
(1999) 12 MAD CK 0017

In the Madras High Court

Case No : Writ Petition No. 13408 of 1999

Ashok Kumar S.

APPELLANT

Vs

Presiding Officer and Another

RESPONDENT

Date of Decision : 13-12-1999

Acts Referred:

Citation : (2002) 4 LLJ 397

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

E. Padmanabhan, J.—The petitioner prays for the issue of writ of certiorarified mandamus calling for the records of the first respondent

principal Labour Court, Chennai, relating to award dated April 26, 1999, passed in I. D. No. 643 of 1995, quash the same and consequently

direct the second respondent to reinstate the petitioner in service with back wages, continuity and all attendant benefits.

2. This Court ordered rule nisi on August 6, 1999. The contesting respondent had entered appearance and also filed counter- affidavit.

3. Heard Ms. A Lakshmi for Mr. V. Prakash for the petitioner and Mr. R. P. Kabilan for the second respondent.

4. The petitioner was employed as a conductor in the erstwhile Pallavan Transport Corporation, since on reorganisation known as Metropolitan

Transport Corporation. According to the petitioner, on December 14, 1988, he sustained employment injury in an accident that arose out of and

during his employment, that the petitioner underwent treatment in the Government General Hospital, that the Medical Board examined him on

various dates and recommended that the petitioner should be given light work and that accordingly the petitioner was allotted desk work of clerical nature in the Saidapet depot from April 13, 1991 to January 26, 1994.

5. It is the further case of the petitioner that despite the said medical opinion the General Manager of the then Pallavan Transport Corporation

brushed aside the recommendation of the Medical Board and terminated the service of the petitioner on October 31, 1994, without any prior

notice, that the petitioner was relieved, that the petitioner raised an industrial dispute and that the Labour Court dismissed the industrial dispute.

Challenging the same, the present writ petition has been filed.

6. The second respondent in his counter admitted that the petitioner was appointed as a conductor on daily wages on August 1, 1985, and

absorbed with effect from August 1, 1986, that the petitioner complained that he had sustained injury during the employment and requested for

light ditty, that the petitioner did not inform the respondent about the injury sustained in the course of employment on March 3, 1989 itself nor he

had made any complaint to anyone regarding the alleged injury sustained by him on March 3, 1989, that the petitioner was directed to appear

before the Medical Board, that the Medical Board reported that the petitioner is temporarily unfit to work as a conductor for a period of six

months in each of its three reports, that in the light of the said report the petitioner was provided with a light duty from June, 1992 to January,

1994, on humanitarian grounds, that once again the Medical Board was requested to assess the fitness of the petitioner to do the job of conductor,

that on September 16, 1994, the Medical Board reported that the petitioner is not fit for any post which involves prolonged standing or walking

and the petitioner may be given alternative job of sedentary in nature (desk job), that based on the Medical Board's report, the petitioner was

discharged from service, vide memo dated October 31, 1994, after giving a month's salary, that as per the guidelines issued in G.O. Ms. No. 746

Transport Department dated July 2, 1981, employees who were discharged from service on medical grounds are entitled only for alternate job as

a fresh entrant depending upon their educational qualifications and physical fitness.

7. It is the further case of the respondent that it was decided to appoint him as

helper, that the petitioner was directed to appear before the Deputy Manager (Personnel) of the respondent-Corporation to verify the certificates, that the petitioner did not appear on the date fixed, that he was directed to appear before the Deputy Manager (Personnel) by letters dated April 29, 1995, November 7, 1995, and January 9, 1996, that the petitioner did not appear, despite several opportunities given to him, that in view of the said attitude the respondent could not provide him alternate employment, that having failed to respond the writ petitioner raised an industrial dispute stating that he is entitled to back wages from date of removal, namely, January 27, 1994, till the date of reinstatement in alternative clerical duties, besides leave salary, etc., that the industrial dispute was dismissed on the ground that the petitioner was offered an alternative job of non-ITI helper as a fresh entrant and as the petitioner did not report to duty, the non-employment of the petitioner cannot be said to be unjustifiable and that being aggrieved the present writ petition has been filed.

