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**(2006) 09 MAD CK 0265**  
**In the Madras High Court**  
**Case No : W.A. (MD) No. 321 of 2006**

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|----------------------------------------|----|------------|
| State                                  | Vs | APPELLANT  |
| K. Mohammed Mustafa, Sr. Gr. Conductor |    | RESPONDENT |

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**Date of Decision :** 14-09-2006

**Acts Referred:**

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 47, 72

**Citation :** (2007) 2 LLJ 407 : (2007) WritLR 256

**Hon'ble Judges :** P.K. Misra, J;K. Venkataraman, J

**Bench :** Division Bench

**Advocate :** R. Siva Manogaran, for the Appellant;

**Final Decision :** Dismissed

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## Judgement

P.K. Misra, J.—Heard Mr. R. Siva Manogaran, learned Counsel appearing for the appellant.

2. The present appeal is filed against the order of the learned single Judge upholding the contentions of the writ petitioner regarding the applicability of Section 47 of the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as "the Act").

3. Brief facts are as follows:

The respondent herein was appointed as Conductor under the Tamil Nadu State Transport Corporation, Madurai (Division-IV) (the present appellant). Subsequently, such person had to undergo hip replacement. Due to such hip replacement, the employee was unable to perform the duty as Conductor. At that stage, the Management issued notice to the said employee to show cause as to why he should not be discharged from service on account of disability. Such notice was challenged by the employee and under the impugned order, the learned single Judge has extended the benefits available u/s 47 of the Act and quashed the notice issued by the appellant and directed the present appellants to

provide some other post with same pay scale and if such other posts are not available to keep on a supernumerary post until a suitable post is available or until a person attains superannuation. In other words, the relief in terms of Section 47 of the Act was extended.

4. The learned Counsel for the appellant placed reliance upon Section 72 of the Act and contended that already a provision has been made in G.O. Ms. No. 746 (Transport Department) dated July 2, 1981 and therefore, the person cannot be allowed to continue as a Conductor but he could be employed in any post as a helper as a fresh entrant in the scale of pay or consolidated pay admissible to the new posts. The relevant portion of the G.O. Ms. No. 746 is to the following effect:

2. The Government accordingly direct that the workers in the State Transport Undertakings who are declared unfit for the continuance in the same posts, by Doctors, while in service because of the eye defect or any other ailments, be discharged on medical grounds and their service benefits settled. They should be subsequently provided with alternative employment in posts like "Helpers" depending upon their qualification and experience and suitability for the new posts, without consulting Employment Exchange. They should be appointed as fresh entrants only in the scale of pay or consolidated pay admissible to the new posts and their services terminated on the date on which they attain the age of superannuation.

5. The learned Counsel admitted that since the provision u/s 72 of the Act is to be considered in addition to any other law and not in derogation of or law and order and since the order in G.O. Ms. No. 746 dated July 2, 1981 is occupying the field, the provision u/s 47 cannot be made applicable to such employee. This provision has been considered by the learned single Judge who placing reliance on the decision of the Supreme Court reported in Kunal Singh Vs. Union of India (UOI) and Another, negated this contention and has observed that the beneficial provision u/s 47 can be made available.

6. After having considered the contention raised by the learned Counsel for the appellant, we are unable to accept the submission made by the appellant to the effect that giving all benefits u/s 47 would in any way derogate from the earlier Government Order passed by the Government. The main intention of the Government Order was to give employment to the person under disabilities. However, the question as to whether he should be paid at a particular scale cannot be considered as the essential aspect of the Government Order. The benefit envisaged u/s 47 can be considered in addition to the benefits contemplated under the Government Order. If any additional benefits or higher benefits are contemplated under the Act as compared to the rights conferred under G.O. Ms. No. 746 dated July 2, 1981 and if such provisions of the Act are made applicable, it cannot be said that such action in any way derogates from the provisions incorporated in G.O. Ms. No. 746 dated July 2, 1981. On the other hand, the same can be said to be additional provisions and a person is entitled to more beneficial provision available either under the Act or under the Government

Order. In other words, if in a given case, the provisions contained in the G.O. are more beneficial notwithstanding any provision contained in the Act, such beneficial provision of the G.O. can be made applicable and similarly if the provisions contained in the Act are more beneficial as compared to the provisions contained in the G.O., benefit of such Act can be made available. In this connection, we also place reliance on the unreported decision of this Court in W.A. No. 136 of 2005 dated August 25, 2006, G. Muthu Vs. The Management of Tamil Nadu State Transport Corporation (Madurai) Ltd., .

7. For the aforesaid reasons, we are unable to accept the submissions made by the learned Counsel for the appellant, the appeal is accordingly dismissed.