

(2011) 01 MAD CK 0374

In the Madras High Court

Case No : Writ Petition (MD) No. 1797 of 2009

K.S. Murugan (deceased), Seetha and Seenithai

APPELLANT

Vs

State Express Transport Corporation (Tamil Nadu) Ltd.

RESPONDENT

Date of Decision : 05-01-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 2, 47

Citation : (2011) 2 CTC 360

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : V. Kannan, for the Appellant; P. Thilak Kumar, Additional Government Pleader, for the Respondent

Judgement

V. Dhanapalan, J.—By consent, the Writ Petition itself is taken up for final disposal.

2. Heard Mr. V. Kannan, learned Counsel appearing for the Petitioners and Mr. P. Thilak Kumar, learned Additional Government Pleader appearing for the Respondents.

3. The Petitioners have filed this Writ Petition seeking to quash the discharge order passed by the First Respondent dated 18.12.2008 in proceedings in 074958/kt4/mtpBghfjeh/2008 and for a consequential direction to the Respondents to provide alternate employment to the Petitioner in any suitable post with continuity of service with effect from the date of discharge and with back wages, increments and other service benefits.

4. Originally, this Petition was filed by the First Petitioner K.S. Murugan, who is the husband of the Second Petitioner and father of the Third Petitioner. Later on, the First Petitioner died on 10.10.2009 during the pendency of the Writ Petition. Thereafter, the wife and daughter of the deceased/First Petitioner have been substituted as Petitioners 2 and 3, as per the order of this Court, dated

27.09.2010 in M.P.(MD) No. 1 of 2010, in this Writ Petition. The Second Petitioner, who is the widow of the deceased K.S. Murugan along with her daughter continued their contest.

5. According to them, the said K.S. Murugan was appointed as driver in the State Express Transport Corporation Tamil Nadu Ltd. (hereinafter referred as "SETC") in its Tirunelveli Branch under the Second Respondent and his E.D.P. No. 3899. They claim that the deceased K.S. Murugan was joined service in the year 1983 and while he was on duty on 10.09.2007 in the bus belonging to the Respondent-Corporation from Tirunelveli to Chennai, he was seriously suffered from chest pain at Chennai. Immediately, he was taken to the Government hospital, Chennai and underwent treatment for his heart ailment as inpatient. Thereafter, he was directed to appear before the Medical Board at Tirunelveli Medical College Hospital by the Respondent Corporation. Accordingly, he appeared before the Medical Board and the Board in its opinion dated 18.02.2008 certified that he was fit for duty and that report was filed before the Corporation for his joining and thereafter, he joined duty on 20.02.2008. But, duty was assigned to him only on 16.04.2008. The board after following necessary formalities, has given its opinion by submitting a report stating that he was not fit to drive heavy vehicle. Therefore, he joined duty on 15.10.2008 with a report of the Medical Board and he made a representation in this regard to the Corporation to assign him some light duty. However, a show cause notice was issued to him on 17.11.2008 calling upon him to submit his explanation as to why he should not be discharged from service, since the Medical Board in its report dated 13.10.2008 has stated that he cannot work as driver because of his cordial illness. Therefore, he has submitted a representation on 09.12.2008 stating that he was medically unfit only to serve as driver and he may be considered for alternate employment. However, he was discharged from service by the impugned order dated 18.12.2008 and the same was served to him on 03.01.2009 and thereafter, he made a representation on 09.01.2009 requesting them to provide him alternate employment with continuity of service. Finding that there is no other alternative remedy, the Petitioner has challenged the same before this Court in this Writ Petition on the ground that the impugned order is arbitrary and against law and Principles of Natural Justice.

6. The learned Counsel for the Petitioner submits that since the persons with disabilities to be provided with alternate employment, as per the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (herein after referred as "Act"), the non employment of the Petitioner with an alternate employment is against the object of the Act and the Constitutional guarantee provided under Article 21 of the Constitution of the India. He has also challenged the impugned proceedings on the ground that the Constitution of India does not specifically prescribe discrimination on the ground of "disability" and therefore, the guarantee available to the citizens under Articles 14 and 16 to be protected in all respects.

7. In support of his contentions, the learned Counsel for the Petitioners has relied on the following decisions:

(i) In Kunal Singh Vs. Union of India (UOI) and Another, the Hon"ble Supreme Court has held as follows:

8. The need for a comprehensive legislation for safeguarding the rights of persons with disabilities and enabling them to enjoy equal opportunities and to help them to fully participate in national life was felt for a long time. To realize the objective that people with disabilities should have equal opportunities and keeping their hopes and aspirations in view a meeting called the "Meet to Launch the Asian and Pacific Decades of Disabled Persons" was held in Beijing in the first week of December 1992 by the Asian and Pacific countries to ensure "full participation and equality of people with disabilities in the Asian and Pacific regions". This meeting was held by the Economic and Social Commission for Asia and Pacific. A proclamation was adopted in the said meeting. India was a signatory to the said proclamation and agreed to give effect to the same. Pursuant thereto this Act was enacted, which came into force on 01.01.1996. The Act provides some sort of succour to the disabled persons.

9. Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that a person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected u/s 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of the section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The Section further provides that if an employee after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from Sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of

the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service.

