
(2011) 04 MAD CK 0050

In the Madras High Court

Case No : Writ Appeal (MD) No. 322 of 2011 and M.P. (MD) No. 2 of 2011

Tamil Nadu State Transport Corporation

APPELLANT

Vs

G. Balakrishnan

RESPONDENT

Date of Decision : 11-04-2011

Acts Referred:

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

Citation : (2011) 04 MAD CK 0050

Hon'ble Judges : K. Suguna, J;A. Arumughaswamy, J

Bench : Division Bench

Advocate : R. Singgaravelan, for the Appellant; N. Sundaresan, for the Respondent

Judgement

A. Arumughaswamy, J.—As against the order of learned Single Judge dated 27.09.2010 in W.P.(MD) No. 1374 of 2007, Tamil Nadu

State Transport Corporation has preferred this Writ Appeal.

2. Originally, the Respondent herein has filed a writ petition before this Court in W.P.(MD) No. 1374 of 2007 challenging the proceedings of the

Appellant herein dated 31.01.2002 and for a further direction to reinstate him with effect from 01.02.2002 and for continuity of service and all

attendant benefits.

3. The learned Single Judge, by an order dated 27.09.2010 allowed the writ petition with costs of Rs. 5,000/-. Hence, this writ Appeal.

4. The main contention of the learned Counsel appearing for the Appellant Corporation is with regard to laches. According to him, during 2001,

the Respondent herein acquired problem in his eyes and he was directed to attend medical check up with Medical Board at Government Rajaji

Hospital at Madurai. Based on the report of the Medical Board, a show cause notice dated 18.01.2002 was issued to the Respondent calling

upon him to submit his explanation as to why he should not be discharged from service on medical grounds and the Respondent by letter dated

25.01.2002 accepted the medical discharge. Thereafter, he was discharged from service on 31.01.2002. Subsequently, after a lapse of five years,

the Respondent herein has filed the writ petition in W.P.(MD) No. 1374 of 2007 only in the year 2007 and therefore, he is not entitled to re-

employment and backwages and therefore, this Writ Appeal has to be allowed.

5. Learned Counsel appearing for the Respondent has contended that it is the duty of the employer to explain the correct legal position to the

Respondent herein and to tell him about his legal rights. If the Respondent could have been explained the position on that day, he would not have

been without work for so many years and therefore, he is not responsible for the laches and prayed that the order of the learned Single Judge has

to be confirmed and the writ appeal has to be dismissed. In support of his contention, he has relied upon the decision reported in Bhagwan Dass

and Another Vs. Punjab State Electricity Board, .

6. It is not in dispute that the Respondent herein has joined duty as Office Assistant and he was on medical leave for quite a long period.

Therefore, on 20.12.2001, the Management has referred him to attend the Medical Board on 26.12.2001. On 02.01.2002, the Medical Board

submitted a Report that the Respondent herein is unfit for duty as Assistant due to poor vision in both eyes. Thereafter, the Appellant issued a

show cause notice dated 18.01.2002 calling upon the Respondent to submit his explanation as to why he should not be discharged from service on

medical grounds. Accepting his medical invalidation, the Respondent herein submitted his explanation on 25.01.2002 and prayed for a job for his

son. On 31.01.2002, the Respondent was discharged from service and no job was given to the son of the Respondent herein. It is also not in

dispute that the Respondent had received the Provident Fund and Gratuity on 28.02.2002. Pension was fixed on 13.08.2002 and computation of

pension has been calculated and it has been distributed in 2006.

7. We have heard the submissions of the learned Counsel appearing for the Appellant as well as the learned Counsel appearing for the Respondent

and perused the documents available on record.

8. From a perusal of the documents available on record, it is clear that the Respondent herein was suffering from poor vision in both eyes and on

that basis, he was medically invalidated and discharged from service on 31.01.2002 and all his dues have been settled. It is also not in dispute that

by relying upon Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, after a

period of five years in 2007, the Respondent has come before this Court with the writ petition in W.P.(MD) No. 1374 of 2007.

9. For better appreciation of the rival submissions of either side, it is useful to extract Section 47 of the Act, which reads as follows:

47. NON DISCRIMINATION IN GOVERNMENT EMPLOYMENT: (1) No establishment shall dispense with, or reduce in rank, an

employee who acquires a disability during his service;

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the

same pay scale and service benefits;

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is

available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability;

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by Notification and subject to

such conditions, if any, as may be specified in such Notification, exempt any establishment from the provisions of this Section

10. Further, in paragraph 18 of the decision reported in Bhagwan Dass and Another Vs. Punjab State Electricity Board, , the Hon"ble Apex Court

has held as follows:

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.

11. On a careful perusal of paragraph 18 of the above said decision, it is clear that when the workman was not aware of any protection that the

law afforded him and apparently believed that the blindness would cause him to lose his job, it is the duty cast upon the superior officers to explain

to him about the correct legal position and to tell him about the legal rights. In this case, as contended by the learned Counsel appearing for the

Respondent, the same was not explained to the Respondent herein. From the facts, it is clear that the Appellant transport Corporation is having a

legal wing. If a workman comes with an application, without having awareness of legal rights, it is the duty of the transport corporation to explain

the position and immediately could have provided alternate employment. In that case, the question of non-employment for more than five years and

thereafter filing of this writ petition for payment of backwages would not have arisen at all. Therefore, we are of the view that the

Appellant/Transport Corporation has failed to explain the correct legal position to the Respondent and to provide alternate employment and

therefore, the contention raised by the learned Counsel appearing for the Appellant as regards laches in filing the writ petition cannot be accepted.

Under such circumstances, we are of the opinion that there is no ground to interfere with the order of the learned Single Judge.

12. The learned Counsel appearing for the Respondent/workman contended that the Respondent should be provided with alternate job and since

the job of recanning of chairs as offered by the Appellant Transport Corporation requires skill work, he should be provided job only in canteen.

The learned Counsel appearing for the Appellant strongly opposed the said argument of the learned Counsel appearing for the Respondent.

13. From the facts of this case, it is clear that the Respondent herein was suffering from poor eye vision in both eyes. As per the order of the

learned Single Judge also, the Transport Corporation has to provide alternate employment to the Respondent herein. But, the choice is always with

the Appellant Transport Corporation. The contention of the learned Counsel appearing for the Respondent that the workman needs required

training for recanning of chairs and he could not do the work without any training is not correct. Hence, we are of the view that ends of justice

would be met by directing the Appellant/Transport Corporation to provide alternate employment of their choice to the Respondent herein, for

which the Respondent/workman has no role to say anything. The learned Counsel appearing for the Appellant also submitted that the Respondent

would be provided with alternate employment and if necessary 15 days training will be given to the Respondent herein and the said submission is

recorded.

14. Submitting that by the impugned order, the learned Single Judge allowed the writ petition with costs of Rs. 5,000/-, the learned Counsel

appearing for the Appellant prayed that the said portion of the order may be set aside.

15. We find force in the said submission of the learned Counsel appearing for the Appellant and we set aside the portion of the order, directing the

Appellant transport corporation herein to pay costs of Rs. 5,000/- to the counsel for the writ Petitioner.

16. In the above said terms, this Writ Appeal is disposed of accordingly. However, there will be no order as to costs. Consequently, M.P.

(MD)No.2 of 2011 is closed.