

Madras High Court

V. Palani vs The Management Of on 4 June, 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2014

CORAM

THE HONOURABLE Mr. JUSTICE M. VENUGOPAL

W.P.Nos. 1824,2927,3233 and 7375 of 2012

1. V. Palani

2. B.V.Lakshmanan

3. M.Elumalai

4. G.Viswasevaran

...

Petitioners

Vs

The Management of

Metropolitan Transport Corporation

(Chennai) Ltd., Pallavan Illam

Anna Salai, Chennai 600 002. ...

Respondent

PRAYER in W.P.No.1824 of 2012: Writ Petition filed under Article 226 of the Constitution of India

PRAYER in W.P.No.2927 of 2012: Writ Petition filed under Article 226 of the Constitution of India

PRAYER in W.P.No.3233 of 2012: Writ Petition filed under Article 226 of the Constitution of India

PRAYER in W.P.No.7375 of 2012: Writ Petition filed under Article 226 of the Constitution of India

For Petitioners

: Mr.S.T.Varadarajulu

(in all writ petitions)

For Respondent

in W.Ps.1824,2927 &3233/12: Mr.G.Muniratnam

For Respondent

in W.P.No.7375 of 2012 : Mr.V.Udayakumar

ORDER

W.P.No.1824 of 2012 The Petitioner has filed the instant Writ of Mandamus praying for passing of an order by this Court in directing the Respondent / Management to grant pay protection to him with continuity of service, back wages and other attendant benefits from 04.12.2000; the date of discharge, as per Section 47 of Persons with Disabilities (Equal opportunities, protection of Rights and Full participation ) Act, 1995.

W.P.No.2927 of 2012 The Petitioner has filed the present Writ of Mandamus praying for passing of an order by this Court in directing the Respondent / Management to grant pay protection with

continuity of service, back wages and other attendant benefits from 27.08.1997, the date of re-appointment, as per Section 47 of Persons with Disabilities (Equal opportunities, protection of Rights and Full participation ) Act, 1995.

W.P.No. 3233 of 2012 The Petitioner has projected the Writ of Mandamus seeking for issuance of direction by this Court in directing the Respondent / Management to grant pay protection to the Petitioner with continuity of service, back wages and other attendant benefits from the date of re-appointment.

W.P.No. 7375 of 2012 The Petitioner has focused the present Writ of Mandamus praying for passing of an order by this Court in directing the Respondent / Management to grant pay protection to him with continuity of service, back wages and other attendant benefits from 15.02.2000, the date of re-appointment, as per Section 47 of Persons with Disabilities (Equal opportunities, protection of Rights and Full participation) Act, 1995.

2. Factual Matrix in Writ Petition No.1824 of 2012 The Petitioner joined in the service of the Respondent/ Management as a Driver on 29.04.1994 on daily wages with Staff No.D16066. He was directed to perform duty at Adyar Depot. Later on, he was brought under monthly cadre on 01.05.1995. On 16.11.1997, he left his house and reached the Adyar Depot to attend the duty. He signed in the control Chart. Unexpectedly, he fell down and could not move his left leg. He was brought to the Government Royapettah Hospital and underwent operation in his left side hip. After the treatment, he was sent to Government Medical Board, Villupuram, the Medical Board examined and informed him that he was unfit for the post of Driver and recommended to provide alternative employment. Based on the recommendation of the Medical Board, he was discharged from the service on 04.12.2000. Subsequently, alternative employment was not given. Frequently, he approached the Respondent/Management to offer employment. On 26.09.2008, he was appointed as Helper Non ITI as fresh entrant in the minimum Time Scale of Pay of Rs.5285-90· 985. He was discharged on 04.12.2000 but appointed as fresh entrant on 26.09.2008. After lapse of eight years, reappointment was given to him. To offer an alternate employment to him, they took nearly eight years. Due to inordinate delay in offering alternate employment, he lost eight years of service. The person who joined as Driver with him and who is working with continuity of service is drawing Rs.10405/- as basic pay. His basic pay is Rs.5465/-. At present, he is incurring loss of Rs.4930/- (10405 - 5465) in basic pay per month.

3. He should be given pay protection as per Section 47 of the Persons with Disabilities (Equal opportunities, protection of Rights and Full Participation) Act, 1995. As his pay was not protected, he incurred loss. Now, he is loosing Rs.4930/- per month in basic pay. No fault of his, he was given employment as new entrant. After joining the post, so many times, he personally met the then Managing Directors and represented to fix the corresponding Scale of pay with continuity of service but his efforts were futile.

4. He gave representations dated 20.12.2011 and 04.01.2012 for which no reply was given till date. The Respondent/Management is not considering his case as he was employed as a new entrant. The Respondent /Management denied to grant benefits, although he is entitled to get benefits under

Section 47 of the Act, 1995.

