
(2002) 09 MAD CK 0251

In the Madras High Court

Case No : Writ Petition No. 14222 of 2002 and W.M.P. No. 19186 of 2002

M. Appavoo

APPELLANT

Vs

Tamil Nadu State Transport Corporation Ltd.

RESPONDENT

Date of Decision : 13-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 96 FLR 104 : (2002) 3 LLJ 1032

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : Hariparanthaman, for the Appellant; Kala Ramesh, for the Respondent

Judgement

E. Padmanabhan, J.—The petitioner prays for the issue of a writ of certiorarified mandamus to call for the records relating to the order of the respondent in Office Order No.704/Nir 11/Ma.Ko.2/99 dated 8.3.2000 quash the same and consequently direct the respondent to provide the petitioner night duty in the post of Stores Helper or in any other suitable post involving light work with continuity of service and pay protection.

2. Pending the writ petition, the petitioner filed W.M.P. No.19186 of 2002 seeking for directions, which are identical to the relief prayed for in the writ petition. Hence, with the consent of counsel for either side, the writ petition itself was taken up for final disposal.

3. Heard Mr.Hariparanthaman, learned counsel appearing for the writ petitioner and Mrs.Kala Ramesh, learned counsel appearing for the respondent.

4. The case of the petitioner leading to the writ petition could be summarised briefly. The petitioner joined the respondent Corporation, a State undertaking as a driver on 1.4.1985. After six years he was advanced to the cadre of senior driver and subsequently as selection driver on completion of fourteen years of service. On 20.1.99 the petitioner was assigned duty in Route No.5-A, Tuticorin

to Kovangadu. When the bus driven by the driver was proceeding towards Kovangadu, four persons boarded the bus from Tuticorin SPIC Nagar bus stop. The four sat on the engine and they refused to purchase tickets, besides causing disturbance to driver and passengers by making noise and quarrel. Since those four persons created disturbance, besides obstructing the gear operation, the petitioner asked the four persons to vacate from the bannet and to move a little back. One of the persons took out an aruval, which was placed and hidden from his body and cut on the petitioner's right thumb. The petitioner's right thumb was severed. Those persons broke the windscreens of the bus, got down and ran away from the bus. The petitioner was given treatment as in-patient and the police who came to the hospital registered a case. It was reported in the daily that four persons were taken to custody and they were detained under Tamil Nadu Act 14 of 1982.

5. The petitioner, who underwent treatment as an in-patient between 30.1.99 and 16.3.99 was discharged and he was continuing treatment as an out-patient. Medical leave was sanctioned for the said period. The petitioner was asked to appear before the Medical Board on 7.6.99. The Medical Board sent a report to the respondent. Meanwhile, the petitioner was given light duty in the stores as stores helper from 31.5.99. Though the petitioner was working in the stores as helper, he was being paid the salary of driver (selection grade).

6. The petitioner was served with a show cause notice on 19.6.99 calling upon him to state his objections as to why he should not be discharged from service based upon the report of the medical board. The petitioner submitted his reply. On 8.3.2000, the impugned order was passed discharging the petitioner from services on medical grounds with immediate effect. The order was served on 24.3.2000. The petitioner has put in more than 240 days of service in the stores.

7. The petitioner made representation to the respondent as well as the State Government and the Chief Minister for intervention and for his being posted and allotted light duty in the respondent Corporation. As there has been no response, the present writ petition has been filed.

8. It is contended that his termination is non-est, inoperative and void ab initio as the respondent has not complied with Section 25-F of The Industrial Disputes Act. The termination is illegal and opposed to the pronouncement of the Supreme Court reported in 1991 (1) LLN 602. The order of discharge or termination should be set aside and a direction should be issued in the light of the earlier decisions of this Court as well as the Supreme Court reported in Narendra Kumar Chandla Vs. State of Haryana and others, and unreported orders in W.P. No.16776 of 1999 dated 1.10.1999, etc.

9. Per contra the respondent contended that the petitioner is not entitled to the relief of certiorarified mandamus as the Medical Board declared the petitioner unfit for the post of driver due to amputation of his right thumb. The petitioner has sustained grievous injury and he was referred to Medical Board. The

petitioner requested for being allotted shunting work inside the depot. The petitioner appeared before the Medical Board on 7.6.99 and the medical board opined that the petitioner is unfit to drive heavy passenger transport vehicle. Thereafter a show cause notice was issued on 19.6.99 and after considering the explanation in the light of the report and opinion of the medical board, by order dated 8.3.2000 the order impugned has been passed discharging the petitioner from service as he is no longer suitable to continue as a driver. The allegation that the petitioner must be given light duty as a stores keeper or that he has put in 240 days of service in the stores department has been denied. The petitioner is physically handicapped and he is not entitled for a direction as prayed for.

