

(2011) 06 MAD CK 0315

In the Madras High Court

Case No : Writ Petition No. 4464 of 2011 and M.P. No's. 1 and 2 of 2011

P. Thirumaran

APPELLANT

Vs

The General Manager, Tamil Nadu State Transport
Corporation Ltd.

RESPONDENT

Date of Decision : 07-06-2011

Acts Referred:

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

Citation : (2011) 06 MAD CK 0315

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Ayyathurai, for the Appellant; M. Ravi Bharathi, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—The Petitioner is working as a Conductor in the Respondent Tamil Nadu State Transport Corporation Limited, Villupuram. He has filed the present writ petition seeking to challenge the order dated 13.09.2010 passed by the Respondent and after setting aside the same, seeks for a direction to provide work with all benefits with effect from 07.01.2008 in terms of Section 47 of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

2. When the matter came up on 07.03.2011, this Court directed the learned Standing Counsel for the Respondent Corporation to take notice. On notice, the Respondent has filed a counter affidavit dated 21.03.2011, to which, the Petitioner has filed a reply affidavit dated 27.03.2011.

3. Heard the arguments of Mr. S. Ayyathurai, learned Counsel for the Petitioner and Mr. M. Ravi Bharathi, learned Standing Counsel for the Respondent Corporation.

4. It is the case of the Petitioner that he was employed as a Conductor in the

Respondent Corporation since July 1986. While he was attached to the Kallakurichi Branch and when he was on duty on 06.01.2008 in the bus which was proceeding from Kallakurichi to Chennai, he suffered grievous injury, while the bus was taking reverse in the bus stand, due to the negligent act of the driver. The Petitioner got admitted to the Hospital at Kallakurichi. Thereafter, he was shifted to the Hospital at Pondicherry for better treatment. In Pondicherry, he was treated as in-patient for 3 days and he could not afford to continue to take treatment due to financial difficulties and he took further treatment in the private Hospital. When he reported for duty, he was posted to work at Attur Depot. But he could not discharge his duties, as he was suffering from frequent giddiness. Thereafter, he wrote to the Respondent seeking to allot light duty in terms of the injuries suffered by him. But however, the Respondent charge sheeted the Petitioner on the ground of unauthorised absence and they have also issued a letter dated 09.04.2010 to submit his remarks on the enquiry report. He has also submitted his explanation on 02.06.2010. Thereafter, on 13.09.2010, he was informed that they had proposed to impose the punishment of removal from service. He also submitted his further explanation on 29.09.2010 in person. He further went to the Office of the Managing Director and submitted a representation dated 04.10.2010 for want of light duty. He was directed to approach the Branch Manager at Tindivanam. As the Branch Manager did not give any communication to the Headquarters, he was not given any such light duty. Therefore, having left with no alternative remedy, he has filed the present writ petition.

5. In the counter affidavit, it is stated that the Petitioner was charge sheeted on account of unauthorised absence from 21.09.2008 and an enquiry was directed to be conducted. The Petitioner was also asked to cross examine the Management witness, but he did not do so. The enquiry officer had submitted a report finding the Petitioner guilty of charges. Based on the request of the Petitioner by producing the medical fitness certificate, he was permitted to join duty as Conductor by an order dated 11.01.2008. But he did not join duty and was making representation. In the meanwhile, a second show cause notice was issued for removal. But due to administrative reasons, no final orders have been passed till date. The Petitioner's request for alternative employment Section 47 of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was a private issue and the Petitioner has not submitted any authenticated medical certificate for claiming such relief and hence, no relief was given to him. But nevertheless, he cannot stall the enquiry proceedings.

6. The Petitioner in his reply affidavit stated that by the Department he was persuaded not to file any criminal case and the Respondent has assured to settle the matter amicably and even during the enquiry, he had mentioned about his disability and he requested for light duty. But however, he was directed to go before the Branch Manager, Tindivanam, who in turn inform the Petitioner that in the absence of an order from the Headquarters, he could not give alternative employment.

7. In the light of these pleadings and oral arguments, it has to be seen whether the Petitioner can be given any relief in this writ petition. It is a rather unfortunate situation where the Respondent cannot play hide and seek game in the matter of grant of relief under the Section 47 of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. While the Petitioner insists of sustaining injury, during the course of his employment, the Respondent, in the absence of a certificate, is unable to grant him the relief. In fact, when an identical situation came up before the Madurai Bench of this Court, this Court found that number of employees in the Respondent Corporation are coming to this Court with writ petitions and in the absence of an effective settlement being evolved by the Respondent Corporation to grant relief to the workmen, who are entitled to have protection under the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and by this process, considerable time, energy and limited sources of the workers are exhausted and the Respondent Corporation do not show any social responsibility in implementing the provisions of the Act, in W.P. (MD) No. 11631 of 2009 in P. Varadharajan v. State Express Transport Corporation, Tamil Nadu Ltd. and Ors. (decided on 25.10.2010), this Court had observed as follows:

4. When the writ petition came up for hearing on 13.11.2009, this Court ordered notice of motion. Pending notice, no interim relief was granted. Subsequently, when the matter came up again, this Court found that the Respondent corporation is total insensitive and has not realized the social responsibility and gave the following order, dated 27.09.2010, which reads as follows:

2. It is a sorry state of affairs in the Corporation that over the years, hundreds of cases are filed before this Court as well as before the Principal Bench of this Court by the conductors and drivers of the Corporation, who unfortunately became disabled due to employment related injuries. In most of the cases, the employees were forced to come to this Court either for referring their cases to the Regional Medical Board or for getting alternative employment in terms of Section 47 of the Act.