5. If pay protection is given as per Section 47 of Persons with Disabilities (Equal opportunities, protection of Rights and Full Participation) Act, 1995, his last drawn basic pay would have been Rs.10,405/- in time scale of pay Rs.4,800 - 10,000 and further that, he has incurred monetary loss to the tune of Rs.4940/- per month due to the denial of legitimate right. His basic pay is Rs.5465/- in time Scale of pay Rs.5285-90-7985. No fault of his, he cannot be denied the correct wages. One Ashok kumar, Conductor and Staff No.12713 was medically discharged from service on 31.10.1994. His pay was fixed in the time scale of pay which he was drawing as a Conductor on 27.01.1994 as per proceedings No.21632/LS(C M) IV/MTC/99 dated 30.10.2004. On 17.12.2011, nine employees (4 Drivers and 5 Conductors) were discharged from service on Medical ground and subsequently, they were appointed as Helper Non- ITI without any change in their service condition with pay protection. He represented on various occasions and his case was not considered by the Respondent/Management and this amounts to discrimination.

6. Counter averments of the Respondent/Transport Corporation The Petitioner joined in the service of the Respondent/Transport Corporation as a Driver on 29.04.1994 as daily wages and he was brought under monthly cadre on 01.05.1995. He performed duty on 08.11.1997 and availed two day leave on 09.11.1997 and 10.11.1997 respectively. He absented from duty for the period from 11.11.1997 to 15.11.1997. On 16.11.1997, he did not suffer any injury since he was not on duty on the day. He made a representation to the Respondent. He suffered fracture on his left leg and he could not perform the duty on 06.03.2000. Hence, he was referred to Medical Board and the Medical Board issued a certificate on 04.09.2000 stating that he is not eligible for Driver post and he was discharged from service on 04.12.2000.

7. Since there was no vacancy, the Petitioner's name was kept in waiting list as serial No.16. The Petitioner was appointed as Non-ITI Helper as a fresh entrant in the minimum time scale of pay on 26.09.2008. The Petitioner had not approached the Respondent for an alternative employment as contended by him. He accepted the order of appointment without no protest and performing his duty till date.

8. After providing an alternative employment as stated supra, he had not approached the Respondent/Transport Corporation to give pay protection with continuity of service etc under Section 47 of the Act. He had not made a representation in the affidavit dated 20.12.2011 and 04.01.2012 for consideration by the Respondent. Having accepted the order of alternative employment dated 26.09.2008 without any protest the petitioner had filed the present writ petition claiming the rights under Section 47 of the Act, 1995, after lapse of four years. Therefore, the Writ petition is not maintainable on the ground of laches and the same is liable to be dismissed.

9. The Petitioner had given his consent to forgo the past service rendered by him in the category of Driver and also agreed to join as Non -ITI Helper as a fresh entrant. After serving for more than four years in the alternative employment, he could not claim protection under Section 47 of the Act, since he had given up the right protected under the Act. The conduct of the petitioner showed that he waived his right accepting the order of alternative employment dated 26.09.2008.

10. The Petitioner had not challenged the order of appointment dated 26.09.2008 of the Respondent. If really he was aggrieved he would have challenged the same immediately and since he had waived his right in this regard, the writ petition is not maintainable.

11. Facts in Writ Petition No.2927 of 2012 The Petitioner joined in the service of the Respondent/Management as a Driver on 29.07.1989 with Staff No.D15116 and performed duty at Ambattur Depot. On 19.03.1997, he left his house and reached Ambattur Depot to join duty and also signed in the control Chart. Few minutes later, he went near the cooler to drink a glass of water. Suddenly, he fainted and became unconscious. He was taken to the Hospital and given treatment. Finally, the Doctor diagnosed and informed him that a tumor was formed in his brain and to be operated immediately. After treatment, he was sent to Kilpauk Hospital Medical Board and the Medical Board examined and informed him, he was unfit for the post of Driver and recommended to provide an alternative employment. Based on the recommendation of the Medical Board, he was discharged from the driver post and relieved on 05.07.1997. He was appointed on 27.08.1997 as Helper non ITI as fresh entrant in the minimum Time Scale of Pay Rs.1690-20-2170. Prior to discharge from his service on the ground of medical invalidation, his salary was Rs.2095/- in Time Scale of pay Rs.1795-25-2495. He was reappointed in the minimum time scale of pay Rs.1690-20-2170. At the time of reappointment, he initially incurred loss Rs.405/- every month. At present his basic salary is Rs.8735/-. However, the person joined as driver with him who is working with continuity of service is drawing Rs.11295/- as basic salary. His incurring loss of Rs.2560/- per month in basic pay alone. (Rs.11295 - 8735). If other allowances are added the loss may come to Rs.4,000/- per month. He should have been given pay protection as he had suffered an employment injury. Pay protection should be given to him as per Section 47 of Persons with Disabilities (Equal opportunities, protection of Rights and Full participation) Act, 1995.

