

Madras High Court
Rangasamy vs The General Manager on 20 April, 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 20-04-2009

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.688 of 2004

Rangasamy .. Petitioner.

Versus

The General Manager,
Tamilnadu State Transport
Corporation
(Coimbatore Division-II) Ltd.,
Chennimalai Road, Erode. .. Respondent.

Prayer: Petition filed seeking for a writ of Certiorarified Mandamus, calling for the records

For Petitioner : Mr.V.Ajay Khose

For Respondent : Mr.T.Chandrasekaran

O R D E R

Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

2. This writ petition has been filed praying for a writ of certiorarified mandamus to quash the order, dated 15.10.2001, passed by the respondent, discharging the petitioner from service and to reinstate him in a suitable post, with continuity of service, pay protection, backwages and other attendant benefits.

3. It has been stated that the petitioner had joined the service of the respondent Corporation, as a Driver, in the year 1983. Thereafter, on reviewing his service he was designated as a senior driver and later, as a selection grade driver, in the higher scale of pay. The petitioner has blemishless service and he has been given cash awards for accident free driving. When he was working in Gopichettipalayam depot, on 12.6.2000, he had met with an accident and he had suffered injuries due to the said accident. He had to undergo surgeries due to the fractures he had suffered. In order to undergo the medical treatment, he had been hospitalised from 9.7.2001 till 17.7.2001. While so, he was issued with the show cause notice, dated 3.4.2001, proposing to discharge him from service on the ground that he was not fit for the post of driver, as per the medical report given by the District Medical Board. On receiving the show cause notice the petitioner had submitted his reply, dated 11.4.2001, requesting the respondent to send him to the medical Board for re-examination.

4. On re-examination, the medical Board had given a report stating that the petitioner was unfit for the post of driver. Based on the said report the respondent had issued another show cause notice, dated 18.7.2001, proposing to discharge the petitioner from service. Thereafter, the petitioner had made a request to the respondent not to discharge him from service, as he was told that he would recover in health and that he would be fit for driving. By a letter, dated 31.10.2001, the petitioner had requested the respondent to provide him alternative employment. However, there was no reply from the respondent. Therefore, the petitioner had made a representation to the District Collector, Erode, which was forwarded to the respondent, for necessary action. Instead of providing the petitioner with a lighter work, the respondent had given a reply, dated 15.3.2002, to the District Collector, marking a copy to the petitioner, informing that the request of the petitioner for alternative employment would not be approved, as his name was included in the seniority list and that appropriate action would be taken in due course. Since no alternative employment had been given to the petitioner, even after the lapse of 1 = years from the date of receipt of the letter, dated 15.3.2002, the petitioner had preferred the present writ petition before this Court, under Article 226 of the Constitution of India.

5. In the counter affidavit filed on behalf of the respondent Corporation, it has been stated that the petitioner had joined as a driver in the respondent Corporation. During his service he had been punished on several occasions for misconduct, contrary to his claim that his service in the respondent Corporation has been without any blemish. Further, the petitioner, in his letter, dated 20.6.2000, had stated that, on 12.6.2000 he had met with an accident, while driving a motor cycle, when he was returning from school, after having gone there to seek admission for his daughter. The petitioner had been granted Medical leave, from 12.6.2000 to 12.12.2000. Instead of joining duty, the petitioner had applied for leave, from 13.12.2000 to 14.02.2001, along with the medical certificate issued by the medical officer, V.M.Kailasam Hospital, Shakthi Nagar. Due to his prolonged Medical leave the petitioner was referred to the medical Board for verifying his fitness as a driver. After examining the petitioner, the medical board had issued a certificate stating that he was not fit for the post of driver. Based on the memo, dated 3.4.2001, the petitioner had been asked to show cause as to why he should not be discharged from service. The petitioner, in his explanation, dated 21.4.2001, had stated that the medical Board had issued the certificate, without proper examination and therefore, he had requested for three months time to be fit enough for the driver's post. Even though the petitioner had been granted the time he had requested for, he had further

requested the respondent Corporation to refer him to the medical Board for re-examination. Accordingly, the petitioner had been produced before the medical Board. The Medical Board, after examining him, had given the opinion that he was not fit for the driver's post. Therefore, another memo, dated 18.7.2001, had been issued to the petitioner through Registered Post, which had not been received by the petitioner in spite of the intimation by the postal department. However, the memo had been served on him in person, on 20.9.2001. The explanation submitted by the petitioner was not satisfactory. Therefore, he had been discharged from service, with effect from 17.10.2001.