10. According to the respondent, the State Government issued G.O. Ms.No.746 Transport Dept., dated 2.7.1981 laying guidelines for fresh employment of those who have been discharged on medical grounds, the order passed is in terms of the said G.O., which applies to all the transport undertakings. The petitioner was given light duty pending receipt of report from the medical board. The petitioner has already been paid terminal benefits on the date of service of the order impugned in the writ petition. No interference is called for with the order passed by the respondent.

11. The respondent filed an additional counter relying upon G.O. Ms. No.746 dated 2.7.1981 and also clauses 82 and 83 of the settlement concluded u/s 12(3) of The Industrial Disputes Act on 28.9.95 signed between the various Trade Unions and the Management of Transport Undertakings, which provides that those who are medically declared unfit will be given alternate employment as a fresh entrant and at the lowest scale of pay applicable for the category in which he was working. Relying upon the said clause in the settlement, the respondent represents that the petitioner being bound by the said stipulations, if he makes an application, the same will be considered and the petitioner will be given alternative employment as a fresh entrant and at the lowest scale of pay applicable for the category in which he was working.

12. Mr.Hariparanthaman, learned counsel appearing for the writ petitioner referred to some of the orders impugned in the order passed by this Court which are the subject matter of appeal before the Division Bench. The learned counsel also referred to the pronouncement of the Supreme Court in support of his contentions. Though the contentions are attractive, this Court is of the considered view that in all those decisions, the stipulations contained u/s 12(3) settlement has not been considered and the said pronouncements are clearly distinguishable. In fact, neither this Court nor any other Court or the Supreme Court had considered the said stipulations contained in the concluded settlement arrived at u/s 12(3).

13. Being a party to the settlement, the petitioner if at all should enforce the terms of the settlement and cannot rely upon any other direction or order or pronouncement in support of his claim. The petitioner's claim cannot be sustained and he could enforce clauses 82 and 83 of Section 12(3) of the

concluded settlement. Clauses 82 and 83 of the concluded settlement reads thus:-

"82) In case an employee meets with an accident during the course of employment as a result of which he is declared medically unfit, and then discharged from service, he will be given alternative employment as a fresh entrant and at the lowest scale of pay applicable for the category in which he was working ;

83) When an employee who is declared medically unfit consequent to ill-health and is discharged from service and given alternative employment he will be appointed at the lowest scale of pay applicable for the category in which he is appointed."

14. The above is a binding settlement on both the parties and the petitioner can very well enforce the stipulations in the settlement and the respondent is bound by the settlement. If that be so, it is not necessary to refer to any other pronouncement or earlier pronouncement of this Court which are the subject matter of appeal. Though the counsel for the petitioner relied upon number of pronouncements, including the pronouncements of this Court, the counsel for the respondent pointed out that those pronouncements are the subject matter of pending appeals. That apart, the effect of Section 12(3) of the concluded settlement has neither been raised or was it the subject matter of decision in these pronouncements. The contention advanced by Mrs.Kala Ramesh in this respect deserves to be sustained and it is not necessary to refer to various pronouncements relied upon by Mr.Hariparanthaman. The petitioner has without demur accepted the terminal benefits already disbursed by the respondent.

15. If at all, the petitioner, in law, could enforce the stipulations contained u/s 12(3) settlement. Mr.Hariparanthaman has not disputed nor he could dispute about the concluded settlement and the terms therein.

16. The petitioner has also received the terminal benefits immediately after the passing of the impugned communication without demur. The learned counsel for the petitioner represents that the petitioner will be given the benefit of stipulations agreed to in the concluded settlement entered u/s 12(3). The counsel for the respondent also fairly states that orders will be passed giving alternate employment as a fresh entrant and at the lowest scale of pay applicable for the category in which the petitioner was working, provided he makes an application.

17. In the light of clauses 82 and 83 of Section 12(3) settlement and the fair stand taken by the respondent, this Court directs the petitioner to forthwith submit an application to the respondent and within six weeks from the date of filing of an application the respondent shall consider the request of the petitioner in terms of clauses 82 and 83 of Section 12(3) settlement concluded on 28.9.95 and pass orders of appointment and appoint the petitioner as a fresh entrant and at the lowest scale of pay applicable for the category in which he was working.

18. This writ petition is ordered in the above terms. Parties shall bear their respective costs. Consequently, connected W.M.P. is closed.