12. He is loosing Rs.4000/- per month, since his pay was not protection. He was given employment as new entrant, for no fault of his. After joining the post, he personally met the then Managing Directors for so many times on numerous occasions and represented to fix the corresponding Scale of pay with continuity of service, but his efforts were futile. He gave representations to the Respondent/Transport Corporation dated 10.09.1998, 02.07.2004, 02.12.2010 and 12.07.2011 for that there was no reply till date. The Respondent/Management cannot consider his case as he was employed as new entrant. He is entitled to get benefits under Section 47 of the Act. The Respondent/Management denied to grant benefits due to him.

13. He is loosing more than of Rs.4000/- per month after rendering 22 years of continuous service. His basic pay is Rs.8735/- in time Scale of pay Rs.5435 - 115-8885. The Correct wages cannot be denied to him, for no fault of his. One Ashok Kumar, Conductor (Staff No.12713) was medically discharged from service on 31.10.1994. His pay was fixed in the time scale of pay which he was drawing as a Conductor on 27.01.1994 as per proceedings No.21632/LS(CM)IV/MTC/99, dated 30.10.2004. On 17.12.2011, nine employees (four Drivers and five Conductors) were discharged from service on medical ground and subsequently, they were joined as Helper Non- ITI without any change in their service condition with pay protection. He made representations on various dates, but his case was not considered by the Respondent/Transport Corporation. It amounts to discrimination. The act of the Respondent/Management is against the order dated 02.12.2010 in

W.P.No.27244 of 2010 passed by this Court.

14. Counter pleas The Petitioner joined in the service of the Respondent as a Driver on 29.07.1989 as daily wages and he was brought under monthly cadre. On 19.03.1997, he left from his house and reached Ambathur Depot to attend duty. But he fainted and become unconscious. He was taken to the Hospital and given treatment. Finally, the Doctor diagnosed and informed that a tumour found in his brain and operated immediately. After treatment, he was referred to Medical Board and the Medical Board recommended to provide alternative employment and he was unfit for the post of Driver and then he was discharged from the Driver post on 05.07.1997. Based on the Medical Report of the Medical Board, he was appointed as Helper non ITI as fresh entrant. He accepted the appointment order without any protest and performing the duty to till date.

15. After providing an alternative employment as stated supra, he had not approached the Respondent Corporation to give pay protection with continuity of service etc, under Section 47 of the Act 1995. He had not made any representation as mentioned in the affidavit dated 10.09.1998, 02.07.2004, 02.12.2010 and 12.07.2011 for consideration by the Respondent. Having accepted the order of alternative employment dated 27.08.1997 without any protest, he filed the present writ petition claiming the rights under Section 47 of the Act, 1995 after lapse of 15 years. As such, the writ petition is not maintainable on the ground of laches. He had not challenged the order of appointment dated 27.08.1997 of the Respondent and waived his right in this regard, the writ petition is not maintainable.

16. The Summation of Facts in W.P.No.3233 of 2012 The Petitioner joined in the service of the Respondent/Management as a Conductor on 14.07.1981 with Staff No. D11872 and performed duty at Poonamallee Depot. While on duty on 10.12.1990 at Vadapalani Depot he suddenly fainted and became unconscious. He was taken to the Hospital by the Vadapalani Depot and was given treatment. For further treatment, he was brought to the Government General Hospital. Finally, the members of the Medical Board had diagnosed and informed that ' it is a case of mitral stenosis with mild mitral regurgitation with atrial fibrillation and mild pulmonary hypertension'. He was advised for light duty other than Conductor post. The Doctor advised him to attend cardiology out-patient department for routine check up.

17. Based on the recommendation of the Medical Board, he was discharged from the Conductor and relieved 28.02.1991. At the time of discharge from service on the ground of medical invalidation, his monthly salary was Rs.1370/- in Time Scale of pay Rs.1070-20-1610.

18. Based on the recommendation of the Medical Board, he was reappointed as Junior Record Clerk as fresh entrant in the minimum Time Scale of Pay Rs.740-15-950 on 23.03.1991. Prior to the reappointment, he was drawing Rs.1370/- in Time Scale of pay of Rs.1070-20-1610. He should have been given pay protection, since he suffered an employment injury. Pay protection should be given to his as per Section 47 of the Persons with Disabilities (Equal opportunities, protection of Rights and Full participation) Act, 1995. However, his pay was not protected. For the past 20 years, he incurred loss every month. He was given an employment as new entrant for no fault of his.

19. Even prior to the Persons with Disabilities (Equal opportunities, protection of Rights and Full Participation) Act, 1995, the Hon'ble Supreme Court in the decision of Anand Bihari case reported in 1991-1-SCC page No.731 categorically held that the employer should provide for adequate safe guards to remedy the situation. It was followed in various judgments and also in R.Mani's case reported in 2008-8-MLJ page No. 1079. After joining in the post of Junior Record Clerk he submitted a representation on 19.02.1992 with a request to count his 10 years past service for all purposes as done in the case of another employee viz., Tmt.Thilagavathi, who was working as Conductor however his request was rejected and it amounts to discrimination. After some years, he met the then Managing Directors personally and represented to fix the corresponding Scale of pay with continuity of service. However, his efforts were futile.

