

(2009) 10 MAD CK 0257
In the Madras High Court
Case No : Writ Petition No. 29628 of 2008

E. Mancharan

APPELLANT

Vs

The General Manager Tamilnadu State Transport Corporation
Ltd. (Coimbatore Division)

RESPONDENT

Date of Decision : 24-10-2009

Acts Referred:

Constitution of India, 1950 — Article 12
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 32, 47

Citation : (2009) 10 MAD CK 0257

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Ayyathurai, for the Appellant; Kanagaraj, for the Respondent

Judgement

K. Chandru, J.—The petitioner was employed as Assistant Tradesman and attached to Tiruppur Depot of the respondent Transport Corporation. The respondent is a State Company and also a State within the Article 12 of the Constitution of India.

2. The petitioner suffered a heart attack and underwent heart surgery. Because of his absence during the period of surgery, a departmental enquiry was also filed against the petitioner. The petitioner in view of his heart condition sought for a light work. When the same was not granted, he moved this Court being W.P. No. 5893 of 2002. This Court by an order dated 26.2.2002 directed the respondent to consider his representation for allotment of light work.

3. The respondent by an order dated 10.4.2002 rejected his request for light work. The petitioner challenged the same by way of W.P. No. 23488 of 2002. This Court dismissed the said Writ Petition by an order dated 2.7.2002, accepting the contention that like the petitioners, there are many other employees who also made similar claims and it is not possible to provide light work to them and that will cause great financial constrain to the respondent Corporation.

4. Thereafter the petitioner was sent for opinion by the Medical Board before the Coimbatore Medical College Hospital. The Medical Board communicated its opinion by its order dated 11.9.2002 informing the respondent that the petitioner was unfit to do any mechanic or manual work and the Board also recommended, providing light work to the petitioner.

5. However, based upon the opinion, the respondent Corporation discharged the petitioner from service, despite the fact that he had rendered more than 20 years of service. As against the said order dated 27.10.2003, the petitioner once again came to this Court by way of Writ Petition being W.P. No. 10316 of 2004 seeking to challenge the order dated 27.10.2003 and for a consequential direction to the respondent to reinstate the petitioner with all benefits including provision of light work to the petitioner. The said Writ Petition came to be dismissed by this Court by an order dated 27.9.2004. (emphasis added).

6. The petitioner moved the Division Bench with Writ Appeal No. 3725 of 2004 seeking to set aside the order passed by this Court. The Division Bench allowed the Writ Appeal and in paragraph 6 of the order held as follows:

6. But, the learned Single Judge, without considering the case in its proper perspective, has arrived at a wrong conclusion to dismiss the Writ Petition filed by the appellant herein. Therefore, following the above judgment of the Apex Court and that of the Division Bench of this Court, the order of the learned Single Judge is set aside and this writ appeal stands allowed. The respondent is directed to provide light work to the petitioner/ appellant within twelve weeks from the date of receipt of a copy of this judgment. No costs.

7. Pursuant to the direction given by the Division Bench, the respondent by a proceedings dated 3.11.2007 directed the petitioner to report for work before the Selection Grade Assistant Manager (Service Group No. I). Accordingly, the petitioner returned for work and has been working in the Corporation since 14.11.2007. After reporting for work, the petitioner claimed salary for the period from 1.10.2001 to 14.11.2007 on the basis of the order passed by this Court. When that was not forthcoming, he has once again filed the present Writ Petition being W.P. No. 29628 of 2008 seeking for a direction to refix his salary with effect from 1.10.2001 and to pay the arrears of salary in terms of Section 47 of the persons with disabilities (Equal opportunities protection of rights and full participation) Act 1995.

8. Notice was issued to the respondent on 16.12.2008. Mr. Kanagaraj appears for the respondent. The contention raised by the respondent Corporation was that they have already implemented the orders of the Division Bench. The order of the Division Bench is silent with reference to the back wages. He further submitted that if a person suffered heart ailment, which led him into surgery, that cannot be considered as a disability in terms of the aforesaid Act. Lastly the learned Counsel submitted that if the present claim is allowed, there is a huge number of persons waiting for making similar claim.

