
(2013) 01 MAD CK 0201
In the Madras High Court
Case No : Writ Petition No. 9546 of 2012

M. Samuel Sekar

APPELLANT

Vs

Tamil Nadu State Transport Corporation Ltd. and Another

RESPONDENT

Date of Decision : 29-01-2013

Acts Referred:

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

Citation : (2013) 137 FLR 470

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Vaidyanathan, for the Appellant; V.R. Kamalanathan, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J

1. The Writ Petition is filed by the petitioner seeking a Writ in the nature of Declaration, declaring that the order dated 15.9.1998, wherein and by which he was discharged from service, was illegal and violative of Article 14, 16 and 21 of the Constitution of India and therefore he wanted a further declaration that respondents should be directed to give alternate employment commensurate with status with effect from 16.10.1998 and consequential benefits taking into account the services rendered as Driver from 20.2.1987.

When the matter came up on 12.4.2012, this Court directed notice to be served on the learned Standing Counsel Mr. V.R. Kamalanathan for the Transport Corporation. Accordingly, Mr. V.R. Kamalanathan, learned Standing Counsel for the respondent Transport Corporation entered appearance and also filed a counter affidavit on behalf of the 1st respondent dated "nil" (November 2012). When the matter came up on 5.11.2012, the petitioner voluntarily filed an Additional affidavit dated 17.6.2012 to the following effect:

2. I submit that I am willing to give up the entire backwages from 16.10.1998 till 31.3.2012 if I am given all the benefits with pay protection, commensurate with status, continuity of service and other consequential benefits with effect from 16.10.1998. The respondent should take into account the past services rendered as a Driver from 1987 for all purposes as otherwise giving up of backwages is not going to give me any benefit after my retirement. If this is given I will be getting better terminal benefits. Even though I am entitled to full back wages and other benefits commensurate status from the date of disengagement, I am giving up the entire backwages in order to give a quietus to the entire matter and that I am retiring on 30th April, 2013.

The petitioner also filed subsequently a reply affidavit dated 12.1.2013 to which the respondents were directed to give a further affidavit, which was also filed on 28.1.2013.

It is seen from the records that the petitioner was appointed as a Driver by order dated 20.2.1987. Subsequently it was his claim that due to stress, he developed a severe back and shoulder pain by which L. 2 and L. 3 in the Spinal Cord became weak. The petitioner was directed to appear before the Medical Board to find out the suitability of the petitioner to continue in service. The petitioner appeared before the Medical Board as an in patient on 9.6.1998 till 26.6.1998. He also made representation that he will be unfit to work as Driver and he may be given an alternate employment. However, the Medical Board found that the petitioner was not suitable for the post of Driver by the report dated 8.7.1998. Based upon the report of the Medical Board, a show cause notice was given on 21.8.1998 as to why he should not be discharged from service, as he was found unfit for the post of Driver.

2. The petitioner though made representation and despite his representation, he was discharged from service on 15.9.1998 on medical grounds. Thereafter, the petitioner gave a representation on 26.9.1998 seeking for alternate employment on the basis of certain Government Orders directing the provision of alternate employment.

3. The respondent Corporation by order dated 12.11.1998 offered the petitioner alternate employment as fresh entrant in the post of Helper. The petitioner also joined duty accepting the same and continued in service till date.

4. From November 1998, the petitioner has not chosen to challenge either the discharge order dated 15.9.1998 or the order dated 12.11.1998 appointing him as Helper as a fresh entrant. In the affidavit filed in support of the Writ Petition, the petitioner has not even referred to any representation sent by him for the last 14 years and no such representation was also found enclosed in the typed set filed in support of the Writ Petition. On the other hand, the petitioner alleged that one Balu, who also joined as a Driver on 13.2.1987 is drawing more pay than the petitioner and therefore having found that he has been continuously on the same remuneration, notwithstanding his discharge, he has chosen to file the

present Writ Petition seeking for a mandamus in the nature of declaration.

5. In the counter affidavit filed by the respondents, it was contended that at no point of time the petitioner never reported before the Committee against the order of discharge and claimed right in terms of section 47 of the Disabilities Act, 1995. The case of Special Grade Driver Balu was sought to be explained stating that he was working without any break of service. Further, in the reply affidavit, the petitioner also stated that one R. Nagarajan and S. Elavarasan were given pay protection in terms of section 47 of the Disabilities Act. In the light of the averment made in paragraphs 6 and 7 of the reply affidavit, the respondent Corporation was directed to respond the same. In the additional counter affidavit filed by the respondents, the case of R. Nagarajan and S. Elavarasan were sought to be explained. It was stated that they never discharged from service nor acted as a fresh entrant and therefore, their service is shown as continuous one.

6. The petitioner except by stating that section 47 of the Disabilities Act is mandatory, has not chosen to explain as to why for the last 14 years, he never raised an issue either before the respondent or before this Court in the legal form.

7. On the other hand, Mr. S. Vaidyanathan, learned Counsel for the petitioner relied upon the judgment of this Court in *G. Kandasamy v. Tamil Nadu Transport Corporation (Villupuram) Ltd.* and another 2010 (3) LLN 380, for contending that there is no estoppel against the statute. In that case, the contention raised by the respondents Corporation that having accepted the post of Helper, the petitioner cannot turn back and claim parity of pay in the respective post held by him.

8. He also referred to the judgment of the Division Bench in *J. Sekar v. Metropolitan Transport Corporation (Chennai Division) Limited*, in Writ Appeal No. 349 of 2011 dated 4.1.2013 for contending that in respect of a person, who comes after 10 years and claimed benefits under the Disabilities Act, his claim was upheld by the Division Bench.

9. In the present case, the question to be raised is not one of estoppel, on the other hand the petitioner having accepted alternate employment and continued in service for the last 14 years, whether he can set up a new plea that the discharge order dated 15.9.1998 should be declared as illegal and non-est in law. The fourteen years long delay in coming to this Court cannot be condoned. It is only a person who is vigilant will get relief from the Court and no relief can be given to a person who accepted an offer of alternate employment and waited for 14 years and thereafter files a Writ Petition for declaratory relief.

10. The judgments cited by the petitioner have no relevance to the case on hand. In the judgment in *J. Sekar's* case (cited supra), the Writ Petition was filed by the worker challenging the order dated 22.11.2006, in the year 2006 itself and as against the order passed by the learned Single Judge dated 10.12.2010, the writ appeal was filed, and his claim was allowed by the Division Bench. In both

the cases cited by the petitioner, there is no reference to any unreasonable delay or acquisition of a person having guilty of laches in coming to this Court. In the present case, this Court is not inclined to go into the larger issue, whether the petitioner was entitled to have continued in service on the same status with the same emoluments. The short question is whether the Writ Petition can be entertained challenging the order of the year 1998, that too after a period of 14 years. Without any satisfactory explanation regarding the long delay caused by the petitioner in filing the Writ Petition against the respondent Corporation, this Court is not inclined to entertain the Writ Petition. The petitioner is guilty of delay and laches for more than 14 years. Hence, the Writ Petition stands dismissed. No costs.