20. For his representations dated 01.07.1997, 10.10.2002, 10.02.2005, 02.12.2009 and 10.09.2011, no reply was furnished to him till date. He had not approached this Court to obtain relief earlier because of the fear. If pay protection was given, his last drawn basic pay would have been Rs.11,905 in time scale of Pay Rs.5200-20200 he had incurred monetary loss to an extent of Rs.1395/- per month due to the denial of legitimate right. He is loosing more than a sum of Rs.1395/- per month after rendering 30 years of continuous service. Now, his basic pay is Rs.10510/- in time scale of pay Rs.5200 20200. His correct wage denied for no fault of him.

21. One Ashok Kumar, Conductor (Staff No.12713) was medically discharged from service on 31.10.1994. After his reappointment his pay was fixed in the time scale of pay which he was drawing as a Conductor on 27.01.1994 as per proceedings No.21632/LS(CM)IV/MTC/99 dated 30.10.2004. Though he represented on various dates, his case was not considered by the Respondent/Management. The act of the Respondent is against the order of this Court dated 02.12.2010 passed in W.P.No.27244 of 2010.

22. The Contents of Respondent's Counter The Petitioner joined in the service of the Respondent/Transport Corporation as a Driver on 14.07.1981 as daily wages and he was brought under Monthly cadre. On 10.12.1990, while on duty he suddenly fainted at Vadapalani Depot and became unconscious and immediately, he was taken to the hospital and provided treatment at Government General Hospital. The Medical Board had diagnosed and informed that ' it is a case of mitral stenosis with mild mitral regurgitation with atrial fibrillation and mild pulmonary hypertension'. Further, he was advised for light duty other than Conductor post.

23. Based on the recommendation on the Medical Board, he was discharged on 28.02.1991 and he was reappointed as Junior Record Clerk as fresh entrant on 23.03.1991. After settling his benefits as per G.O.746 dated 02.07.1981. The Petitioner had not approached the Respondent for an alternative employment. Further, he accepted the order of appointment without any protest and performing his duty till date. The Act came into force on 01.02.1996. Hence, he could not claim the benefit under Section 47 of the Act after lapse of 22 years.

24. The Petitioner had not made any representation as stated in the affidavit dated 19.02.1992, 01.07.1997, 10.10.2002, 10.02.2005, 02.12.2009 and 10.09.2011 for consideration by the Respondent. After serving for more than four years in the alternative employment he could not

claim protection under Section 47 of the Act, 1995. His conduct showed that he waived his right accepting the order of alternative employment dated 23.03.1991. The writ petition is not maintainable.

25. The Summary of Facts in Writ Petition No.7375 of 2012 The Petitioner joined in the service of the Respondent Management as a Driver on 25.09.1981 with Staff No.D12007 and performed duty at Ambattur Depot. On 21.10.1992, he was on duty and drove the bus in the route. While the bus was plying on the road suddenly it entered into uneven road caused injury in his Spinal Chord. Due to the injury, unbearable pain developed in his spinal chord. When he reported about the injury and his inability in performing duty with pain, the Respondent advised him to appear before the Government Kilpauk Medical College Hospital, Medical Board. The Medical Board examined and informed him that he was unfit for the post of driver and recommended to provide an alternate employment. Based on the recommendation of the Medical Board, he was discharged from the driver post and relieved on 18.12.1998.

26. After the discharge, he was demanding for alternate employment. However, the Respondent/Transport Corporation after some time offered appointment on 15.02.2000 as Helper Non ITI, as fresh entrant in the minimum monthly pay scale of Rs.3240-60-4680. Prior to his discharge from service on the ground of medical invalidation, his salary was Rs.4950/- in Time Scale of pay Rs.3480-75-4230-80-5510. At the time of reappointment, he initially incurred a loss Rs.1710/- every month. His present salary per month is Rs.8315/- but the person who joined as driver along with him who is working with continuity of service in drawing Rs.11570/- as monthly salary. His is incurring loss to an extent of Rs.3255/- per month for the present.

27. Pay protection should be given to the Petitioner as per Section 47 of the Persons with Disabilities (Equal opportunities, protection of Rights and Full participation) Act, 1995. His pay was not protected. For no fault of his, he was denied pay protection. After joining the new post, on many occasions, he personally met the then Managing Directors of the Respondent/Management and represented to fix the corresponding Scale of pay with continuity of service but his efforts were futile. He gave representation dated 12.10.2002, 02.02.2006 and 16.08.2011 for which no reply was sent to him. The act of the Respondent is against the order of this Court dated 02.12.2010 in W.P.No.27244 of 2010.

