

(2010) 09 MAD CK 0225

In the Madras High Court

Case No : Writ Petition (MD) No's. 1374 and 1969 of 2007, 10838 of 2008, 461 of 2009 and M.P. (MD) No's. 1 of 2007, 1 of 2008, 1, 1, 2, of 2009

G. Balakrishnan

APPELLANT

Vs

The Tamil Nadu State Transport Corporation
B.
Rajendran Vs State Express Transport Corporation Ltd.

A. Francis Vs The Managing Director, Tamil Nadu State
Transport Corporation Ltd.
N. Subramaniyan Vs The
General Manager, Tamil Nadu State Transport Corporation
Ltd.

RESPONDENT

Date of Decision : 27-09-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 18(1)
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full
Participation) Act, 1995 — Section 47

Citation : (2010) 09 MAD CK 0225

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : N. Sundareshan for Sun Associates in W.P. MD. 1374/2007, Kumarichelvan Bosco, in W.P. MD No. 1969 of 2007, G. Karnan, in W.P. MD No. 10838 of 2008, T. Selvan, in W.P. MD No. 461 of 2009, P. Ganapathi Subramanian, in W.P. MD No. 5026 of 2009 and K. Murugesan, in W.P. MD No. 5147/2009, for the Appellant; M. Prakash in W.P. (MD).1374/2007 and 461 of 2009, P. Jessi Jeevapriya in W.P. (MD) No. 1969 of 2007 and P. Thilakkumar in W.P. (MD) No. 10838/2008 and W.P. (MD) Nos. 5026 and 5147 of 2009, for the Respondent

Judgement

K. Chandru, J.—The Petitioners who are workers of the Respondents wholly owned transport corporation have come before this Court to assert their legal rights in terms of the provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short 1995 Act).

2. Despite the fact that the Parliament had enacted legislation as early as in the

year 1995 and recognised the right of persons with disabilities and have statutorily protected their right to continue in employment notwithstanding an acquired disability, the Transport Corporation because of its insensitiveness to their problems have driven their workers to this Court to file case after case for securing their right. Even the State Government recognizing the importance and sensitivity needed over the issue, had created a separate department for Differently Abled Welfare Department. But unfortunately, the State owned Transport Corporation, whose employees are faced with occupational hazards of facing numerous accidents and acquire disabilities while in employment, have not come up with any concrete proposals to redress the grievances of employees by creating a mechanism of their own.

3. After finding the plight of the workers who are forced to spend their hard earned money and wait eternally in the time consuming litigative exercise, this Court by its order, dated 27.09.2010 in W.P.(MD) No. 11631 of 2009 gave a direction to the Respondent which is as follows:

5. The Corporation must realize its social responsibilities as well as the welfare of the workers in dealing with such cases. The Corporation should immediately constitute a Special Cell relating to disabled workmen, comprising higher level officers to consider such grievances on day-to-day basis rather than making the workers to come to this Court on each occasion and spend years together for getting relief, which is guaranteed to them under the 1995 Act. This will avoid unnecessary hardship besides saving money for the workmen on costly litigation. The Managing Director shall set in his affidavit the steps to be taken in this regard. He is not expected to just deal with the present case alone.

The Transport Corporation is yet to come up with any useful proposal. The Standing Counsel for the Corporation informed that a Board meeting will have to be convened which may be only in December, 2010. This is hardly expected of a public sector company which must have a Corporate responsibility atleast for its own workers. Therefore, these writ petitions in which common grievances were raised were grouped together and a common order is being passed.

4. Before delving on the legal issues, it is necessary to deal with the facts of each case. It is also rather unfortunate that in all these writ petitions, though Respondents have been served, they have not come forward to file counter affidavits except in three cases. This would show the attitude of the Transport Corporation is not only being indifferent, but also utterly irresponsible.

5. In W.P.(MD) No. 1374 of 2007, when the Petitioner was working as an Assistant, he had a problem with his eyesight. He was directed to be sent for a medical checkup by the Medical Board. The Medical Board reported that due to poor vision in both eyes, he is unable to discharge his duties as an Assistant. Based upon the said report, a show cause notice, dated 18.1.2002 came to be issued as to why he should not be discharged on medical grounds. The Petitioner unaware of his legal right, gave a letter, dated 25.1.2002 accepting his medically

discharge. Subsequently, he objected to his medically discharge on illegal grounds. Hence he has come forward to file the present writ petition. The Petitioner claimed that he has service till 31.12.2013 and there was no ground for discharging him from service.

6. Notice of motion was ordered on this writ petition. On notice, the Respondent has filed a counter affidavit, dated 02.04.2007. The stand of the corporation was that they did not compel or threaten the Petitioner to agree for discharge. The Petitioner himself requested providing for an employment to his sons. Hence the present objection on his discharge was invalid and an after thought.