6. It has been further stated that, in respect of monitoring the re-employment of medically discharged persons, the Government had issued certain guidelines, in G.O.Ms.No.746, dated 2.7.1981. According to the said Government Order, medically discharged persons would be provided with alternative employment in certain posts like the post of 'helpers', depending upon their qualifications, experience and suitability for the post. They would be appointed as fresh entrants, on a consolidated pay. Since helpers were in excess and as there were other medically discharged persons waiting for re-employment as helpers, the petitioner would not be re-employed, immediately. The petitioner is at No.5 in the seniority list. The respondent would provide alternative employment to the petitioner, with appropriate wages, as and when the vacancies arise in the post of helper.

7. It has been further stated that the petitioner had been discharged from service, after following all the formalities, in accordance with law and by following the principles of natural justice. It is also stated that the disablement had not happened in the course of his employment, nor due to an occupational disease. Therefore, the petitioner is not entitled to claim reinstatement, under the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. He can only get the remedy, under G.O.Ms.No.746, dated 2.7.1981. In such circumstances, the writ petition is devoid of merits and therefore, it is liable to be dismissed.

8. The learned counsel appearing on behalf of the petitioner had submitted that the impugned order passed by the respondent, discharging the petitioner from service, is arbitrary and in violation of Article 14 of the Constitution of India. Since the petitioner is a 'disabled' person, under the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, with certain disabilities and when the respondent is an 'establishment', within the meaning of Section 2(k) of the said Act, the respondent ought to have continued the petitioner in service in any other suitable post, with continuity of service and pay protection. Discharging the petitioner from service on the ground of disability, without providing a suitable alternative employment, with pay protection and other service benefits, is contrary to the mandatory protection provided, under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. It is also opposed to the settled position of law, as laid down by the Apex Court. Further, the impugned order passed by the management of the respondent Corporation is contrary to the principles enshrined, under Article 21 of the Constitution of India.

9. The learned counsel appearing for the petitioner had relied on the following decisions in support of his contentions:

9.1. In *Kunal Singh V. Union of India* (2003(4) SCC 524), the Supreme Court had held as follows:

"Admittedly that Act applies to the establishment of the respondents and is not exempted under Section 47 thereof. From the facts, it is clear that the disability suffered by the appellate is covered by Section 2(i)(v) read with Section 2(o) of the Act. That disability was admittedly acquired by the appellant during service. Chapter VI of the Act containing Sections 32, 33 and 38 deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. A person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. The language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service."

9.2. In *B.Dass V. Punjab State Electricity Board* (2008(2) L.L.N.1), the Supreme Court had held as follows:

"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 has 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 a large. What the law permits to them is no charity or largesse but their right as equal citizens of the country.

20. In light of the discussions made above, the action of the Board in terminating the service of the disabled employee (appellant 1) with effect from 21 March 1997 must be held to be bad and illegal. In view of the provisions of S.47 of the Act, the appellant must be deemed to be in service and he would be entitled to all service benefits including annual increments and promotions, etc. till the date of his retirement. The amount of terminal benefits paid to him should be adjusted against the amount of his salary from 22 March, 1997 till date. If any balance remains, that should be adjusted in easy monthly instalments from his future salary. The appellant shall continue in service till his date of superannuation according to the service records. He should be reinstated and all due

payments, after adjustments as directed, should be made to him within six weeks from the date of presentation of a copy of the judgment before the Secretary of the Board."

9.3. In Metropolitan Transport Corporation V. The Presiding Officer, Principal Labour Court & another (2004 Writ L.R. 398), a Division Bench of this Court had held as follows:

"The word establishment referred to in S.47 need not necessarily be a department or a wing of Government, but could be an establishment which is owned by or is under the control of the Government. The employees of the Transport Corporation which is wholly owned by the Government therefore come within the scope of the term establishment used in Section 47(1)."

9.4. In Metropolitan Transport Corpn. V. K.Ravichandran (2005(2) L.L.N. 869), a Division Bench of this Court had held as follows:

"7. A perusal of S.3(1) of the Workmen's Compensation Act, 1923, shows that the words used therein are "personal injury..... in the course of his employment."

8. On the other hand, the words used in S.47(1) of the 1995 Act are "an employee who acquires a disability during his service."

9. Thus, the language of S.3(1) of the Workmen's Compensation Act is very different from that of, S.47(1) of the 1995 Act. We cannot import notions of the Workmen's Compensation Act, 1923, into the 1995 Act which is a totally different Act.

10. It may be mentioned that the 1995 Act is a piece of welfare legislation and hence it has to be liberally construed giving a purposive interpretation. The object of the Act obviously is to fulfill the mandate of the Directive Principles of State Policy in Part IV of the Constitution. Hence full effect must be given to this objective. In our opinion, the words "who acquires a disability during his service" means that the disability should be acquired while in employment, and it is not necessary that it should be acquired while performing his work. It is also not necessary that the employment should be the cause of disability."

9.5. In G.Muthu V. Mgmt. Of T.N.State Transport Corpn. (Madurai) Ltd. (2007-I-LLJ 9), a Division Bench of this Court had held as follows:

"31. 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 had 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 March 26,

2002 discharging the appellant on medical grounds has no leg to stand. The appellant is entitled to the protection under Section 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.