28. Salient features of Respondent's Counter The Petitioner had not suffered employment injury during the course of employment. As per the discharge summary issued by the Institute of Neurology, Government General Hospital that he carried over sudden onset low back pain radiating down both the legs after bending down to lift scooter. He was admitted in the Neurology Department of Government General Hospital on 21.10.1992 and was discharged on 27.11.1992. He had not disclosed about the hospitalisation for taking treatment to the ailments in his petition. He had given his willingness to forgo the past service rendered by him in the category of Driver and also agreed to join as Helper Non ITI as fresh entrant. As alleged by him, there is no denial for granting benefits as requested by him since he was appointed as Helper Non ITI as new entrant and as holding the above post he was paid emoluments and other benefits under Section 47 of the Act on par with other Helper - Non ITI Helpers like others. He had not challenged the order of

appointment dated 15.02.2000 of the Respondent and that he waived his right in this regard, the writ petition filed by him is not maintainable.

29. The Contentions and Discussions (In All Writ Petitions) The Petitioners, in the Writ Petitions filed by them, prayed before this Court for passing of an order in directing the Respondent/Transport Corporation to grant pay protection to them with continuity of service, back wages and other attendant benefits from the date of discharge viz., 04.12.2000, from 27.08.1997 the date of reappointment, from the date of reappointment, and from 15.02.2000, the date of reappointment.

30. The main grievance of the Petitioners is that since they suffered employment injuries, necessary pay protection ought to be given by the Respondent/Transport Corporation in terms of the ingredients of Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. However, the Respondent/Transport Corporation till date had not considered the representations submitted by them in writing and on account of the same, each one of them is loosing a sizable sum in their monthly salary (notwithstanding that they were given the alternative employment as Helper Non ITI).

31. It is to be borne in mind that the Writ petitioner of the Writ Petition in W.P.No.1824 of 2012 was discharged from service as driver on 04.12.2000, but was appointed as Helper Non ITI as a fresh entrant on 26.09.2008. Added further, he was given reappointment, after the lapse of eight years. Moreover, it is his case, i.e. incurring loss of Rs.4930/- (Rs.10405-5465) in basic pay per month.

32. Advancing his arguments, the Learned Counsel for the Petitioner submits that in so far as the Petitioner in W.P.No.2927 of 2012 is concerned, because of an employment injuries sustained by him, although he was given the post of Helper Non- ITI on 27.08.1997 after he was discharged from driver post and being relieved on 05.07.1997. The pay protection was not given to him in terms of Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and resultantly, he is loosing Rs.4,000/- per month for no fault of his .

33. As regards the Petition in W.P.No.3233 of 2012 is concerned, it is represented that he was discharged from the post of Conductor based on the medical invalidation and relieved on 28.02.1991. But when he was appointed as Junior Record Clerk as fresh entrant, he was placed in the minimum Time Scale of pay of Rs.740-15-950 on 23.03.1991 and further that, his pay was not protected and for the past 20 years, he had incurred loss of substantial monetary amounts of Rs.1395/- per month.

34. In regard to the Petitioner ( in W.P.No.7375 of 2012), it is to be pointed out that the Petitioner was discharged from the driver post and relieved on 18.12.1998 and he was given the appointment on 15.02.2000 as Helper Non ITI as fresh entrant in the Time Scale of pay Rs.3240-60-4680 and in that process, he incurred loss of Rs.1710/- every month and at present is incurring loss to an extent of Rs.3255/- per month.



35. The stand of the Respondent /Transport Corporation in so far as W.P.Nos. 1824, 2927 and 3233 of 2012 is that the Petitioners are claiming the benefits under Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 after lapse of 4 years, 15 years and 22 years and that to, after getting alternative employment as Helper Non ITI as fresh entrant and when they are not challenged the alternative employment order dated 26.09.2008, 27.08.1997 and 23.03.1991, then, it amounts to waiving of right by them and therefore, the writ petitions filed by them are per se not maintainable in law.

36. However, the Respondent/Transportation, in so far as petitioner in W.P.No.7375 of 2012 is concerned, takes a definite stand that the petitioner had not suffered employment injury during the course of employment and the discharge summary issued by the Institute of Neurology, Government General Hospital mentioned that the Petitioner carried over sudden onset low back pain radiating down both the legs after bending down to lift scooter and as such, he is not entitled to get benefits under the Act, 1995. Also that, he had not challenged his alternative appointment order dated 15.02.2000 as Helper Non ITI and therefore, he had waived his right. Consequently, the writ petition filed by him is not maintainable in limine.

37. A perusal of the appointment order dated 28.06.1995 issued to the Petitioner in W.P.No.1824 of 2012 (V.Palani) shows that he was appointed as a driver on a basic pay of Rs.1030-15-1150-20-1450/- at Adyar Depot. It was also stated in the said appointment order that from 01.05.1995 he was appointed on monthly salary basis. Also that, he was discharged from service as driver on medical grounds as per proceedings No.23793/ggpep2-khngfh1-98 dated 04.12.2000 of the Respondent/Transport Corporation with a request to relieve him immediately with one monthly salary.