8. Mr. R. P. Kabilan, counsel for the respondent, vehemently contended that no interference is called for and prayed for dismissal of the writ petition. The impugned proceedings of the Labour Court is ex facie liable to be set aside on the admitted facts in the light of the latter pronouncement of the Apex Court. The petitioner was admittedly appointed as a conductor which post he had been holding permanently. The petitioner sustained injury during the course of employment and the petitioner underwent treatment and despite such treatment he is unfit to do the job of a conductor and that for such injury the Medical Board reported that the petitioner may be given an alternate job. The petitioner was discharged from service which action is prima facie illegal as it is the bounden duty of the respondent to assign alternate duty, while protecting the pay of the petitioner.

9. On the other hand relying upon a Government Order, the respondent had terminated the service of the petitioner and thereafter called upon the petitioner for fresh alternate employment. This approach of the respondent can neither be appreciated nor it could be sustained in the light of the latter pronouncement of the Apex Court in Narendra Kumar Chandla Vs. State of Haryana and others, where the Apex Court held that under

identical circumstances an employee cannot be thrown out that the employee has to be given light duty or alternate duty, which may suit his health

conditions and that he should be given pay protection also. The approach of the Labour Court on the face of it cannot be sustained. The Labour

Court proceeded on the assumption that when once alternate employment is offered the employee cannot successfully challenge the order of

discharge or termination. Such an approach is also *ex facie* illegal. The attention of the Labour Court had not been drawn to the decision of the

Apex Court.

10. The contention raised in the writ petition is covered by the pronouncement of the Apex Court relied on by the petitioner. Mr. R. P. Kabilan

learned counsel points out that as per the State Government directions alternate employment suitable to the physical condition had to be given as a

fresh appointment. This contention of Mr. R.P. Kabilan, learned counsel cannot be sustained in view of the pronouncement of the Apex Court in

Narendera Kumar Chandla v. State of Haryana, (*supra*) wherein it has been held thus:

Article 21 protects the right to livelihood as an integral facet of right to life. When an employee is afflicted with unfortunate disease due to which,

when he is unable to perform the duties of the post he was holding, the employer must make every endeavour to adjust him in a post in which the

employee would be suitable to discharge the duties as a carrier attendant is unjust. Since he is a matriculate, he is eligible for the post of L.D.C.

For L.D.C apart from matriculation, passing in typing test either in Hindi or English at the speed of 15/30 words per minute is necessary. For a

clerk, typing generally is not a must. In view of the facts and circumstances of this case, we direct the respondent Board, to relax his passing of

typing test and to appoint him as L.D.C. Admittedly, on the date when he had unfortunate operation, he was drawing the salary in the pay scale of

Rs. 1,400-2,300. Necessarily therefore, his last drawn pay has to be protected. Since he has been rehabilitated in the post of L.D.C. we direct the

respondent to appoint him to the post of L.D.C. protecting his scale of pay of Rs. 1,400-2,300 and direct to pay all the arrears of salary.

The above pronouncement of the Apex Court squarely applies to the facts of the present case. That apart, learned counsel for the writ petitioner

also relied upon an order passed by this Court in respect of another State Transport Corporation wherein directions have been issued. Following the judgment of the Apex Court. I had occasion to consider two other identical cases and following the pronouncement of the Apex Court reliefs were granted.

11. The contentions raised by Mr. R. P. Kabilan learned counsel for the respondent who was vociferous cannot be sustained. In the light of the above pronouncement of the Apex Court after restoration to duty the petitioner should have been taken back to duty with continuity of service by assigning light ditty commensurate with the physical conditions, with pay protection. In the light of the said pronouncement, the G.O. relied upon by learned counsel for the respondent is of no avail. To the show-cause notice, the petitioner at the earliest represented that he may be given an alternate lighter duty and as he is not suitable for the job of conductor in view of the disability incurred due to injury sustained during employment.

12. It was contended by Mr. R. P. Kabilan that the petitioner had declined to join when he was called for an interview for an alternate employment. This contention also is misconceived as it is incumbent on the part of the employer to provide continuity in employment with the protection of pay while allotting light duty as has been held by the Apex Court.

13. In the circumstances the writ petition is allowed. The impugned award of the first respondent-Labour Court is quashed and also the order of discharge passed by the second respondent on January 27, 1994, and direct the second respondent to reinstate the petitioner and allot him lighter duty or such other stationary job as may be suitable to his health conditions but subject to payment of the scales of pay which he had been drawing as a conductor and also pay one half of all the arrears payable between January 27, 1994, and till reinstatement within three months from today.

The second respondent is given two months time to reinstate the petitioner and disburse all benefits.