(o) which refers to "locomotor disability", the case of the Appellant/Petitioner

(Employee) comes within the ambit of the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full

Participation) Act, 1995. As such, the Respondents are to extend their helping hands to the Appellant/Petitioner [being the disabled Employee]

and to enlighten him about the benefits available to him under the Act.

30. The forceful contention of the Learned Counsel for the Appellant/Petitioner is that the Respondent/Transport Corporation cannot deprive a

statutory right of the Appellant/Employee to lead decent life in terms of Article 21 of the Constitution of India. Further, it is contended on behalf of

the Appellant/Petitioner that he must be paid with all arrears of salary, allowances, increments, grade pay etc., as per the calculation of Employee

dated 03.04.2012 (of course after reconciling with the accounts of the Respondents) and the payment made to the Co-employees of the same

rank appointed along with the Appellant on the same order of the Respondent/Corporation from the date of accident viz., 29.07.2002 till

31.03.2016 being the date of superannuation with all attendant benefits by placing the Appellant in supernumerary post till his retirement [less the

amount of Rs. 5,51,026.80 paid to the Appellant] pursuant to the directions of the Hon"ble Supreme Court in S.L.P.(C) No. 18439 of 2012

dated 05.07.2012].

31. At this juncture, to advance the cause of Justice, we worth recall the following decisions:

(a) In the decision N. Krishnan Vs. Tamil Nadu State Transport Corporation and another , the Petitioner joined services of the State Transport

Corporation and worked as conducted. He contracted disease of Parkinson"s after 20 years of service. At his request he was given light duty off

and on and management questioned his unauthorised absence by issuing Charge Memo. The Charge Memo was questioned. The conductor was

referred to Medical Board. His disease was confirmed" and in this backdrop, it is observed as follows:

The said report was produced by the respondents. There was no objection to the findings rendered by the Neurologist. In the light of the above,

there is no justification for the respondents to charge-sheet the workman, who within the knowledge of the respondents had absented due to his

physical condition. Though at periodical intervals, certain attempts were made to give him light duty, the same was not extended for the reasons

best know to the respondents. Since the petitioner has proof to the satisfaction of this Court that he has acquired disability, he is entitled to have

protection u/s 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

Further, this Court directed that "The Petitioner must be given suitable alternate employment and continued to be paid wages as he was drawing in

his original post and consequently, allowed the Writ Petition.

(b) In the decision *M. Suresh v. The Secretary, Tamil Nadu Service Commission, Chennai* [(2011 (1) CWC 796 (DB)], it is held that "Persons

with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996) is a special enactment with object of

providing equal opportunity and protection of rights to physically handicapped persons and further it is observed that the posts are to be carried

forward if there is non-availability of candidates in respective categories and failure to do so will be violative of special enactment".

(c) In the decision *K.S. Murugan (deceased), Seetha and Seenithai Vs. State Express Transport Corporation (Tamil Nadu) Ltd.*, it is observed

and laid down as follows:

10. In the light of the above stated position, this Court is not inclined to discuss the merits of the case and the Respondent-Corporation has come

forward with a suggestion that if the Petitioners 2 and 3 approach the First Respondent -Corporation with relevant papers for claiming alternate

employment as well as the benefits accrued thereon so far, the same will be looked into by the Respondents by taking into provisions of the Act u/s

47 and also the Judgment of the Supreme Court as well as this Court and pass appropriate orders, within a reasonable time to be fixed by this

Court.

11. This Writ Petition is disposed of with a direction to the Petitioners 2 and 3 to appear before the First Respondent with all the relevant

documents and submit an Application within a period of two weeks from the date of receipt of a copy of this order. If such documents are

produced before the Respondent with necessary Application, the First Respondent is directed to consider the same by taking into account of the

Section 47 of the Act and also the decision of the Supreme Court in Kunal Singh Vs. Union of India (UOI) and Another, and consider the claim of

the Petitioner in accordance with law and on merits and pass appropriate orders, within a period of eight weeks thereafter.

(d) In the decision C. Narayanan Vs. The Deputy Director-cum-Principal in Charge, Government Industrial Training Institute and The Director,

Employment and Training, this Court has, inter alia, held that "Person who acquires disability during his employment cannot be inflicted with any

decision to dispense with his services or reduce in rank on ground of such disability". Further, in the aforesaid decision, at page 583 in paragraphs

18 & 19, it is observed and held as follows:

In the present case, the following facts cannot be disputed:

(i) The Petitioner is entitled to have the protection under Act 1 of 1996.