38. It transpires from the proceedings of the Respondent/Transport Corporation in Proceedings No.21632/LS(CM)IV/MTC/99 dated 30.10.04 that one S. Ashok Kumar, Ex.Conductor, Staff No.12713 of Saidapet Depot was medically discharged from service vide Memo No.400/PS(A) 2/PTC/92 dated 31.10.94 based on the report of Government General Hospital. He raised Industrial Dispute No.643/95 before Principal Labour Court and which was dismissed on 26.04.1999. Against the dismissal of I.D., he preferred an Appeal by way of W.P.No.13408/99. The Hon'ble High Court by an order dated 13.12.99 directed the Management to allot him lighter duty or such other stationary job as may be suitable to his health condition; but subject to the payment of the scale of Pay which he had been drawing as a Conductor and also to pay the half of the arrears payable between 27.1.94 to till his reinstatement within 3 months from 13.12.99.

39. Further, as against the order of the Single Judge, Metropolitan Transport Corporation filed an Appeal by W.A.No.64/01 and the Hon'ble Bench dismissed our Appeal on 15.3.2004, as no illegality in the order of Single Judge. As the Writ Appeal No.64/01 is dismissed, the Management filed S.L.O.P.(C) CC 7399/2004 before the Hon'ble Supreme Court of India which was also dismissed on 13.9.2004. Consequent on the dismissal of W.A.No.64/01 and S.L.P.(C) CC.No.7399/04, the matter was placed before the Board and the Board approved to comply the orders of the Hon'ble Courts.

40. It is not in dispute that the Petitioner was appointed as Junior Helper Non I.T.I on a minimum basic pay of Rs.5285-90-7985 as fresh entrant ( vide proceedings in memorandum No.3014/ggp(ep)2-khngfh-2000-3 dated 26.09.2008 of the Respondent / Transport Corporation). That apart, a cursory glance of the impairment/disability certificate dated 24.05.2011 issued by the Government Institute of Rehabilitation Medicine, K.K.Nagar, Chennai 600 083 in respect of the Petitioner in W.P.No.1824 of 2012 (V.Palani) shows that his case was one of ' A care of Fracture Neev of Femur left Hip-ORIF done with stiffneck and is physically handicapped with 64% Permanent Physical impairment/disability.

41. According to the Writ Petitioner in W.P.No.1824 of 2012 (V.Palani), 1. R. Ragupathi (Senior Driver, Perambur Depot) 2. R.Senthil Kumar (Senior driver, Thambaram Depot). 3. N.Sowkath Ali Jinna (Special Grade Driver, Basin Bridge Depot). 4. G.Samuvel (Senior Driver, Thiruvanmiyur Depot). 5. K.Adinarayanan (Special Grade Conductor, Annanagar Depot). 6. S.Selvarajan (Conductor Ennore Depot). 7. S.I.Sadhic (Senior Conductor, Basin Bridge) 8. M.Jegadeesan (Special Grade Conductor, Avadi Depot), 9. P.Sivalingam (Senior Grade Conductor, Poonamallee) were appointed as Helper Non - ITI as per the proceedings of the Respondent/Transport Corporation dated 17.12.2011 and these persons were permitted to work/serve in alternative employment ( Based on their individual representations/ Petitions)

42. The Writ Petitioner (V.Palani, Helper Non - ITI) in his representation dated 20.12.2011 addressed to the Managing Director of the Respondent /Transport Corporation, Chennai 2 had stated that as per memo dated 04.12.2000, he was directed to be relieved from the post of driver and accordingly, he was relieved on 09.01.2001 and on 25.08.2008 he was called for an alternative employment and on 26.09.2008 he was appointed as Helper Non ITI on a minimum basic pay of Rs.5285 90-7985 as fresh entrant, as a result of which, in his monthly basic pay he was incurring a substantial monetary loss. Further, in this regard, he had met the Managing Director of the Respondent/Transport Corporation personally and made a request to set right injustice made out to him, for which, no reply was issued to him. In fact, in his representation dated 20.12.2011, he had prayed for sanction of his earlier basic pay and requested for change in salary. Likewise, he made a similar prayer in his representation dated 04.01.2012.

43. In so far as the Petitioner in W.P.No.2927 of 2012 viz., B.V. Lakshmanan is concerned, it is to be pointed out that he was appointed as Driver and joined on 29.07.1989 and absorbed on 16.06.1990. The Medical Board declared him unfit for driver post and he was medically discharged from service and relieved on his duty from Ambathur Depot on 05.07.1997 afternoon. Further, he was appointed as Junior Helper Non-ITI in the minimum scale of pay of Rs.1690-20-2170 as per proceedings of the Respondent memo No.3-00356-ggp(ep)1-khngfh--97 dated 27.08.1997, he made a representation to the Managing Director of the Respondent/Transport Corporation dated 10.09.1998 and 02.07.2004 respectively praying for continuity of service and sanction of the basic pay which was earlier received by him. Furthermore, he made a representation dated 02.12.2010 and 12.07.2011 seeking continuity of service and sanction of the earlier basic pay which was received by him in his earlier post of driver.