7. In W.P.(MD) No. 1969 of 2007, the Petitioner was working as a Driver and has put in 20 years of service. When he was driving a bus from Senkottai to Chennai, the bus met with an accident and he suffered grievous injuries. After undergoing treatment on medical leave, he was given light duty from 24.4.1994 to 1.1.1997 in the same scale of pay. Thereafter, he was terminated from service on the basis of the opinion of the Medical Board by an order, dated 20.03.1997. Subsequently, on being represented, by an order, dated 17.7.1997, he was given an appointment as an helper without any back wages and as a new entrant with lower scale of pay. He sent a representation, dated 8.1.2007. But when there was no reply, he has filed the writ petition. It was claimed that the new employment was given based on the settlement u/s 18(1) of the Industrial Disputes Act. Though notice was motion was ordered as early as on 28.3.2007, no counter affidavit has been filed.

8. In W.P.(MD) No. 10838 of 2008, the Petitioner was employed as a Driver. While he was on duty on 12.5.2007, he was beaten by some anti-social elements with deadly weapons and he was physically immobilized. On a complaint given by him, a criminal case was registered. He was also admitted to the hospital. Thereafter, he was directed to appear before the Medical Board. On the basis of the opinion of the Medical Board, he was discharged from service. Though the Petitioner requested for an alternate employment, the same was not given. He had also moved the Workmen Compensation Commissioner with W.C. Case No. 381 of 2002. The Commissioner had awarded compensation of Rs. 94,589/- for the injury sustained by him. An appeal was filed by the Corporation in CMA No. 1917 of 2004 before this Court and the same is pending. Subsequently, he made a representation. He was informed that since the CMA was pending, his request cannot be considered. Thereafter, he filed the present writ petition asserting his right in terms of 1995 Act. Though in the writ petition, notice was ordered on 27.11.2008, the Respondent has not filed any counter affidavit.

9. In W.P.(MD) No. 461 of 2009, the Petitioner was working as a Conductor. During the month of November, 2007, he met with an accident and he could not immediately join duty. He had to undergo a surgery due to minor disability. Despite attended the interview and on being successful, he was not given any appointment. Notice of motion was ordered on the writ petition on 23.7.2009. Pending the writ petition, no relief was given. In the meanwhile, the Respondent

has filed a counter affidavit, dated 25.10.2008. It was stated by them that since the Petitioner had suffered 40% disability in the right hand, he was unfit for reporting duty. Subsequently, the medical officer certified that he suffered 26% disability. A letter of the Government, dated 1.6.1990 stated that a person who is physically disabled is not eligible to get posted as a Conductor. Even under the common service rule, the Conductor must be free from any physical deformity. In the typed set of documents, they produced a copy of the appointment order, dated 6.8.2007 given to the Petitioner. The medical officer had merely certified that he was temporarily unfit as he is unable to flex the four fingers in the right hand.

10. In W.P.(MD) No. 5026 of 2009, the Petitioner was working as a Driver. During the year 2005, he was sent for checkup by the Medical Board at Tiruchirappalli. The Medical Board certified on 30.8.2005 that h was unfit to drive the heavy vehicle. Therefore, a show cause memo, dated 20.7.2006 was given to him. The Petitioner gave an explanation dated 25.7.2006 requesting to provide an alternate employment even though he is fit to drive the heavy vehicle. But, however, by the impugned order, dated 31.7.2006, his services were terminated. Hence he is before this Court. Notice of motion was ordered on 19.6.2009.

11. On notice from this Court, the Respondent had filed a counter affidavit, dated 23.9.2010. In the counter affidavit, in paragraphs 4 and 5, it was averred as follows:

4.I submit that the Petitioner had crossed 40 years of age, and he was directed for periodical eye test before the Medical office. The Medical officer has examined the Petitioner and opined that the Petitioner was not fit for the post of driver and the Petitioner was referred to the Regional Medical Board, Trichy for fitness of Eye and the Board opined that the Petitioner was not fit to continue as driver post due to colour vision defect in his Eyes.

Transport Corporation functioning under the Government of Tamil Nadu operating vehicles in the interest of the travelling public. As the Petitioner was a driver, he should have clear eye sight for driving the vehicle and as he was found to be suffering from colour vision by the Medical Board and as it was unsafe to allow him to drive vehicle and hence he was served show cause notice as to why he should not be discharged on Medical grounds. As the reply submitted by the Petitioner was not satisfactory, the Petitioner was discharged on Medical grounds on 31.07.2006 vide ref.TNSTC/PDK/Sadu/D3/540, dated 31.07.2006.

5.I submit that colour blindness is neither a disability nor an acquired are in the course of employment or due to employment. The relevant Act providing for alternative employment does not apply to the case of the Petitioner. There is no right much less legal subsisting in favour of the Petitioner to claim alternative employment.

