

Madras High Court

S.S. Anandaraja vs The Managing Director on 26 April, 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26-4-2011

CORAM

THE HON'BLE MR.JUSTICE N.PAUL VASANTHAKUMAR

W.P.No.9889 of 2011

&

M.P.No.1 of 2011

S.S. Anandaraja

... Petitioner

Vs.

1. The Managing Director,  
Tamil Nadu Civil Supplies Corporation Ltd.,  
Kilpauk, Chennai - 600 010.

2. Tamil Nadu Civil Supplies Corporation Ltd.,  
rep. by its Senior Regional Manager  
South Arcot Region  
Cuddalore 607 002.

... Respondents

Writ Petition filed under Article 226 of Constitution of India, praying this Court to

For Petitioner : Mr.K.Parthasarathy

For Respondents : Mr.V.Selvanayagam

O R D E R

The writ petition was posted for admission on 20.4.2011, the learned counsel for the petitioner submitted that the matter in issue is covered by the earlier order made in W.P.No.27964 of 2007, dated 28.1.2008.

2. Mr.V.Selvanayagam, learned counsel takes notice for the respondents. The learned counsel for the respondents was directed to verify the same and report today. On verifying the facts and the earlier order, the learned counsel for the respondents submitted that the issue raised in this writ petition is covered by the earlier order. Hence, by consent, the main writ petition itself was taken up for hearing.

3. The prayer in the writ petition is to quash the order of the first respondent dated 23.11.2009 and consequently direct the first respondent to provide alternate employment to the petitioner by protecting his pay and other service conditions and if no equal post is immediately found, absorb the petitioner by creating supernumerary post.

4. The facts necessary for disposal of the writ petition are as follows:

(a) Petitioner has studied upto S.S.L.C. and he was appointed as a Helper in the Tamil Nadu Civil Supplies Corporation Limited, a Corporation registered under the Indian Companies Act, 1956, which is a Government of Tamil Nadu Undertaking. He was promoted as Technical Assistant Operator in the year 1994.

(b) The petitioner submits that he has undergone an operation in the year 2009 for coronary artery disease, single vessel disease. He was admitted in the hospital and underwent hemorrhoidectomy and herioplasty for umbilical hernia in July, 2008 and thereafter in the month of July, 2009. As per Doctor's advice, the petitioner has to engage himself only in light work and he has been instructed not to attend to heavy work. Hence, the petitioner submitted his request before the respondents based on Doctor's advice. Thereafter, the petitioner received a reply from the first respondent stating that as per the provision and Standing Orders applicable to persons working in the technical side, his request cannot be complied with and that the change cannot be affected.

(c) The petitioner further submits that A.Sakkarapani, Helper of Tiruvannamalai Region was posted as Typist in the head office and this is a change given from Technical side to Administrative side. Apart from all these individual's shift over from technical side to administrative side, it was contended that rules do not provide a major change over. Whereas, in the order dated 10.4.2008, eight persons were given a change over from Technical side to Administrative side. Hence, the order passed by the first respondent, which is impugned in this writ petition is non-est in law. The petitioner is continuously submitting representations to provide alternate employment and for other service benefits. Therefore, the petitioner filed this writ petition.

5. The learned counsel for the petitioner submitted that the petitioner has worked in the technical side for more than twenty years and now he is seeking for the transfer because of his inability to perform that kind of work. It is further submitted that it is settled law that administrative instructions govern the situation, when the rules do not provide for a particular contingency.

6. The learned counsel for the respondents on the other hand submitted that alternate employment cannot be claimed as a matter of right, particularly when there is no provision under the Standing Orders to transfer an employee from the technical side to administrative side.

7. I have considered the rival submissions made by the learned counsel for the petitioner as well as the learned counsel for the respondents.

8. It is not in dispute that the petitioner underwent an operation for coronary artery disease. It is also not in dispute that the petitioner was admitted in the Vijaya Heart Foundation, Chennai twice

i.e. in the month of July, 2008 and thereafter in the month of July, 2009. The Vijaya Heart Foundation, Chennai submitted a report to the Managing Director, Tamil Nadu Civil Supplies Corporation Limited on 28.8.2010, which reads as follows:

" Mr.S.S.Anandharaja, working as SG-Assistant Operator in Modern Rice Mill, TNCSC Limited, Neyveli, is a known case of Labile Hypertension, diabetes mellitus and coronary artery disease. He has undergone PCI with stenting to mid and distal LAD on 29.6.2009 using 2 stents.

He has been having Labile Hypertension and recurrence of angina. He is advised to do light duties and to take adequate rest under physical and mental exertion may adversely affect his cardiac status."

In spite of such medical opinion given stating that the petitioner will not be in a position to perform heavy duty as before due to heart surgery, admittedly the petitioner was not given alternate employment, even though it was suggested to do light duty by stating that there is no provision in the service rules to transfer an employee from the technical side to administrative side.