44. As regards the Petitioner, (M.Elumalai in W.P.No.3233 of 2012) is concerned, it is to be pointed out that the Petitioner was appointed as Conductor with effect from 14.07.1981 as per proceedings No.21369/g/gp(ngh)3-gnghf-80. dated 10.07.1981 of the Respondent/Transport Corporation, Chennai. Further, it is evident from the proceedings of the Registered Medical Board, Government General Hospital, Madras-3, dated 14.02.1991 that the members of the Medical Board examined him on 08.02.1991 and it opined that his case was of mitral stenosis with mild mitral regurgitation with atrial fibrillation and mild pulmonary hypertension and that he gave history of hemiplegia secondary to heart disease and was advised for light duty other than Conductor post. Moreover, he was advised to attend cardiology out-patient department for routine check up.

45. Apart from the above, the Petitioner (M.Elumalai), on the recommendation of the Medical Board, was invalidated from service as Conductor on medical ground and he was immediately relieved on his duty with one month salary being paid to him as per proceedings No. 29309/ggp(ep)2-gnghf-90. of the Respondent/Transport Corporation, dated 28.02.1991. Proceeding further, he was appointed as fresh entrant under Section 18(1) settlement of the Industrial Disputes Act 1947 as new fresh entrant temporarily as Junior O.A. Also, he made written representations on 01.07.1997, 10.10.2002, 10.02.2005, 02.12.2009, 10.09.2011 and 03.12.2011 addressed to the Managing Director of the Respondent/Transport Corporation seeking sanction of earlier basic pay (in the post of Conductor). Significantly, in his representations dated 01.07.1997, 10.10.2002, 02.12.2009, and 10.09.2011, he had categorically stated that one Tmt.Thilagavathi, Woman Conductor based on the Medical Board's recommendation was relieved from the post of Conductor and when she was provided with an alternative employment, she was given the continuity of service and then, she received the salary, but, he was denied with such benefits and it amounts to discrimination.

46. In regard to the Writ petitioner viz.,G.Viswasevaran (Driver) in W.P.No.7375 of 2012 is concerned, he was found to be unfit for driving as he has Retno Spondylothesis L4 L5 in terms of the letter in LDS No.9186/RMP/98 dated 10.11.1998 of the Medical Board and on that basis he was directed to be discharged from service on medical ground with one month salary being paid to him as per proceedings of the Respondent/Transport Corporation dated 18.12.1998. He was provided with an alternative employment as Junior Helper Non- ITI in the minimum scale of pay of Rs.3240-60-4680 as per proceedings of the Respondent/Transport Corporation dated 15.02.2000. He made written representations dated 12.10.2002, 02.02.2006 and 16.08.2011 addressed to the Managing Director of the Respondent/Transport Corporation seeking continuity of service and also, praying for sanction of the earlier basic pay which he had received in the post of driver.

47. It is to be noted that after issuing a direction to discharge the Petitioner (G.Viswasevaran, driver in W.P.No.7375 of 2012) from service on medical ground with one month salary being paid to him in terms of the proceedings of the Respondent/Transport Corporation dated 18.12.1998 and later, when he was provided with an alternative employment as Junior Helper Non- ITI as per proceedings of the Transport Corporation dated 15.02.2000, then, it is not open to the Respondent/Transport Corporation to take a plea that the Petitioner had not suffered employment injury during the course of employment. In short, this Court is of the considered view that the Respondent/Transport Corporation cannot approbate or reprobate in the subject matter in issue, as

opined by this Court.

48. The Learned Counsel for the Petitioners placed strong reliance on the Division Bench Judgment of this Court, in A.M.Selvaraj V. The Managing Director, Metropolitan Transport Corporation, Pallavan House, Chennai 600 002 and another, 2013 Writ L.R.675 and at special page 690, wherein in paragraph No. 40 and 41, it is laid down as follows;

40. Even though the Respondent/Transport Corporation has taken a plea that there is no provision in the Persons With Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995 to pay full backwages to the Appellant / Petitioner from 29.07.2002 till date of his superannuation, a reading of Section 47 of the Act unerringly point out that the Appellant/petitioner, who acquired disability during his service, is very much protected and in this regard, we opine that the tenor and spirit of the ingredients of Section 47 are not directory in nature, per contra, they are mandatory in character, to be complied with bubbling enthusiasm, vigour and vitality. Therefore, we come to an irresistible conclusion that the Appellant/Petitioner cannot be either left in the lurch or in shambles along with his dependants (notwithstanding the fact that the Respondent/Transport Corporation permitted him to join in the alternate post of Helper (Non-ITI) as per order dated 31.12.2010. Further , it cannot also brush aside that the Appellant/Petitioner after suffering the disability on 29.07.2002, that too during his service, is in Bed Dependent existence and the medical opinion dated 01.02.2012 issued by the Chairman and Members of the Medical Board, Royapettah, Chennai categorically points out that the Appellant cannot do active productive worker and also even the second opinion of the Regional Medical Board, Government Royapettah Hospital, Chennai dated 03.11.2010 also confirmed that the Appellant/Petitioner is unfit to drive the bus as he has been suffering from weakness of the Right Upper limb and Right Lower limb on the basis of Neuromedical opinion.

