

(2010) 03 MAD CK 0107
In the Madras High Court
Case No : Writ Petition No. 12863 of 2007

S. Ashok Kumar

APPELLANT

Vs

Metropolitan Transport Corporation

RESPONDENT

Date of Decision : 30-03-2010

Acts Referred:

Constitution of India, 1950 — Article 141, 21
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 47

Citation : (2010) 03 MAD CK 0107

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : S.S. Vasudevan, for the Appellant; J.S. Dolia, for the Respondent

Judgement

N. Paul Vasanthakumar, J.—The prayer in the writ petition is to issue a writ of certiorarified mandamus calling for the records relating to the

impugned order No. Ku. No. 3210/ES(A)2/MTC1/2000 dated 4.9.2000 passed by the respondent Corporation and quash the same and direct

the respondent to reinstate the petitioner with continuity of service in equivalent post carrying the same emoluments from the date of his

reinstatement i.e., from 27.1.1994.

2. The petitioner is aggrieved by the impugned order dated 4.9.2000 of the respondent Corporation appointing him in service as fresh entrant in

the post of Junior Helper, which according to the petitioner is in violation of Section 47 of the Persons with Disabilities (Equal Opportunities,

Protection of Rights and Full Participation) Act, 1995.

3. The petitioner was initially employed as Conductor in the erstwhile Pallavan Transport Corporation, presently Metropolitan Transport

Corporation, from 28.11.1983. It is the case of the petitioner that on 14.12.1988, due to an accident during the course of the employment,

petitioner suffered an injury and he underwent treatment in the Government General Hospital, Chennai, from 31.3.1989 to 28.4.1989, from

20.6.1990 to 31.8.1990 and from 17.9.1990 to 1.11.1990, with the result, the big toe in the right leg of the petitioner was amputated. The

Medical Board examined the petitioner on 5.6.1992, 8.3.1993 and on 18.2.1994 and recommended to assign lighter work to the petitioner.

Accordingly petitioner was allotted desk work of (clerical nature) in Saidapet Depot from 31.4.1991 to 26.1.1994.

4. By order dated 31.10.1994 petitioner was medically invalidated and discharged from service with immediate effect, without any notice.

Petitioner raised an industrial dispute against the said discharge order in I.D. No. 643 of 1995. The Labour Court dismissed the industrial dispute

and the same was challenged by the petitioner in W.P. No. 13408 of 1999 before this Court and this Court allowed the writ petition by order

dated 13.12.1999 and ordered to reinstate the petitioner and to allot lighter duty suitable to his health condition and pay 50% backwages within

three months from the date of that order. The said order of this Court was challenged by the respondent Corporation in W.A. No. 64 of 2001 and

the Division Bench of this Court dismissed the writ appeal and confirmed the order of the learned single Judge by Judgment dated 15.3.2004. The

SLP filed by the respondent Corporation before the Supreme Court in SLP(C) No. 7399 of 2004 was also dismissed on 13.9.2004.

5. After the order of the learned Single Judge dated 13.12.1999 in W.P. No. 13408 of 1999, the respondent Corporation issued an appointment

order dated 4.9.2000 during the pendency of W.A. No. 64 of 2001 and the petitioner also joined in service on 20.10.2000, without prejudice to

his claim in the writ petition. The grievance of the petitioner is that he was re-appointed only as non-I.T.I Helper, that too as fresh entrant in spite of

the orders in the writ appeal by the Division Bench and in SLP by the Supreme Court, and that he was not given any regular and equivalent post,

which he was holding prior to his discharge from service.

6. It is stated in the affidavit filed by the petitioner that after the disposal of the SLP by the Supreme Court, the respondent passed an order on

30.10.2004 and paid a sum of Rs. 1,68,717.50 towards 50% of arrears of pay and in January, 2006 the respondent paid Rs. 50,802/- as

increment arrears. However, in the service record of the petitioner still he is described as "fresh entrant". Further, leave benefit has not been

accorded to the petitioner from 27.1.1994 to 19.10.2000. Hence the petitioner issued a counsel notice to the respondent on 7.8.2006 and called

upon the respondent to rectify the service record with continuity of service from the date of his first appointment, credit leave account and pay his

eligible batta due to his post, leave salary, etc., and no reply being received, this writ petition is filed.