9. The Tamil Nadu Civil Supplies Corporation Limited is admittedly a Government owned Corporation, registered under the Companies Act, 1956. Section 47 of Central Act 1 of 1996, Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation Act, 1995 (hereinafter called the "Act") clearly states that no establishment shall dispense with or reduce in rank an employee, who acquires disability during his service. Section 47 reads as follows:

Sec.47. Non-Discrimination of 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. Admittedly, the Tamil Nadu Civil Supplies Corporation has not obtained any exemption for non-application of the provisions of Section 47 of the Act, till date. As per the judgment of the Supreme Court reported in 20`10 AIR SCW 2310 (Fancy Rehabilitation Trust and Another vs. Union of India and Others), Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation Act), 1995 is not applicable to private institutions. The Tamil Nadu Civil Supplies Corporation Limited is a Government establishment. Therefore, Section 47 of the Act is applicable to the respondent

Corporation also.

10. The only point for consideration is as to whether under the service rules there is any provision for accommodating the petitioner in the administrative side, who is now in the technical side, in the light of the above statutory provisions and various decisions of the Supreme Court and of this Court.

11. The service rules will not prevail over Act 1 of 1996. Therefore, the said reason given by the respondents to deny alternate employment to the petitioner cannot be sustained. A person acquiring disability is entitled to get protection under section 47 of the Act was considered by the Supreme Court in the decision reported in (2003) 4 SCC 524 (Kunal Singh v. Union of India). Paragraph 9 of the decision reads as follows:

"9. ....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. The very opening part of Section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The Section further provides 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; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this, no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. "

12. Further, forcing the petitioner to do technical work even after his heart surgery, is to be treated as violation of human rights as well as Article 21 of the Constitution of India. The said view was taken by another Division Bench of this Court in the decision reported in (2006) 4 MLJ 1669 (G.Muthu v. Management of T.N.State Transport Corporation (Madurai) Ltd.), wherein the very same Act 1 of 1996 came up for consideration. In paragraphs 22 and 26, the Division Bench 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 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."

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 Judgment of this Court reported in 2007 II LLJ 407 (State v. K.Mohammed Mustafa); (2006) 1 MLJ 452 (P.Thangamarimuthu v. Tamil Nadu State Transport Corporation, Madurai) (D.Murugesan. J); and in the decision of mine reported in 2007 II LLJ 300 (K.Selvaraj v. State Express Transport Corporation).

13. 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 2008 (1) SCC 579 (Bhagwan Das and Another vs. Punjab State Electricity Board). In the said judgment, it is held thus:

"We understand that the concerned officers were acting in what they believed to be the best interests of the Board. Still under the old mind-set 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 largess but their right as equal citizens of the country."

14. A similar issue regarding the applicability of Act 1 of 1996 in respect of an employee of Tamil Nadu Civil Supplies Corporation was considered by me in W.P.No.27964 of 2007 by order dated 28.1.2008 and the said writ petition was allowed with direction to give alternate employment. The learned counsel for the petitioner submitted that the said order was also implemented by Tamil Nadu Civil Supplies Corporation Ltd. The learned counsel for the respondents was not able to dispute the same. The denial of promotion on the ground of not having higher medical standard was

held illegal by the Honourable Supreme Court in the decision reported in AIR 2010 SC 1253 (Union of India vs. Devendra Kumar Pant & Others), as the same was violative of Section 47(2) of the Act. Discontinuing the service after selection on the ground that the selected candidate could not write properly was also held improper by the Honourable Supreme Court in the decision reported in 2010 AIR SCW 1795 (Syed Bashir-ud-Din Qadri vs. Nazir Ahmed Shah and Others) as it is contrary to the spirit of Act 1 of 1996.

15. In the light of the above settled legal position, the respondents are not justified in contending that their service rules do not provide transfer/posting of an employee from the technical side to the administrative side.

16. Considering the facts and circumstances of the case, the petitioner is entitled to get lighter duty with pay protection and all other benefits as contemplated under section 47 of the Act. Hence, the said submission of the respondents is also bound to be rejected.

17. In the light of my above findings, the impugned order dated 23.11.2009 is set aside and the writ petition is allowed with a direction to the respondents to provide alternate employment to the petitioner, equal to the cadre of Technical Assistant Operator in the Tamil Nadu Civil Supplies Corporation Limited, within a period of two weeks from the date of receipt of copy of this order, in the light of the medical opinion dated 28.8.2010, issued by the Vijaya Heart Foundation, Chennai in terms of Section 47 of Act 1 of 1996. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes  
Internet : Yes

26.4.2011

kb

Note to Office:- Issue order copy on 9.5.2011.

To

1. The Managing Director,  
Tamil Nadu Civil Supplies Corporation Ltd.,  
Kilpauk, Chennai - 600 010.
  
2. Tamil Nadu Civil Supplies Corporation Ltd.,  
rep. by its Senior Regional Manager  
South Arcot Region, Cuddalore 607 002.

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