

(2011) 03 MAD CK 0116
In the Madras High Court
Case No : Writ Petition No. 35595 of 2007

V. Balasubramaniam

APPELLANT

Vs

Tamil Nadu State Express Transport Corporation

RESPONDENT

Date of Decision : 15-03-2011

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 47, 47(2), 72

Citation : (2011) 03 MAD CK 0116

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : S. Sadasharam, for the Appellant; M. Ravibharathi, for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—The writ petition is filed for direction against the Respondent to offer alternative employment to the Petitioner in the

Respondent corporation in an identical scale of pay admissible to the post of Driver following various representations made by the Petitioner.

2. The Petitioner was appointed as Driver in the Respondent Corporation and was employed at Tirunelveli Depot. Based on the certificate issued

by the Principal of Tirunelveli Medical College and Hospital, Tirunelveli dated 10.11.2003, referring to Ortho disability suffered by the Petitioner,

show cause notice was issued by the Respondent on 18.12.2003 calling upon the Petitioner to submit his explanation as to why he should not be

removed from service. After explanation was submitted, the Respondent Corporation has by order dated 6.12.2004 removed the Petitioner from

service based on the medical report and further stated that if he desires, he can apply for alternative employment. The Petitioner has subsequently

made representations dated 13.11.2005 and 3.5.2007 to the Respondent requesting alternative employment. However, no order has been passed by the Respondent. Hence, the present writ petition for direction as stated above.

3. The Petitioner has claimed the relief in the writ petition as per the provisions of Persons with Disabilities (Equal Opportunities, Protection of

Rights and Full Participation) Act, 1995. The said Act came into force from the date of its notification dated 7.2.1996. Section 47 of the Act

makes it clear that no establishment shall dispense with the service of an employee who acquires a disability during his service. It also makes clear

that an employee, in case of acquiring disability during service, is not suitable for the post he was holding, could be shifted to some other post with

the same pay scale and service benefits. It further states that even 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. It is relevant 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.

4. The said provision came to be upheld and explained in the judgment reported in Kunal Singh Vs. Union of India (UOI) and Another, , wherein,

the Supreme Court has laid down the dictum to the effect that as and from the date of notification of the Act, the legal right accrues on the

employee who acquires disability, by way of protection in respect of pay and employment enshrined u/s 47 of the Act. The Act which is self

contained Code, is significant for the persons with disabilities and Section 72 also makes it clear that the provisions of this Act shall be in addition

to and not in derogation of any other law for the benefits of persons with disabilities. Further, the Act contemplates the disability which has been

defined in Section 2(i) which includes locomotor disability. The purport of various provisions came to be discussed in the batch of writ petitions

filed before the Madurai Bench of Madras High Court by V. Palanishanmugavel and Ors. v. The General Manager, Tamil Nadu State Transport

Corporation (Madurai) Ltd. Tirunelveli and Ors. reported in 2007(4) CTC 478 wherein, I had occasioned to discuss entire provisions of the Act

and by following the guidelines given by the Supreme Court in the judgment reported in Kunal Singh Vs. Union of India (UOI) and Another, .,

issued the following direction:

32. Therefore, for all the foregoing reasons, the writ petitions are allowed and the show cause notice or the order of discharge issued against the

Petitioners in respect of the employees in service acquired disability during the period of service are quashed with a direction to the Respondents to

provide some other post with same pay scale and continuing service benefits from the date of discharge and if such other posts are not available to

keep on a supernumerary post either until a suitable posts are available or they attain superannuation whichever is earlier. This includes their further

right of promotion, etc. as per Section 47(2) of the Act.

5. Further, it is also relevant to point out at this juncture that the Division Bench of this Court in 2008 (2) CLT 402 in K. Ganesan v. The Managing

Director, MTCL, has reiterating the judgment of the Supreme Court in Kunal Singh v. Union of India with reference to Section 47 of the Act,

directed to reinstate the medically invalidated person who was working as bus driver in the Respondent Corporation, in service with all benefits as

per Section 47 of the Act.

6. The learned Counsel for the Respondent would submit that since the Petitioner has chosen to approach this Court belatedly, he is not entitled to

claim backwages and the benefits conferred u/s 47 of the Act can be given to the Petitioner only from the date of filing of this writ petition. I do not

agree with the contention so raised on the side of the Respondent.

7. The Act has been notified being beneficial legislation and by virtue of mandatory provision u/s 47 of the Act, accrued right has already been

conferred to the employee who has acquired disability during the course of employment. The Supreme Court in Kunal Singh case as referred to

above, has dealt with the issue of benefits, not in the writ petition, but only at the stage of writ appeal and held therein that inasmuch as the benefits

of the Act has already been accrued to the party concerned, it is the question of law and there is no need to specifically raise the same. The Act

being a beneficial legislation, it is the duty cast upon the Respondent to give backwages to the Petitioner. In the present case, the Petitioner was

discharged from service on 6.12.2004, after the Act came into effect. In such view of the matter, in my considered view, the Petitioner is entitled to

claim not only alternative employment, but also all the benefits conferred u/s 47 of the Act.

8. In the result, the writ petition stands allowed, with direction to the Respondent to confer all benefits including monetary benefits to the Petitioner

from the date of discharge and to provide some other post with same pay scale and continuing service benefits from the date of discharge on

6.12.2004 and if such other posts are not available to keep on a supernumerary post either until a suitable posts are available or he attains

superannuation whichever is earlier, within eight weeks from the date of receipt of the copy of this order. The arrears shall be payable to the

Petitioner by then. No costs.