(ii) His mental condition which is certified by the Medical Board is an acquired disability while in service.

(iii) On account of the Medical Board's opinion, he was discharged (though the learned Government Advocate wanted to label it as a relief but the

Counter Affidavit speaks to the contrary) from service on account of mental disability.

(iv) The fact that he had applied for pension need not stand in the way of his claiming the relief of backwages from the date of disability till the date

of his superannuation.

(v) The action of the Respondents is clearly in contravention of Section 47 of the Act 1995.

19. In the light of the above facts, the Writ Petition is allowed with costs. The Respondents are directed to pay full salary to the Petitioner including

annual increments from the date of his relief till the date of his actual date of reaching the age of superannuation. While making such payment, the

pension paid during the relevant period can be adjusted against the amounts to be paid. The Respondents by their action had completely betrayed

their ignorance of the Act, 1995 and had made the Petitioner to run from Court

to Court. Therefore, it is a fit case for imposing costs on the

Respondents. Costs quantified at Rs. 5000/- towards legal fees which has to be paid to the learned Counsel for the Petitioner.

32. Besides the above, this Court, in the interest of justice, cites the following decisions:

(a) In the decision C. Shanmuganathan Vs. State, it is held as follows:

It is not clear as to why the respondents especially the Health Department was not even aware of the Central Act which has application to the

present case. When it is a matter of fact that the petitioner had disabled himself to discharge field duty and when he demanded some other position

where his service can be utilised, the respondents had illegally invoked the Pension Rules, which has no relevance in the present case. Even

otherwise, the said pension rule will have to give way to the provision of the Disabilities Act which is a Special law which holds the field since

1995.

(b) In the decision A. Marimuthu v. Tamil Nadu State Transport Corporation (Kumbakonam Division-IV) Ltd., rep. By its Managing Director, D.

No. 51/1, S. No. 216/2, A. Marimuthu Vs. Tamil Nadu State Transport Corporation (Kumbakonam Division-IV) Ltd., it is held as follows:

In the instant case, the petitioner, who is found to be suffering from colour blindness has been discharged on medical grounds and the stand of the

respondents that the requests of other employees, who were similarly placed as that of the petitioner had earlier been rejected and hence, the claim

of the petitioner could not be considered, cannot be sustained. Thus, considering the facts and circumstances of the case and in view of the

judgments of Supreme Court and other Courts, this Court holds that the petitioner herein is entitled for alternative employment and the rejection

made by the respondents by their impugned order is liable to be set aside and is accordingly set aside. The Court directs the respondents to

provide such alternative employment to the petitioner from the date of his discharge with pay protection, continuity of service and all other

attendant benefits for which he is legally entitled to, except back wages.

(c) In the decision of the Hon"ble Supreme Court in Syed Bashir-ud-din Qadri Vs. Nazir Ahmed Shah and Others, in paragraph 53 & 54, it is

held as follows:

53. It is only to be expected that the movement of a person suffering from cerebral palsy would be jerky on account of locomotor disability and that his speech would be somewhat impaired, but despite the same, the Legislature thought it fit to provide for reservation of 1% of the vacancies for such persons. So long as the same did not impede the person from discharging his duties efficiently and without causing prejudice to the children being taught, there could, therefore, be no reason for a rigid approach to be taken not to continue with the appellant's services as Rehbar-e-Taleem, particularly, when his students had themselves stated that they had got used to his manner of talking and did not have any difficulty in understanding the subject being taught by him.

54. Coupled with the above is the fact that the results achieved by him in the different classes were extremely good; his appearance and demeanour in school had been highly appreciated by the Committee which had been constituted pursuant to the orders of the High Court to assess the appellant's ability in conducting his classes.

Also, in the aforesaid decision, at page 885, in paragraphs 56 to 61, it is observed as follows:

56. In the aforesaid background of events, the disengagement of the appellant as Rehbar-e-Taleem by virtue of the order of the Chief Education Officer, Pulwama, dated 19th January, 2008, goes against the grain of the 1998 Act. Apart from the fact that the appellant is a victim of cerebral palsy, which impairs the movements of limbs and also the speech of a victim, there is nothing on record to show that the appellant had not been performing his duties as Rehbar-e-Taleem efficiently and with dedication. On the other hand, his performance as a teacher was reflected in the exceptionally good results that he achieved in his discipline in the classes taught by him.