In *Mgmt. Of T.N., State Transport Corpn. V. B.Gnanasekaran* (2007(5) MLJ 1), a Division Bench of this Court had held as follows: "Under Section 2 of the Act of 1995, 'disability' and 'person with disability' are separately defined and they are distinct and Section 47 of the Act deals with an employee who has acquired disability during service, as such, it is not necessary for the workman to establish that he suffer more than 40% disability and the test is whether the employee, after acquiring disability, has become unsuitable for the post he was holding earlier."

9.6. In *The State V. K.Mohammed Mustafa* (2007 Writ L.R. 256), a Division Bench of this Court had held 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 under Section 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."

9.7. In *Subramani, A. V. The Management of Tamil Nadu State Transport Corporation* (2007(5) CTC 386), a Division Bench of this Court had held as follows:

"9. In any event, Section 72 of the Disabilities Act specifically provides that the provisions of the said Act are to be considered in addition to any other law or order and not in derogation of any law or order. The main objection of the Workmen's Compensation Act is to compensate the workman for his injury. Merely because the workman has received the compensation for his injury under the Workmen's Compensation Act, it is not permissible for the employer to deny the benefits of Section 47 of the Disabilities Act, which contains a directive that the employer shall not dispense with or reduce in rank an employee who acquires disability during the service. The benefit envisaged under Section 47 of the Disabilities Act must be considered in addition to the benefits contemplated under the Workmen's Compensation Act. Therefore, the learned Single Judge was clearly in error in directing the appellant/workman to refund the compensation received by him under the Workmen's Compensation Act."

In G.M., T.N.State Transport Corpn. Ltd. V.Udayasuriyan (2008-III-LLJ 538 (Mad)), a Division Bench of this Court had held as follows:

"Section 47 of the said Act provided that the employee after he acquired disability could be shifted to some other post with the same scale and service benefits. The test was whether after acquiring the disability had become unsuitable for the post he was holding earlier."

9.8. In E.Subramani V. The General Manager, (Administration) Puratchi Thalaivar MGR Transport Corporation (2004 Writ L.R. 751), a learned single Judge of this Court had held as follows:

"Right of such an employee to be appointed in an alternative post, is mandatory not only in the context of G.O.Ms.No.746, but also under S.47 of the Act.

Contention of learned counsel for the respondent that the employee has to be terminated or discharged from service and then only his entitlement for alternative post will arise, cannot be sustained."

10. In view of the submissions made by the learned counsels appearing on behalf of the petitioner, as well as the respondent Corporation and in view of the cases cited by the learned counsel for the petitioner and on a perusal of the records available, this Court is of the considered view that the impugned order of the respondent, dated 15.10.2001, discharging the petitioner from service, is devoid of merits and unsustainable in the eye of law.

11. Once it is admitted that the petitioner had incurred a disability while he was in service he would be entitled to the benefits contemplated under the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, would encompass not only the disabilities contemplated, under Section 2(1) of the Act, but also those which had disabled the person from performing the work, which he was capable of doing, immediately prior to the acquiring of the disability.

12. It is clear that the benefits of a benevolent legislation cannot be denied to a disabled person on mere hyper technicalities, as it has been held by the Apex Court that the 'workmen' are not denizens of an animal farm to be eliminated ruthlessly, the moment they became useless to the establishment in which they have been employed. Apart from the burden of carrying on their lives, they have also the responsibility of taking care of the members of their family. If a person had suffered a disability, while he was in employment, a duty is cast on the employer to provide him a suitable post in which such a disabled person would be in a position to discharge his duties. The respondent Corporation cannot deny alternative employment to the petitioner by relying on the Government Order, in G.O.Ms.No.746, dated 2.7.1981, especially, when the provisions of the statute, namely, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, confers more benefits than those contemplated under the Government Order.

13. The benefits contemplated by a beneficial statute cannot be curbed, constricted or abridged by imputing a narrow and restricted meaning to its contents. In such view of the matter, the impugned order of the respondent, dated 15.10.2001, is set aside and the respondent is directed to re-employ the petitioner in a suitable post, which he is capable of performing, with pay protection and all other attendant benefits. The petitioner would be deemed to have been in continuous service in the respondent Corporation, as though the impugned order, discharging him from service, had never come into force. Thus, the petitioner would be entitled to all the monetary and other benefits, as though he had continued to be in service, without having been discharged. Accordingly, the writ petition stands allowed. No costs.

Index:Yes/No 20-04-2009 Internet:Yes/No csh M.JAICHANDREN,J.

csh To

1.The Commissioner, Corporation of Chennai, Rippon Buildings, Chennai-600 003.

Writ Petition No.688 of 2004 20-04-2009