3. When the Parliamentary Law on the subject Section 47 of the 1995 Act puts embargo on the Corporation from discharging such disabled employees and mandates it to provide alternative employment, it is unnecessary for those employees to rush to this Court for getting appropriate relief.

4. This Court and the Principal Bench of this Court have already passed more than 500 orders. In some cases, the Transport Corporation filed Writ Appeals and some of those appeals were also dismissed even at the admission stage. The subject matter of such issues are squarely covered by more than ten decisions of the Supreme Court. Therefore, the Transport Corporation need not drive parties to this Court to have their cases considered as if the law is unclear.

5. The Corporation must realize its social responsibilities as well as the welfare of the workers in dealing with such cases. The Corporation should immediately

constitute a Special Cell relating to disabled workmen, comprising higher level officers to consider such grievances on day-to-day basis rather than making the workers to come to this Court on each occasion and spend years together for getting relief, which is guaranteed to them under the 1995 Act. This will avoid unnecessary hardship besides saving money for the workmen on costly litigation. The Managing Director shall set in his affidavit the steps to be taken in this regard. He is not expected to just deal with the present case alone.

5. Upon such directions, the Respondents filed an evasive counter affidavit, dated Nil and gave the following averment in paragraph 2, which reads as follows:

(2) It is submitted that in order to arrive at a common policy decision to deal with such cases of Medical disability for providing alternate employment by forming a Special cell, the matter is being placed in the ensuing Board meeting to be held in December 2010. The decision to be arrived in the Board Meeting shall be common to all Transport Corporations, therefore, the Respondent prays to seek time for implementing the order of Hon''ble Court in the said matter.

6. This Court was not satisfied with the affidavit, which was furnished on 20.10.2010 and strictly directed the Corporation to abide by the interim order without further inviting strictures against them. Thereafter, when the matter came up on 25.10.2010, the Corporation had filed a further counter affidavit, which reads as follows:

2) It is submitted that to complying the orders of the Hon''ble High Court, Madurai Bench, Dated: 27.09.2010 in W.P.(MD).11631 of 2009, the following senior officials of this corporation are nominated and a Special cell is constituted to receive and attend the grievances of such of those employees who seek alternate employment based on the Medical report on day today basis.

- 1) General Manager (Technical & Administration)
- 2) Senior Deputy Manager
- 3) Corporation Medical Officer
- 4) Deputy Manager (Legal)
- 5) Assistant Manager (HR)

The committee shall peruse the connected records and put up its recommendation and remarks to the Managing Director to take appropriate action immediately.

7. At least the Respondent Corporation has now realized its corporate responsibility towards its employees and has come up with the formation of a committee as per the undertaking on 25.10.2010. But it is not suffice that such an undertaking is given only to this Court without it being let known to all workers. The concerned workmen who ran to length and breadth of the State must also be aware of such remedies available to them, lest on each occasion

they may be forced to come to this Court spending huge amount of litigation expenses. Therefore, in the fitness of things, the Respondent Corporation must be directed to publish the formation of the Commission and the power delegated to the committee apart from being exhibited in their notice boards must publish it in leading Tamil newspapers, so that the workmen will be aware of their rights and can approach the in-house committee for the redressal of their grievances, failing which it will be always open to them to come to this Court. By the constitution of the committee, they can get the relief in terms of the provisions of the act and there will be no necessity for them to spend huge amounts besides time and energy of such workers as well as the Corporation will be saved. This Court also will not be clogged with such unnecessary litigations. As the issue raised in the writ petition has been decided in plethora of cases by this Court both by the learned single judge as well as by the division bench and that precedents laid down by the Supreme Court was also clear.

8. Insofar as the Petitioner's case is concerned, it is unnecessary that the issue should be sent before the Committee as the Respondents themselves acting upon the Medical Board's opinion had terminated the service of the Petitioner without any justification.

8. It was brought to the notice of this Court that subsequent to the directions, the State Express Transport Corporation, Tamil Nadu Ltd., has formed a Committee to decide the grievances of the workmen, failing which, the workmen are at liberty to move this Court. But the Respondent, being a separate Corporation, has not chosen to do the same and therefore, this Court is constrained to pass the similar order, as noted above:

A direction is issued to the Respondent to form a Special Cell comprising of:

- 1) General Manager (Technical & Administration)
- 2) Senior Deputy Manager
- 3) Corporation Medical Officer
- 4) Deputy Manager (Legal)
- 5) Assistant Manager (HR)

and the Special Cell shall peruse the connected records and put up its recommendation and remarks to the Managing Director to take appropriate action, within a period of four weeks from the date of receipt of the order and consider the case of the Petitioner in the light of the directions given by this Court. It is only in cases where there was no satisfaction by the Special Cell regarding the grievances projected by the workmen, they can be sent for appropriate review by a competent Medical Board and the Corporation can act upon the same.

9. In the light of the above, the impugned proceedings against the Petitioner is quashed and the Respondent is directed to undertake the exercise as directed

above. With reference to the formation of the Special Cell, the Respondent is also directed to publish the same in two Tamil Newspapers and also put the same in a notice board in all their depots and branches for the benefit of the workmen.

10. The writ petition is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petitions are closed.