7. Notice in this writ petition was served on the respondent on 25.7.2007. On 23.1.2009 this Court fixed the date of final disposal of the writ

petition as 17.6.2009. However, till date no counter affidavit is filed by the respondent.

8. The learned Counsel appearing for the petitioner submits that the order of the learned single Judge of this Court in W.P. No. 13408 of 1999

dated 13.12.1999, which has been confirmed by the Division Bench of this Court as well as by the Supreme Court, is bound to be implemented

by the respondent Corporation as the said order has become final and that the petitioner is entitled to get alternate employment with pay protection

and promotion.

9. The disability sustained by the petitioner is admittedly during the course of his employment. The Medical Board found that the petitioner was not

fit to continue as Conductor and recommended for lighter duty. But the respondent Corporation discharged the petitioner from service on

31.10.1994.

10. Whether the person who sustained disability before the enactment of Act 1 of 1996 is entitled to get alternate employment with pay protection

and promotion or not was considered by me in the decision reported in (2008) 8 MLJ 1079 (R. Mani v. Labour Court). Paragraphs 10, 11, 14

and 15 of the said order read thus,

10. The enactment of Act 1 of 1996, was made for giving effect to the proclamation of full participation and equality of people with disabilities in

the Asian Pacific region held in Beijing in the first week of 1992 to which the Government of India is a signatory. Even prior to the enactment of

Act 1 of 1996, similar issue came up before the Supreme Court in the decision reported in Anand Bihari and others Vs. Rajasthan State Road

Transport Corporation, Jaipur and another, wherein it is held that in case of the employees acquiring disability during employment, the employer

should provide for adequate safeguards to remedy the situation by giving them alternate job or by compensating them in some form for the around

loss they suffered for no fault of theirs. In that case, the drivers of the roadways buses of the respondent Corporation who have put in long years of

service, during their routine medical examination were found to have developed defective eyesight and did not have the required vision for driving

heavy motor vehicles like buses. The Corporation terminated their services since their eyesight was not of the standard required to drive buses.

The Honourable Supreme Court held that the action of the Corporation was not proper and equitable and directed the Corporation to offer them

alternative employment or grant compensatory relief for the loss they suffered on account of the premature retirement necessitated by their unfitness

to work as drivers. The Court observed that the workmen are not denizens of an animal farm to be eliminated ruthlessly the moment they become

useless to the establishment. They have not only to live for the rest of their lives, but also to maintain the members of their family and other

dependents, and to educate and bring up their children. Their liability in this respect at the advanced age at which they are thus retired stands

multiplied. They may no longer be of use to the Corporation for the job for which they were employed, but the need of their patronage to others

intensifies with the growth in their family responsibilities. In the circumstances of the case, the Court proposed a scheme to give relief to the

workmen involved in that case.

11. Again in the decision reported in Narendra Kumar Chandla Vs. State of Haryana and others, i.e., prior to the enactment of the Disabilities Act,

the Supreme Court considered similar issue and ordered to give alternate employment taking note of the fundamental right guaranteed under Article

21 of the Constitution of India. The operative portion of the order reads as follows:

Article 21 protects the right to livelihood as an integral facet of right to life. When an employee is afflicted with unfortunate disease due to which,

when he is unable to perform the duties of the post he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge the duties. Asking the appellant to discharge the duties as a Carrier Attendant is unjust. Since, he is a matriculate, he is eligible for the post of LDC. For LDC, apart from matriculation, passing in typing test either in Hindi or English at the speed of 15/30 words per minute is necessary. For Clerk, typing generally is not a must. Therefore, the State Electricity Board should relax his passing of the typing test and appoint him as an LDC. Since, on the date when he had unfortunate operation, he was drawing the salary in the pay scale of Rs. 1,400-2,300, his last drawn pay and scale of pay have to be protected. He will also be entitled to arrears of salary.