(ii) In *Management of Tamil Nadu, State Transport Corporation (Villupuram Division-II) Ltd., Kancheepuram v. B. Gnanasekaran* 2007 (5) MLJ 1 it has been held as follows:

17. In the instant case, the Respondent-Workman became unfit for the duty of the driver as he lost knee movement and there is no possibility of regaining his normal movement. It is not disputed before us that the workman is suffering from locomotor disability within the meaning of Section 2(o) of the Disabilities Act. In view of the Supreme Court's decision in *Kunal Singh v. Union of India and Anr.* it is clear that the acquisition of disability is not the same as a person with disability and it was not necessary for the workman to establish that he suffer more than 40% disability. In our considered opinion the decision of the Division Bench in *General Manager, Tamil Nadu State Transport Corporation v. A. Sengam* does not lay down the correct law.

(iii) In *Bhagwan Dass and Another Vs. Punjab State Electricity Board*, the Hon'ble Apex Court has held thus:

2. This case highlights the highly insensitive and apathetic attitude harboured by some of us, living a normal healthy life, towards those unfortunate fellowmen who fell victim to some incapacitating disability. The facts of the case reveal that officers of the Punjab State Electricity Board were quite aware of the statutory rights of Appellant-1 and their corresponding obligation yet they denied him his lawful dues by means that can only be called disingenuous.

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.

(iv) In *S. Raghuraman v. Union of India (UOI)* 2009 (1) CTC 668, this Court has held as follows:

11. The above said clauses in Chapter XIII of IREM are in consonance with Section 47 of the above said Act. Therefore, the provisions of Section 47 of the Act as well as the above said clauses of IREM deal with the protection of employment of medically incapacitated staff by absorbing them in alternative suitable employment with the protection of pay and other service benefits.

Therefore, the stand taken by the Railway Administration that the Petitioner is not entitled for the reliefs sought for by him is incorrect and against the sprit of Section 47 of the Act and the above said clauses of IREM. Therefore, we are not able to accept the contention raised by the Respondents.

(v) In *C. Shanmuganathan v. State and Ors.* 2010 WLR 92 the learned single Judge of this Court has held as follows:

11. In the present case, when the reference was made and the Medical Board opined that he cannot perform his field work, they could have assigned him some other position. But he cannot be terminated or discharged on the ground that he had acquired disability during his service. It was rather unfortunate that the Respondents were ignorant of a Central Act which has direct bearing to the present case.

12. In this context, it is necessary to refer to the decision of the Supreme Court in *Bhagwan Dass and Another Vs. Punjab State Electricity Board*, The following passages found in paragraphs 2 and 16 to 19 will make the position clear and they are as follows:

2. This case highlights the highly insensitive and apathetic attitude harboured by some of us, living a normal healthy life, towards those unfortunate fellowmen who fell victim to some incapacitating disability. The facts of the case reveal that officers of the Punjab State Electricity Board were quite aware of the statutory rights of Appellant 1 and their corresponding obligation yet they denied him his lawful dues by means that can only be called disingenuous.

16. The disabled employee then approached the Punjab and Haryana High Court in Civil Writ Petition No. 12534 of 2004 seeking relief in terms of Section 47 of the Act and the circulars issued by the State Government and the Board in its furtherance. In the Writ Petition he was joined by his son, Appellant-2, and an alternative relief was sought for employment of his son in his place. Unfortunately, before the High Court it was the second relief that came into focus and the High Court dismissed the Writ Petition by a brief order referring to the decision of this Court in *Umesh Kumar Nagpal v. State of Haryana*. In the High Court order there is no mention of Section 47 of the Act and the disabled employees' claim/right on that basis. Against that order this Appeal is preferred in which the disabled employee agitates his rights on the basis of Section 47 of the Act.

8. On the above background pleadings, the learned Counsel for the Petitioner submits that the discharge made by the Respondent without providing alternate employment is contrary to the decision of the Hon''ble Supreme Court in *Kunal Singh Vs. Union of India (UOI) and Another*, and therefore, the order impugned in this Writ Petition is against the object of the provisions of the Act and the Constitutional guarantees. He also submits that this Court in several decisions have granted the relief to the disabled persons with an alternate employment.

9. On the other hand, Mr. T. Thilak Kumar, learned Additional Government Pleader, appearing for the Respondent-Corporation on instruction would submit that the Respondent Corporation will look into the matter, if the Second Petitioner, the widow of the deceased employee along with the third Petitioner approach the Respondent-Corporation with required documents and other materials for claiming their benefits including their claim of the terminal benefits arising out of discharge and also the Petitioner's claim for alternate employment of the deceased and the benefits accrued thereon, the same will be considered by the Respondents sympathetically, in view of the decisions of the Hon'ble Supreme Court as well as this Court.

10. In the light of the above stated position, this Court is not inclined to discuss the merits of the case and the Respondent-Corporation has come forward with a suggestion that if the Petitioners 2 and 3 approach the First Respondent-Corporation with relevant papers for claiming alternate employment as well as the benefits accrued thereon so far, the same will be looked into by the Respondents by taking into provisions of the Act u/s 47 and also the judgment of the Supreme Court as well as this Court and pass appropriate orders, within a reasonable time to be fixed by this Court.

11. This Writ Petition is disposed of with a direction to the Petitioners 2 and 3 to appear before the First Respondent with all the relevant documents and submit an Application within a period of two weeks from the date of receipt of a copy of this order. If such documents are produced before the Respondent with necessary Application, the First Respondent is directed to consider the same by taking into account of the Section 47 of the Act and also the decision of the Supreme Court i Kunal Singh Vs. Union of India (UOI) and Another, and consider the claim of the Petitioner in accordance with law and on merits and pass appropriate orders, within a period of eight weeks thereafter.

12. The Writ Petition is disposed of accordingly. No costs.