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(2009) 10 MAD CK 0186

Madras High Court

Case No: Writ Petition No. 23224 of 2007 and M.P. No. 1 of 2007

A. Arumugam	APPELLANT
Vs	
The Director of School Education, The Chief Educational officer and The Vallal S.I. Algarsamy Chettiar High Secondary School	RESPONDENT

Date of Decision: Oct. 15, 2009

Acts Referred:

- Central Civil Services (Pension) Rules, 1972 - Rule 38
- Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 - Section 47

Citation: (2009) 10 MAD CK 0186

Hon'ble Judges: S. Nagamuthu, J

Bench: Single Bench

Advocate: C. Selvalraj, SC and S. Mani, for the Appellant; E. Ranganayaki, Government Advocate R1 and R2 and P. Nagaraju, R3, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S. Nagamuthu, J.
A Graduate Teacher who has become disabled with the complaint that alternative employment has not been provided to him as mandated u/s 47 of the Persons with Disabilities (Equal Opportunities, protection of rights and full participation) Act 1995, has come forward with this writ petition.

2. The petitioner was appointed as a Graduate Teacher in the third respondent-School on 06.07.1989. It is an aided school Governed by the Tamil nadu Recognised Private Schools (Regulation) Act. When the petitioner was so working, unfortunately, on 01.12.2000, he suffered severe injuries on his back and soon, he was admitted in a hospital. Despite medical care, unfortunately, his fore-limbs were paralised. Admittedly, he was bed-ridden for several years. Even now, the petitioner cannot walk and he is confined in a wheel chair. After so much of treatment and medical care, he is capable of moving his hands alone, but he could not write. According to medical experts, the disability is 90% which is evident from the Medical Certificate dated 04.11.2003. Because of the said disability, the petitioner is unable to discharge his functions as a teacher. Therefore, he sought for alternative employment as required u/s 47 of the Act. But the third respondent by his proceedings in Na.Ka. No. 11/A/07 dated 16.05.2007 has rejected the said request of the petitioner for alternative employment. Challenging the same, the petitioner has come forward with this writ petition.

3. The learned senior counsel appearing for the petitioner submitted that though the petitioner is confined to wheel-chair, still he can take moral classes and also other subjects in which black-board is not used. Though initially the learned senior counsel submitted that the petitioner is capable of discharging his duties as a teacher, at one stage, he made alternative argument stating that he can be given alteast alternative employment by creating supernumerary post either in the third respondent-school or in any other institution under the control of the first respondent.

4. The learned senior counsel has produced the petitioner before this Court. This Court could see that the petitioner is very brisk though he is disabled to move. He is capable of moving his hands freely; but he could not write. His mind appears to be very alert like any other normal man. The learned Counsel appearing for the respondents also had an occasion to see the petitioner. They also did not raise any dispute regarding the condition of the petitioner.

5. From the medical records produced before this Court and on seeing the petitioner, this Court is of the opinion that as rightly pointed out by Doctor, the petitioner cannot discharge his functions as a teacher. In view of the said position, as mandated u/s 47 of the Persons with Disabilities (Equal Opportunities, protection of rights and full participation) Act 1995, he is entitled for alternative employment.

6. But the learned Counsel appearing for the third respondent would submit that there is no suitable post available with the third respondent so as to accommodate the petitioner. The said argument cannot be accepted because u/s 47 of the Act, even if there is no suitable post iavailable, it is the bounden duty of the employer to create supernumerary post, until a suitable post is available or until he attains the age of superannuation which ever is earlier; that too, with the same pay-scale and service benefits.

7. In Kunal Singh Vs. Union of India (UOI) and Another, wherein the Hon"ble Supreme Court while analysing the scope of Section 47 of the Persons with Disabilities (Equal Opportunities, protection of rights and full participation) Act 1995, has held as follows:

Further merely because under Rule 38 of CCS Pension Rules, 1972 the appellant got invalidity pension is no ground to deny the protection,mandatorily made available to the appellant u/s 47 of the Act. Once it is held that the appellant has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay scale and service benefits; If it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation, whichever is earlier.

8. In view of the said law laid down by the Hon"ble Supreme Court, it is obligatory on the part of either the third respondent or the State to provide alternative employment by creating supernumerary post. In the case on hand, the third respondent is an aided school and even if the petitioner is given alternative employment in the same school, ultimately, salary and other monetary benefits are going to be paid only by the State. Therefore, in my considered opinion, it would be in the interest of justice to give option to the first respondent to create supernumerary post either in the third respondent school or in any other institution or office, or library falling within the jurisdiction of the first respondent to provide alternative employment.

9. The learned senior counsel appearing for the petitioner would fairly submit that the petitioner is willing to work either in the third respondent-school or in any other institution or office in any post without disturbing the pay-scale or other service benefits of the petitioner.

10. In view of the above, the Writ Petition is allowed. The impugned order of the third respondent is set aside and the first respondent is directed to create a supernumerary post in the third respondent school to provide alternative employment for the petitioner or to provide alternative employment in any other institution or office or library falling within the jurisdiction of the first respondent within the city of Chennai, without disturbing the pay-scale and other service benefits as required u/s 47 of the Persons with Disabilities (Equal Opportunities, protection of rights and full participation) Act 1995. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. Connected miscellaneous petition is closed. No costs.