12. In W.P.(MD) No. 5147 of 2009, the Petitioner was working as a driver. He met with an accident in the course of his employment. He was directed to appear

before the Medical Board at Thoothukudi. The Medical Board by a report dated 22.1.1999 certified that he was not fit enough to do the duties of driver. A show cause notice, dated 27.2.1999 was given to him asking him as to why he should not be discharged from service on account of disablement. The Petitioner sent a reply, dated 17.3.1999. However, notwithstanding his request for an alternate employment, by the impugned order, dated 10.5.1999 he was discharged from duty. Till date, he was not given any alternate employment. He also appeared before the Committee on 16.7.2008. Though he was assured of an alternate employment, till date he has not been provided any alternate employment. Notice of motion was ordered on 23.6.2009. But, the Respondent has not filed any counter affidavit.

13. In the light of the above, it has to be concluded that the averments made by the Petitioners are not contradicted. The Petitioners are entitled to the benefit of 1995 Act. The legal issues raised in these writ petitions are no longer res integra. Several division bench of this Court have consistently held that in case of disability, even for acquired disability, those persons have protection u/s 47 of the 1995 Act. It is necessary to refer to the following decisions which are as follows:

- a) G. Muthu v. The Management of Tamil Nadu State Transport Corporation (Madurai) Ltd., rep. By its Managing Director, Bye-pass Road, Madurai-10 reported in 2006 (5) CTC 413.
- b) K. Ganesan Vs. The Managing Director, Metropolitan Transport Corporation Chennai, Limited, .
- c) S. Raghuraman v. Union of India (UOI) rep. by the General Manager, Integral Coach Factory and Ors. reported in 2009 (1) CTC 668.

14. In the light of these judgments, the following propositions emerge:

- a) 1995 Act squarely applies to the Respondent Corporation.
- b) In case of any disability after employment, including acquired disability, the workers are entitled to have the protection u/s 47 of the Act.
- c) The alternate employment to be given cannot be as fresh entrant or in a lower scale of pay. But the salary and status of the workers will have to be protected while granting an alternate employment.
- d) A worker even if agrees by a settlement, such settlement is invalid in the light of the non obstante clause found under 1995 Act.
- e) When a worker by ignorance of his right agrees to go on medical invalidation, his ignorance cannot be taken advantage of by the Corporation.

15. In this context, it is necessary to refer to a judgment of the Supreme Court in Bhagwan Dass and Another Vs. Punjab State Electricity Board, . The observations made by the Supreme Court is squarely applies to the case of the

Petitioner in W.P.(MD) No. 1374 of 2007. The relevant passages found in paragraphs 6, 17 to 20 may be usefully extracted below:

6. In view of Section 47 of the Act and the circulars issued by the State Government and the Board it is clear that notwithstanding the disability acquired by the Appellant the Board was legally bound to continue him in service. But on behalf of the Respondent it is stated that the disabled employee himself wanted to retire from service and, therefore, the provisions of Section 47 had no application to his case. Here it needs to be made clear that at no stage any plea was raised that since the Appellant was declared completely blind on 17-1-1994 he was not covered by the provisions of the Act that came into force on 7-2-1996. Such plea cannot be raised because on 7-2-1996 when the Act came into force the Appellant was undeniably in service and his contract of employment with the Board was subsisting. His case was, therefore, squarely covered by the provisions of the Act.

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. The only material on the basis of which the officers of the Board took the stand that the Appellant had himself made a request for retirement on medical grounds was his letter dated 17-7-1996. The letter was written when a charge-sheet was issued to him and in the letter he was trying to explain his absence from duty. In this letter he requested to be retired but at the same time asked that his wife should be given a suitable job in his place. In our view it is impossible to read that letter as a voluntary offer for retirement.

18. Appellant 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 officers concerned of the Board, to our mind, was deprecable.

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 or 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 21-3-1997 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 22-3-1997 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.

16. In the light of the above factual matrix and the legal precedents, all writ petitions will stand allowed with costs. The Respondents are hereby directed to give effect to this order within a period of eight weeks from the date of receipt of copy of this order without fail.

17. This Court is constrained to order cost because the Transport Corporation is not only insensitivity to the cases on hand, but inspite of the clear mandate by a Parliamentary Law, they had driven their employees to move this Court when there is no warrant for driving them to do so. The issues raised in these writ petitions have been answered in numerous writ petitions and writ appeals by this Court. There are several decisions of the Supreme Court on those issues. Hence cost of Rs. 5000/- (Rupees five thousand only) is ordered in each of the writ petition payable by the Respondent Corporation to the Counsel for the Petitioners. Consequently connected miscellaneous petitions stand closed.