

**(2008) 03 MAD CK 0017**

**In the Madras High Court**

**Case No :** W.A. No. 1109 of 2006 and M.P. No. 1 of 2006

G.M., T.N. State Transport Corporation Ltd.

APPELLANT

Vs

Udayasuriyan

RESPONDENT

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**Date of Decision :** 06-03-2008

**Acts Referred:**

Central Civil Services (Pension) Rules, 1972 — Rule 38

Constitution of India, 1950 — Article 21

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 47

**Citation :** (2008) 118 FLR 815 : (2008) 3 LLJ 538 : (2008) 2 LW 140

**Hon'ble Judges :** A.P. Shah, C.J.;K. Chandru, J

**Bench :** Division Bench

**Advocate :** R. Parthiban, for the Appellant;

**Final Decision :** Dismissed

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## **Judgement**

A.P. Shah, C.J.—Heard Mr. R. Parthiban, learned Counsel appearing for the appellant. The challenge in the appeal is to the order of the

learned single Judge directing the appellant to give alternative employment to the respondent in view of the provisions of Section 47 of the Persons

with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Act 1 of 1996)(hereinafter referred to as the

Disabilities Act).

2. The respondent was originally] employed as a driver in the Pallavan Transport Corporation. During the year 1985, he was transferred to the

appellant Corporation with continuity of service and same conditions of service. It appears that in all State owned Transport Corporations

including the appellant Corporation drivers are sent for eye checkup every year on attaining the age of 40 years. Based on that procedure the

respondent was sent to eye checkup, and wherein he was referred to Medical Board. The Medical Board finally opined that the respondent was

unfit for driving due to colour blindness. Based on the report of the Medical Board the respondent was discharged from service on June 15, 2004.

3. Learned single Judge following the decision of the Supreme Court in Kunal Singh Vs. Union of India (UOI) and Another, allowed the writ

petition, and directed the transport Corporation to give alternate employment to the petitioner-employee, protecting his pay and other service

benefits.

4. In Kunal Singh v. Union of India and Anr. (supra) the Supreme Court held as follows:

Merely because under Rule 38 of the CCS (Pension) Rules, 1972, the appellant got 4 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.

Learned Counsel appearing for the appellant Corporation strenuously contended that colour blindness is congenital and not acquired during the

course of employment and hence, it cannot be considered as disability within the meaning of Section 2(i) of the Disabilities Act. He submitted that

for considering the claim of a disabled person to continue in service or to provide alternate employment, as per the provisions of Section 47 of the

Disabilities Act, the employee should have acquired disability during the course of his employment, and for congenital disability like the one

acquired by the respondent, the provisions of Section 47 are not applicable. He referred to the opinion given by the Medical Board which certified

that the respondent is unfit for driving due to colour deficiency. In support of his contention the learned Counsel placed reliance on an unreported

decision of the Division Bench of this Court in W.A. No. 305 of 2005 dated April 3, 2006 (A. Aruldoss v. The General Manager, Tamil Nadu

State Transport Corporation (Kumbakonam) Ltd. and Anr.).

5. We find absolutely no merit in the submission of the learned Counsel for the appellant Corporation. In the light of the decision in Kunal Singh v.

Union of India and Anr. (supra) case, it is clear that Section 47 deals with an employee who has acquired disability during service and it is not

necessary that he should have suffered 40% disability. The test is whether an employee, after acquiring disability, has become unsuitable for the

post he was holding earlier, and it is provided by Section 47 that in such a case, the employee could be shifted to some other post with the same

pay scale and service benefits, and if it is not possible to adjust the employee against any such post, he may be kept in a supernumerary post until a

suitable post is available or he attains the age of superannuation, whichever is earlier. In a recent decision of the Division Bench of this Court in G.

Muthu Vs. The Management of Tamil Nadu State Transport Corporation (Madurai) Ltd., it was held that the term disability used in Section 47 of

the Disabilities Act would encompass not only those contained in Section 2(i), but also those which disabled a person from performing a work

which he held immediately prior to acquisition of such disability. In that case, the appellant driver was discharged from service on the ground that

he had acquired colour blindness which rendered him unfit to work as driver. Rejecting the argument that colour blindness would not fall u/s 2(i) of

the Act, the Division Bench held that the term disability used in Section 47 of the Disabilities Act would encompass not only those contained in

Section 2(i), but also those which disabled a person from performing a work which he held immediately prior to acquisition of such disability. It

was held that the benefits of benevolent legislation could not be denied on the ground of mere hyper technicalities. The SLP filed against the said

judgment of the Division Bench was also dismissed by the Supreme Court.

6. We may mention here that even prior to the enactment of the Disabilities Act in Anandi Bihari and Ors. v. R.S.R.T. Corporation. and Ors. 1998

III LLJ (Supp) 1209 the Supreme Court held that in case of the employees acquiring disability during employment the employer should provide for

adequate safeguards to remedy the situation by giving them alternative job or by

compensating them in some form for the alround loss they suffered for no fault of theirs. In that case the drivers of the roadways buses of the respondent. Corporation who have put in long years of service, during their routine medical examination were found to have developed defective eyesight and did not have the required vision for driving heavy motor vehicles like buses. The Corporation terminated their services since their eyesight was not of the standard required to drive buses. The Court held that the action of the Corporation was not proper and equitable and was not justified, and directed the Corporation to offer them alternative employment or grant compensatory relief for the loss they suffered on account of the premature retirement necessitated by their unfitness to work as drivers. The Court observed that the workmen are not denizens of an animal farm to be eliminated ruthlessly the moment they become useless to the establishment. They have not only to live for the rest of their lives but also to maintain the members of their family and other dependents, and to educate and bring up their children. Their liability in this respect at the advanced age at which they are thus retired stands multiplied. They may no longer be of use to the Corporation for the job for which they were employed, but the need of their patronage to others intensifies with the growth in their family responsibilities. In the circumstances of the case, the Court proposed a Scheme to give relief to the workmen involved in that case.

7. In *Narendra Kumar Chandla Vs. State of Haryana and others*, , which is also a judgment before the enactment of the Disabilities Act, the appellant therein a Sub-Station Attendant of the Haryana State Electricity Board, after being cured of a certain disease after a surgical operation, was found physically unfit by a Medical Board assisted by two Engineers for performing the duties of his original post or equivalent posts. However, having found the employee able to write, the Medical Board suggested him to be considered for any clerical or non-technical post. Rejecting the appellants plea to order him to be appointed as UDC which carried the same pay scale, but allowing his appeal, the Supreme Court held:

For a direct recruit to the post of UDC, graduation or post-graduation or law graduation is the minimum educational qualification required apart from other requirements mentioned therein, which the appellant is not possessed

of. Hence, the Court cannot give any direction to appoint him as UDC. 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. Asking the appellant to discharge the duties as a Carrier Attendant is unjust. Since, he is a matriculate, he is eligible for the post of LDC. For LDC, apart from matriculation, passing in typing test either in Hindi or English at the speed of 15/30 words per minute is necessary. For Clerk, typing generally is not a must. Therefore, the State Electricity Board should relax his passing of the typing test and appoint him as an LDC. Since, on the date when he had unfortunate operation, he was drawing the salary in the pay scale of 1400-2300, his last drawn pay and scale of pay have to be protected. He will also be entitled to arrears of salary.

8. In view of the foregoing discussion we are not inclined to interfere with the order of the learned single Judge. The appeal is dismissed. The appellant Corporation is directed to reinstate the respondent by giving an alternate job, with back wages, pay protection and service benefits within a period of four weeks from today. No costs. Consequently, connected miscellaneous petition is also dismissed.