

(2010) 02 MAD CK 0204

In the Madras High Court

Case No : Writ Petition No. 17347 of 2009 With M.P. No. 1 of 2009

N. Krishnan

APPELLANT

Vs

Tamil Nadu State Transport Corporation and another

RESPONDENT

Date of Decision : 26-02-2010

Acts Referred:

Citation : (2010) 02 MAD CK 0204

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : V. Ajoy Khose, for the Appellant; T. Chandrasekaran and S.G.P., for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard both sides. The petitioner has come forward to challenge the Charge Memo, dated 17.7.2009 issued by the second respondent. In that Charge Memo, the petitioner was accused of being absent from 1.3.2009 and because of his absence, he had created hindrance to the smooth operation of the Corporation and that he is negligent in his duty.

2. The petitioner had contended that he joined as a Conductor in the respondent's Corporation on 12.7.1985. After six years of service, he was made as a Senior Conductor and after 10 years of service and 20 years of service, he was given special increments. From 1998, he has been working in the Cuddalore Depot of the Corporation. He was afflicted with Parkinson's disease since 2003 and he was in constant treatment by the Doctor. He could not sit or stand or move or walk freely for a long time. He also gave a representation to that effect on 15.7.2005 and sought for light duty. Accordingly, he was given light duty in the time office at the Cuddalore bus stand for three months and at the post office stopping for another three months. Subsequently, the same was stopped. A Charge Memo, dated 20.11.2005 was given regarding his absence.

3. The petitioner gave his explanation, dated 18.8.2006. He also gave a further

representation, dated 23.2.2007 once again requesting for light duty. He was given light duty for three months. Further, on his representation, dated 20.6.2007, he was given light duty for six months and with effect from 1.3.2009, even the grant of light duty was stopped. On 17.7.2009, the petitioner was given the impugned Charge Memo. The petitioner came forward to challenge the said Charge Memo on the ground that as he had acquired disability, he is entitled for protection u/s 47(1) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Reliance was placed upon a Division Bench judgment of this Court in A. Veeriyar Perumal Vs. The Secretary to Government, Health and Family Welfare Department, .

4. When this matter came up on 26.8.2009, private notice was ordered to the respondents. Subsequently, when the matter came up on 6.10.2009, this Court passed the following order:

According to the learned Counsel for the respondents, the petitioner will be referred to the Medical Board within a period of two weeks from the date of receipt of a copy of this order and after the receipt of the opinion of the Medical Board, the respondents will also pass an order based on the opinion of the Medical Board with regard to providing an alternative employment to the petitioner on the ground of his disability, which a period of four weeks thereafter.

2. The petitioner is also directed to attend the Medical Board on the date on which he is directed to appear before the Medical Board. Post this writ Petition after six weeks.

5. Thereafter, accordingly, the petitioner appeared before the Medical Board in the Institute of Neurology at the Government General Hospital, Chennai-3. The petitioner was admitted on 4.12.2009 in the hospital as an inpatient and on 11.12.2009, he was discharged. His case was also reviewed. Subsequently on several days and finally, his case was reviewed by the Neurologist in the Government General Hospital. By opinion, dated 17.12.2009, it was observed as follows:

This patient Mr. Krishnan, aged 55 years, referred from Medical Board for neurological evaluation is found to be suffering from Idiopathic Parkinson's disease after detailed clinical examination and investigations. He is not fit for Conductor's job. He can be given light-duties in the office according to his present capacity.

6. The said report was ^produced by the respondents. There was no objection to the findings rendered by the Neurologist. In the light of the above, there is no justification for the respondents to charge-sheet the workman, who within the knowledge of the respondents had absented due to his physical condition. Though at periodical intervals, certain attempts were made to give him light duty, the same was not extended for the reasons best know" to the respondents. Since the petitioner has proof to the satisfaction of this Court that he has acquired disability, he is entitled to have protection u/s 47 of the Persons with

Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

7. The Division Bench in the decision cited supra had held in paragraphs 12 and 13 as follows:

12. The right to livelihood which is an integral facet of right to life as guaranteed under Article 21, coupled with the protection u/s 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 entitles the employee who was incapacitated during service, for continuance of service in suitable alternative post with same scale of pay drawn by him and other service benefits.

13. From the above discussions, we are of the considered view that the appellant's right to alternate employment cannot be deprived of solely on the ground of medical invalidation, as his" right is protected u/s 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995....

8. On coming to the conclusion, the Division Bench also placed reliance upon the directive of the Supreme Court in Kunal Singh Vs. Union of India (UOI) and Another, .

In the light of the above, the writ petition will stand allowed. The impugned order stands quashed. The petitioner must |be given suitable alternate employment and continued to be paid wages as he was drawing in his original post. No costs. Consequently, connected miscellaneous petition stands closed.