9. The contention raised by the respondent is no longer *res integra*. The Division Bench of this Court presided by S.J. Mukhopadhyaya, J., vide decision in *K. Ganesan Vs. The Managing Director, Metropolitan Transport Corporation Chennai, Limited*, considered all these aspects and followed the previous Division Bench judgment of this Court. The contention that the disability is not referable to Section 2(i) of the Act was also rejected in paragraph 13, which reads as follows:

13. From a plain reading of Section 2(i) and (t) and the decision of the Courts as referred to above, it would be evident that distinct and different definitions have been given for "disability" and "person with disability". It will be further evident from Chapters VI and VIII of the Disabilities Act, 1995 that while Chapter VI deals with "employment" and Section 32 relates to "identification of posts which can be reserved for persons with disabilities", Chapter VIII relates to "non-discrimination" and Section 47 deals with "non-discrimination in Government employment", if an employee, after acquiring disability, is not suitable for the post. Therefore, while Section 32 talks of the post for which "persons with disabilities" are entitled for "employment", Section 47 deals with the post to which the employee is "not suitable for the post after acquiring disability", which may be confined to the meaning as defined u/s 2(i), for the purpose of Chapter VI for the initial stage of employment in a service, such disability cannot be confined within the range aforesaid, if an employee is found not suitable for the post after acquiring disability. This is the reason the Division Bench of this Court in the case of *G. Muthu v. Mgmt. of T.N. State Transport Corpn., (Madurai) Ltd.*, (supra) while noticing Section 2, which states, "unless the context otherwise requires", came to a conclusion that "... the term 'disability' used in Section 47 can draw support not only in respect of the defined 'disabilities' as contained in Section 2(i) of the Act, but will also encompass such other 'disabilities' which would disable a person from performing the work which he held immediately prior to acquisition of such 'disability' and thereby entitle him to avail the benefits conferred under the said provision for having acquired such a 'disability'".

10. Even the flood-gate theory advanced by the respondent's counsel was also considered after referring to the earlier judgment in *G. Muthu Vs. The Management of Tamil Nadu State Transport Corporation (Madurai) Ltd.*, .

11. The last contention raised by the respondent that there was no direction by the Division Bench cannot be countenanced by this Court. In fact, the Division Bench of this Court by its final order dated 11.7.2007 has allowed the Writ Appeal and the order of the learned Single Judge was set aside. This only means that the Writ Petition filed by the petitioner being W.P. No. 10316 of 2004 is allowed, wherein the petitioner has sought for reinstatement with all benefits including provision of light work to the petitioner. Therefore, the Division Bench by allowing the Writ Appeal has virtually ordered the prayer made by the petitioner in W.P. No. 10316 of 2004. With reference to the operative portion, the Division Bench has only provided 12 weeks time for the respondent Corporation to implement the order. That alone is not the decretal portion of the Division

Bench order.

12. In the light of the above, the Writ Petition will stand allowed. However, Mr. Kanagaraj, learned Counsel for the respondent stated that in the Ganesan's case cited supra, the Division Bench has allowed only 50% of the back wages, whereas the petitioner presently seeks for full back wages and therefore the learned Counsel placed reliance upon para 18 of the said judgment, which is as follows:

So far as the intervening period is concerned, though it will be counted for all purposes including seniority, employment, fixation of pay, etc, but we allow only 50% of the wages/salary for the intervening period (i.e., from the date of discharge upto the date of this judgment) to be paid in favour of the appellant/writ petitioner within one month from the date of receipt or production of a copy of this judgment, failing which, the respondent-Transport Corporation shall be liable to pay interest @ 9% from the date of this judgment till the amount is paid in favour of the appellant-writ petitioner, along with costs of Rs. 10,000/-.

Therefore, he contends that a similar direction can be given, if the Court is inclined to agree with the petitioner. Though Mr. S.Ayyathurai, learned Counsel for the petitioner vociferously contended that this Court cannot dilute the provisions of the Parliamentary enactment, this Court is not inclined to order full back wages and is willing to follow the course adopted by the Division Bench in Ganesan's case cited supra. In the light of the same, similar direction is given to the respondent Corporation to pay 50% of the back wages for the period from 1.10.2001 till 14.11.2007 together with interest at the rate of 9% per annum. However, the entire period of interregnum will be counted for all purposes including seniority, fixation of pay and other terminal benefits. The respondent Corporation is directed to implement the order within a period of two months from the date of receipt of this order without fail. Since the petitioner has been litigating and has filed more than 5 cases, as per the order of the Division Bench in Ganesan's case cited supra, cost of Rs. 10,000/- will be paid to the petitioner towards counsel's fee. The Writ Petition is allowed to the extent indicated above. No costs. The connected Miscellaneous Petition stands closed.