41. When the contents of Section 47 of the Persons With Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995 are unambiguous in nature and when the provision of the said Act are very much applicable to the Respondent/Transport Corporation, then, the Appellant/Petitioner is entitled to reap the benefits of the welfare legislation to his maximum advantage and therefore, he cannot be fastened with any order of removing from service or to dispose with the service or reduction in rank on the ground of his disability. and contends that the Writ petitioners are entitled to get benefits in terms of the ingredients of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

49. At this stage, this Court very pertinently points out that the United Nations convention on the rights of persons with disabilities (UNCRPD) was ratified by India on 01.10.2007. Article 4(d) of UNITED Nations conventions on the rights of persons with disabilities enjoins the states parties 'to refrain from engaging in any act or practice i.e. inconsistent with the present convention and to ensure that public authorities and institutions act in conformity with the present convention'.

50. Also, Article 15(2) of the Convention imposes an obligation on the state to protect persons with disabilities from cruel inhuman or degrading treatment or punishment. It mentions that 'state parties shall take all effective, legislative, administrative, judicial or other measures to prevent

persons with disabilities, on an equal basis with others, from being subjected in torture, or cruel inhuman or degrading treatment or punishment'.

51. Moreover, Article 17 of UNCRPD specifies that 'every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others'

52. It is to be noted that the definition under Section 2 (i) of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, 'disability' means as follows;

- (i) blindness;
- (ii) low vision;
- (iii) leprosy-cured;
- (iv) hearing impairment;
- (v) locomotor disability;
- (vi) mental retardation;
- (vii) mental illness;

53. Also, Section 2(j) 'employer' means as under (I) in relation to a Government, the authority notified by the Head of the Department in this behalf or where no such authority is notified, the Head of the Department; and

(ii) in relation to an establishment, the Chief Executive Officer of that establishment;

54. Further, 2 (k) defines 'Establishment' meaning a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) and includes Departments of a Government;

55. Section 2(m) of the Act, 1995 reads as under;

(m) Institution for persons with disabilities means an institution for the reception, care, protection, education, training, rehabilitation or any other service of persons with disabilities;

56. Also, Section 2(o) is as follows;

(o) locomotor disability means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy;

57. Section 2(p) of the Act, 1995 runs as follows;

(p) medical authority means any hospital or institution specified for the purposes of this Act by notification by the appropriate Government;

58. Section 2(t) of the Act relating to 'person with disability' means 'a person suffering from not less than 40% of any disability as certified by a medical authority.'

59. Section 2(w) of the Act enjoins as under';

(w) 'rehabilitation' refers to a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual , psychiatric or social functional levels;

60. One cannot brush aside an important fact that under Section 2 of the Act, 1995 disability and person with disability are separately defined and they are distinct as per decision of Hon'ble Supreme Court Kunal Singh V. Union of India, AIR 2003 SC 1623.

61. Coming to the concept of 'Writ of Mandamus' it is to be taken into consideration that the said relief will be granted (1) When there is an existence of a legal right and (2) an obligation of a public authority to fulfil the same. The aim of 'mandamus' is to compel performance of a legal duty on the part of some one or body who is entrusted by law with that duty.

62. It is to be borne in mind that an employee, who acquires disability during his service, is required to be protected specifically in terms of ingredients of Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. It is to be remembered that if such an employee, acquiring disability, if not protected, would not only suffer himself, but also, others who depend on him would also suffer as well. In this regard, this Court is of the considered view that the spirit and tenor with ingredients of Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 are mandatory in character and they not directory in nature. Also that, as such, the Writ petitioners are entitled to be sowered with the benefits of the welfare legislation viz., The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and as such, they can take at most maximum advantage of the said Act, as opined by this Court. Viewed in that perspective, this Court comes to an irresistible and inescapable conclusion that the petitioners cannot be saddled with any order of removing them from service or dispense with their services or reduce them in rank on the ground of disabilities acquired by them.

63. In the upshot of qualitative and quantitative discussions and this Court on an overall assessment of the entire conspectus of the facts and circumstances of the present case comes to a resultant conclusion that the Petitioners are unequivocally to be showered with the benefits of beneficial/Welfare Act namely, The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Looking from that angle, this Court, in furtherance of substantial cause of justice, directs the Respondent/The Management of Metropolitan Transport Corporation (Chennai) Ltd., Pallavan Illam, Anna Salai, Chennai 2, to accord pay protection to the

Petitioners with continuity of service, back wages and other attendant benefits from the date of their reappointment in terms of Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, within a period of eight weeks from the date of receipt of copy of this order.

With the aforesaid observations and directions, the Writ Petitions are allowed; but without costs.

04.06.2014

Index : Yes/No  
Internet: Yes/No  
sms

To

The Management of  
Metropolitan Transport Corporation  
(Chennai) Ltd., Pallavan Illam  
Anna Salai, Chennai 600 002.

M. VENUGOPAL . J ,  
sms

Pre-delivery order in  
W.P.Nos. 1824,2927,3233  
and 7375 of 2012

04.06.2014