

(2009) 04 MAD CK 0275

In the Madras High Court

Case No : Writ Petition No. 19403 of 2007 and M.P. No. 1 of 2007

D. Pushparaj

APPELLANT

Vs

Tamil Nadu Transport Corporation

RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 30, 30(1), 30(3), 31, 32

Citation : (2009) 123 FLR 517

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : R.T. Shyamala, for the Appellant; Rita Chandrasekaran, for the Respondent

Final Decision : Allowed

Judgement

S. Nagamuthu, J.—"Whether a physically challenged person, possessing a valid Conductor's licence under the Motor Vehicles Act, can be denied employment in a State Transport Corporation, on the ground of physical deformity ?". "No". This is precisely the contention of the petitioner in this writ petition.

2.The petitioner is admittedly a physically challenged person having 60% of disability. He possess Conductor's licence issued u/s 30 of the Motor Vehicles Act, and he registered the same in the local employment exchange. On an employment notification issued by the respondent State Transport Corporation, the local employment exchange sponsored the name of the petitioner for the post of Conductor along with many other candidates. But, the respondent did not send call letter to him. When he enquired about the same, he was informed that since he is physically challenged, he cannot be given employment as Conductor as per the Regulation of the respondent Corporation. In those circumstances, the petitioner has come forward with this writ petition for appropriate relief.

3. In the counter filed, inter alia, it is stated by the respondent that as per Rule 59 of the Regulations of the respondent Corporation, a candidate must be free

from any physical deformity and in the case of the petitioner, since he suffers from physical deformity measuring 60%, he was rejected. It is further contended that the job of a Conductor involves frequent movement inside the Bus and out side, it cannot be performed by the petitioner. Lastly, it is contended that as against the quota reserved for physically challenged, already several persons were appointed and as of now, there is no vacancy under the said quota.

4. I have considered the rival submissions.

5. Admittedly, the petitioner possess a Conductor's licence which means he is qualified to hold the said licence. Section 31 of the Motor Vehicles Act, which deals with disqualification for the grant of Conductor's licence and Section 32 which deals with revocation of a Conductor's licence on grounds of disease or disability are as follows:

31. Disqualification for the grant of Conductor's licence.-

(1) No person under the age of eighteen years shall hold, or be granted, a conductor's licence.

(2) The licensing authority may refuse to issue a conductor's licence

(a) If the applicant does not possess the minimum educational qualification;

(b) If the medical certificate produced by the applicant discloses that he is physically unfit to act as a conductor; and

(c) If any previous conductor's licence held by the applicant was revoked.

32. Revocation of a conductor's licence on grounds of disease or disability:

A conductor's licence may at any time be revoked by any licensing authority if that authority has reasonable grounds to believe that the holder of the licence is suffering from any disease or disability which is likely to render him permanently unfit to hold such a licence and where the authority revoking a conductor's licence is not the authority which issued the same, it shall intimate the fact of such revocation to the authority which issued that licence.

6. While making an application for conductor's licence, u/s 30(3) of the Act, the applicant is required to submit a medical certificate signed by a registered medical practitioner and from out of the said certificate, if the authority is satisfied that he is physically unfit to act as a conductor, then the competent authority shall refuse to issue licence u/s 30(1) of the Act. If any person who is already possessing a conductor's licence suffers from any disability or disease, which is of such a nature to render him permanently unfit to hold such a licence, the same may be revoked. From the above provisions, it could be understood that whether a person is qualified to possess a Conductor's licence or not is a matter to be decided only by the competent authority under the Motor Vehicles Act. On getting satisfied that the deformity as disclosed from the medical certificate will not deter him to act as a Conductor, if once, the authority has

issued the licence, then, it cannot be stated by any other authority that he is not entitled to be appointed as a Conductor on the ground of physical unfitness.

7. In the case on hand, since the physical fitness of the petitioner is seriously disputed by the respondent, this Court directed the petitioner to be present before this Court today and accordingly, he is present. This Court is able to see that the petitioner, except exhibiting mild limping, walks freely and steadily. In the opinion of this Court, the petitioner can very effectively discharge the functions of a Conductor as it is done by any other conductor with no physical deformity.

8. The learned Counsel for the respondent relies more on Rule 59 of the Regulations of the respondent Corporation which states that a candidate must be free from any physical deformity. This Rule does not define the term "physical deformity". It cannot be blindly construed that any form of physical deformity would be a disqualification for appointment as conductor. Such a construction, in my considered opinion, would surely cause violence to the right of equality guaranteed under Article 14 of the Constitution of India. The term "physical deformity" as stated in Rule 59 should receive contextual interpretation. Such physical deformity which would deter the physically challenged from functioning as conductor alone will be a disqualification and not every deformity as it is claimed by the respondent. Therefore, Rule 59 does not in any way help the respondent to advance the case.

9. At this juncture, it would be worthwhile to mention about the rights of the physically challenged. Giving employment to the physically challenged is neither out of grace nor out of any sympathy but only to honour the right guaranteed to them under Article 14 of the Constitution of India, which speaks of equality. When a physically challenged person and a person blessed with no physical challenge can equally perform a particular job, I do not find any legal justification to decline to treat them alike. In the context of Article 14 of the Constitution of India, they are equals and so, they should be treated alike in the matter of public employment. In the case on hand, the respondent has rejected the petitioner only on the ground that he is physically challenged which in my considered opinion, is not only violative of Article 14 of the Constitution of India but it would certainly injure the dignity, feelings and sentiments of the individual.

10. As a proactive measure, to keep them in the mainstream, the Parliament enacted the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. As could be seen from the object of the Act, it is an act to give effect to the proclamation on the full prospective and equality of the people with disabilities in the Asian and Pacific regions. As per the decision taken in the meeting convened by the Economic and Social Commission for Asian and Pacific held at Beijing, on first to fifth December 1992, the parliament has in its wisdom, with a view to declare and protect the rights of the physically challenged persons in tune with the UN Convention has enacted the said Act. u/s 32 of the Act, it is for the appropriate Government to identify the posts in the

establishments which could be reserved for the persons with disability. But, according to the learned Counsel for the respondent, the post of the Conductor in a State Transport Corporation has not been identified u/s 32 of the Act, by the Government of Tamil Nadu and so, according to her, the petitioner is not entitled for the benefits of the Act.

11. Even after 14 years of the advent of the said Act, if it is the fact that the State Government has not identified the post of Conductor for the purposes of this Act, in my considered opinion, it needs the immediate attention of the Government. Therefore, I deem it appropriate to suggest to the Government to look into this and pass appropriate orders in this regard as required u/s 32 of the Act.

12. In the instant case, though the prayer of the petitioner is to consider him under the disabled quota, in my considered opinion, even by putting him in the general quota, he is eligible for being appointed as Conductor as it is not the case of the respondent that under the general quota or for other reasons, he is not eligible for being appointed.

13. In view of all the above, the writ petition is allowed and the respondent is directed to issue appointment order to the petitioner within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.