The said judgment is having binding force in terms of Article 141 of the Constitution of India.

14. Act 1 of 1996, even though came into force from February, 1996, the principles contained in the said Act can be applied to this case since the petitioner's right guaranteed under Article 21 of the Constitution of India has been violated and by enactment of the said Act, the pre-existing right available as fundamental right as well as human right was reiterated in the said Act. The petitioner is having a fundamental right to demand alternate employment even without reference to the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

Similar issue was considered by the Honourable Supreme Court in the decision reported in M. Nagaraj and Others Vs. Union of India (UOI) and

Others, and in paragraph 20, the Supreme Court held as follows:

20. This principle of interpretation is particularly apposite to the interpretation of fundamental rights. It is a fallacy to regard fundamental rights as a gift from the State to its citizens. Individuals possess basic human rights independently of any Constitution by reason of the basic fact that they are members of the human race. These fundamental rights are important as they possess intrinsic value. Part III of the Constitution does not confer fundamental rights. It confirms their existence and gives them protection. Its purpose is to withdraw certain subjects from the area of political controversy to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. Every

right has a content. Every foundational value is put in Part III as a fundamental right as it has intrinsic value. The converse does not apply. A right becomes a fundamental right because it has foundational value....

In the said judgment it is held that the enactment of the Constitution of India, particularly Part-III confirms the existing rights and the same cannot be treated as new rights to the citizens. Similarly, Act 1 of 1996 has not created any new right and it only recognised the pre-existing right.

15. Thus, the contention of the learned Counsel for the second respondent that the petitioner having sustained disability prior to Act 1 of 1996 is

not entitled to seek alternate employment, is unsustainable. The said plea cannot at all be raised by the second respondent since even the

Government Order issued to provide Helper post afresh is not complied with insofar as the petitioner's case. The Labour Court, without

appreciating the legal rights involved in favour of the petitioner refused to interfere with the order of termination solely on the ground that the

petitioner has approached the Motor Accident Claims Tribunal for the injuries sustained by him, got an award including under the head "Loss of

Earnings". The Division Bench judgment cited supra answers the point in favour of the petitioner and it is for the second respondent to argue for

the reduction of compensation due to providing of alternate employment. The learned Counsel for the second respondent submitted that the appeal

against the motor accident claims Tribunal award is pending before this Court and therefore no prejudice would be caused to the second

respondent by providing alternate employment.

11. How Act 1 of 1996 shall be interpreted was considered by the Division Bench of this Court in the decision reported in G. Muthu Vs. The

Management of Tamil Nadu State Transport Corporation (Madurai) Ltd., , and in paragraphs 22 and 26, held thus,

22. Welfare legislations are meant to ensure benefits to the needy. They should be interpreted in such a way so that the purpose of the legislation is

allowed to be achieved. Even assuming that there is any ambiguity in the provisions of the Act, in view of the object underlying the Act, it requires a

reasonable interpretation of Section 2(i) of the said Act so as to make it applicable to the case on hand. The legislative purpose must be noted and

the statute must be read as a whole.

23....

24....

25....

26. After analysing the entire provisions of the Act and also various decisions cited above, we feel that the Courts cannot shut its eyes if a person

knocks at its door claiming relief under the Act. In a welfare State like India, benefits of benevolent legislation cannot be denied on the ground of

mere hyper-technicalities. When the law makers have conferred certain privileges on a class of persons, like in this case to a disabled person, the

duty is cast upon the judiciary to oversee that the authorities or the persons to whom such a power is conferred, enforce the same in letter and

spirit for which such enactment has been made. In the present case on hand, the appellant has been discharged on the ground of "colour blindness"

without providing alternative job as per Section 47 of the Act, which is unjustified and unreasonable. Hence, the order of the respondent dated

26.3.2002 discharging the appellant on medical grounds has no leg to stand. The appellant is entitled to the protection u/s 47 of the Act. He should

have been given a suitable alternative employment with pay protection, instead of discharging him from service on the ground of "colour blindness".