57. It is unfortunate that inspite of the positive aspects of the appellant's functioning as Rehbar-e-Taleem and the clear and unambiguous object of the 1998 Act, the High Court adopted a view which was not compatible therewith. The High Court has dealt with the matter mechanically, without even referring to the 1998 Act or even the provisions of Sections 22 and 27 thereof. Instead, the High Court chose a rather unusual method in assessing the appellant's capacity to function as a teacher by calling him to

appear before the Court and to respond to questions put to him.

58. The High Court appeared to be insensitive to the fact that as a victim of cerebral palsy, the appellant suffered from a slight speech disability

which must have worsened on account of nervousness when asked to appear before the Court to answer questions. As has been submitted by Mr.

Gonsalves, the intimidating atmosphere in which the appellant found himself must have triggered a reaction which made it difficult for him to

respond to the questions put to him.

59. In our view, since the Committee constituted to assess his performance as a teacher notwithstanding his disability had formed a favourable

impression about him, his tenure as a Rehbar-e-Taleem ought to have been continued without being pitch-forked into a controversy which was

uncalled for.

60. We are convinced that the approach of the local authorities, as well as the High Court, was not in consonance with the objects of the 1998 Act

and scheme of the State Government to fill up a certain percentage of vacancies with disabled candidates, and was too pedantic and rigid. The

order of the High Court cannot, therefore, be sustained and has to be set aside.

61. The appeals, accordingly, succeed and are allowed. The impugned order of the High Court and that of the Chief Education Officer, Pulwama,

dated 19th January, 2008, disengaging the appellant from functioning as Rehbar-e-Taleem, are hereby set aside. Consequently, the authorities are

directed to allow the appellant to resume his functions as Rehbar-e-Taleem in the Middle School, Kanjinag, immediately upon communication of

this order with continuity of service from the date of his disengagement as Rehbar-e-Taleem. The period during which the appellant was

disengaged from his service as Rehbar-e-Taleem till the date of his resuming duty in such post shall not be treated as break in service and he shall

be entitled to all notional service benefits for the said period.

33. It is evident from the Concession Certificate for Orthopaedically Handicapped in respect of Appellant/Petitioner dated 26,09.2003 that the

Appellant/Petitioner has a loss of functional capacity viz., right sided Hemiplegia Dysarthric and this permanent disability has been assessed at

200%.

34. It is to be pointed out that an HOMO-SAPIEN'S life is Mike the beauty of sun rise or splendour of stars beyond the scale of monetary tape-measure".

35. At this stage, we worth recall the observation of Lord BLACKBURN in the decision *Livingstone v. The Rawyards Coal Company* [(1880) 5

AC 25], wherein, it is observed that "Where any injury is to be compensated by damages, in settling the sum of money to be given for reparation

of damages you should as nearly as possible get at that sum of money which will put the party who has been injured, or who has suffered, in the

same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation".

36. It is trite to state that it is quite impossible to equate the money with human sufferings or physical depravity. Also, no amount of payment of

backwages by the Respondent/Corporation can restore physical frame of the Appellant which has been shattered and battered. Moreover, in

cases of grave injury, where the body is wrecked or brain destroyed, it is an Himalayan Task to assess a just and fair compensation in monetary

terms, in the considered opinion of this Court.

37. As far as the present case is concerned, the Respondent/Transport Corporation have not contradicted the stand of the Appellant/Petitioner

that when he was on duty on 29.07.2002 a cyclist crossed the road, immediately to avoid accident, he applied sudden break and due to the

shock, he fainted. Also that he was taken to Royapettah Hospital and admitted as an inpatient. When he regained his conscience, the Doctor

diagnosed that the Appellant/Petitioner suffered stroke and shock which resulted in paralysis of his right side. Further, it was not in dispute that the

Appellant/Petitioner appeared before the Medical Board on 27.10.2010 and the Medical Board issued an unfit certificate for the post of Driver on

03.11.2010 to the Respondent/Management. Based on the unfit certificate, the Respondent/Transport Corporation issued an order on 31.12.2010

treating his disability to the post of Driver and posted the Appellant/Petitioner to work as Assistant (Non-Technical) at Adyar Depot, Chennai.

38. Indeed, the Chairman and Members of the Regional Medical Board, Institute of Non-Communicable Diseases and Government Royapettah,

Chennai, after examining the Appellant/Petitioner, gave an opinion on

01.02.2012, by certifying that he has weakness of all 4 limbs, Right more that Left with Pseudobulbar Palsy with Emotional Incontinence with Slurring speech due to Cerebro Vascular Disease (Stroke) involving Bilateral Corona Radiation of Brain with Hypertension and Diabetes mellitus. At present patient is in Bed Dependent existence and cannot do active productive work.

39. Even though the Respondent/Transport Corporation has taken a plea that there is no provision in the Persons with Disabilities [Equal opportunities, Protection of Rights and Full Participation] Act, 1995 to pay full backwages to the Appellant/Petitioner from 29.07.2002 till date of his superannuation, a reading of Section 47 of the Act unerringly point out that the Appellant/Petitioner, who acquired disability during his service, is very much protected and in this regard, we opine that the tenor and spirit of the ingredients of Section 47 are not directory in nature, per contra, they are mandatory in character, to be complied with bubbling enthusiasm, vigour and vitality. Therefore, we come to an irresistible conclusion that the Appellant/Petitioner cannot be either left in the lurch or in shambles along with his dependants [notwithstanding the fact that the Respondent/Transport Corporation permitted him to join in the alternate post of Helper [Non-ITI] as per order dated 31.12.2010. Further, it cannot also brush aside that the Appellant/Petitioner after suffering the disability on 29.07.2002, that too during his service, is in Bed Dependent existence and the medical opinion dated 01.02.2012 issued by the Chairman and Members of the Medical Board, Royapettah, Chennai categorically points out that the Appellant cannot do active productive worker and also even the second opinion of the Regional Medical Board, Government Royapettah Hospital, Chennai dated 03.11.2010 also confirmed that the Appellant/Petitioner is unfit to drive the bus as he has been suffering from weakness of the Right Upper limb and Right Lower limb on the basis of Neuromedical opinion.

40. When the contents of Section 47 of the Persons with Disabilities [Equal opportunities, Protection of Rights and Full Participation] Act, 1995 are unambiguous in nature and when the provisions of the said Act are very much applicable to the Respondent/Transport Corporation, then, the Appellant/Petitioner is entitled to reap the benefits of the welfare legislation to

his maximum advantage and therefore, he cannot be fastened with any order of removing from service or to dispose with the service or reduction in rank on the ground of his disability.

41. To put it succinctly, as per Section 47(1) of the Act when the Appellant/Petitioner is unfit for the post of Driver and later on when he has been provided with an alternative employment of Helper [Non-Technical], even in that capacity, he cannot turn out work in a production oriented fashion. Bearing in mind of the Appellant/Petitioner's disability and also that his contention is in Bed Dependent existence and cannot do active productive work, this Court, by advancing object of the Persons with Disabilities [Equal opportunities, Protection of Rights and Full Participation] Act, 1995 and serving its object, directs the Respondent/Transport Corporation to extend their statutory obligation as an Employer to protect the Appellant/Employee who has acquired disability during service, to pay full backwages from 29.07.2002 till date of his superannuation with all monetary benefits [less a sum of Rs. 5,51,026.80 paid, if any]. Viewed in that perspective, we also hold that the Learned Single Judge, in W.P. No. 1606 of 2011, is not correct in coming to the conclusion by directing the Respondent/Transport Corporation to pay backwages from September, 2008 onwards to the Appellant/Petitioner and treat the period of absence from 29.07.2002 till the date of reinstatement for all other purposes including for computing the length of service etc. except for monetary benefits and accordingly, sets aside the said order passed in the Writ Petition. When the Appellant/Petitioner is entitled to get protection u/s 47 of the Persons with Disabilities [Equal Opportunities, Protection of Rights and Full Participation] Act, 1995 (1 of 1996), then, we also hold that the impugned order dated 31.12.2010, passed by the 2nd Respondent/Transport Corporation denying backwages to the Appellant/Petitioner, is illegal in the eye of law and to prevent an aberration of Justice, we set aside the same. In the result, the Writ Appeal is allowed, leaving the parties to bear their own costs. The order passed by the Learned Single Judge, in W.P. No. 1606 of 2011 dated 18.08.2011, is hereby set aside for the reasons assigned by this Court in this Appeal. The Respondent/Transport Corporation is directed to pay full backwages with all monetary benefits to the Appellant/Petitioner till date of his

superannuation in the year 2016 [calculating the amounts so due and deducting the amount/amounts paid if any]. In this regard, it is also open to the Appellant/Petitioner to give his working sheet of amount due from the Respondent/Transport Corporation to the Management, if he so desires/advised. Consequently, connected Miscellaneous Petitions are closed.