Viewed from any angle, the order of the learned single Judge dismissing the writ petition on the mere ground of laches without considering the claim

of the appellant on merits is liable to be set aside.

The said Judgment has become final, as SLP filed against the said decision was dismissed by the Supreme Court. Similar view was taken in the

Division Bench Judgments of this Court reported in *The Management of Tamil Nadu State Transport Corporation (Villupuram Division-III) Ltd.*

Vs. B. Gnanasekaran, ; A. Subramani Vs. The Management of Tamil Nadu State Transport Corporation (Coimbatore Division I) Ltd. and The

Presiding Officer Labour Court, ; State Vs. K. Mohammed Mustafa, Sr. Gr. Conductor, ; P. Thangamarimuthu Vs. Tamil Nadu State Transport

Corporation, Madurai (Division-I) Ltd., (D. Murugesan. J); and in the decision of mine reported in 2007 II LLJ 300 (K. Selvaraj v. State Express

Transport Corporation); (2008) 3 MLJ 787 (P. Ravichandran v. Tamil Nadu Civil Supplies Corporation Limited); and (2008) 6 MLJ 1015 (V.

Venkatesan v. T.N. State Transport Corporation Ltd.).

12. How the officers should change their mind set and extend the benefit to the disabled persons as per Section 47 of the Act 1 of 1996 was

considered by the Supreme Court in the decision reported in Bhagwan Dass and Another Vs. Punjab State Electricity Board, and in paragraphs

16 to 19 it is held thus,

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 Vs. State of Haryana and Others, . 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.

17. From the materials brought before the court by none other than the respondent Board it is manifest that notwithstanding the clear and definite

legislative mandate some officers of the Board took the view that it was not right to continue a blind, useless man on the Board's rolls and to pay

him monthly salary in return of no service. They accordingly persuaded each other that the appellant had himself asked for retirement from service

and, therefore, he was not entitled to the protection of the Act. The only material on the basis of which the officers of the Board took the stand that

the appellant had himself made a request for retirement on medical grounds was his letter dated 17-7-1996. The letter was written when a charge-

sheet was issued to him and in the letter he was trying to explain his absence from duty. In this letter he requested to be retired but at the same time

asked that his wife should be given a suitable job in his place. In our view it is impossible to read that letter as a voluntary offer for retirement.

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.

19. We understand that the officers concerned were acting in what they believed to be the best interests of the Board. Still under the old mindset it would appear to them just not right that the Board should spend good money on someone who was no longer of any use. But they were quite wrong, seen from any angle. From the narrow point of view the officers were duty-bound to follow the law and it was not open to them to allow their bias to defeat the lawful rights of the disabled employee. From the larger point of view the officers failed to realise that the disabled too are equal citizens of the country and have as much share in its resources as any other citizen. The denial of their rights would not only be unjust and unfair to them and their families but would create larger and graver problems for the society at large. What the law permits to them is no charity or largesse but their right as equal citizens of the country.

13. In this case the discharge of the petitioner by order dated 31.10.1994 is held illegal. Though the Labour Court passed an award against the petitioner, the learned single Judge of this Court granted relief in favour of the petitioner, which has also become final as the said decision was confirmed by the Division Bench of this Court as well as by the Supreme Court, and ordered alternate employment with 50% backwages and continuity of service. The grievance of the petitioner is non-implementation of the said order fully. In the counsel notice dated 7.8.2006 the respondent was called upon to comply with the order of this Court in its entirety, for which the respondent has not chosen to give any reply to the petitioner. Hence this writ petition is disposed of with direction to the respondent to pass orders on the petitioner's counsel notice dated 7.8.2006 in compliance with the order of this Court dated 13.12.1999, within four weeks from the date of receipt of a copy of this order.

The Writ petition is ordered with the above directions. No costs.