

Kerala High Court

C.Anil Kumar vs Kerala State Road Transport ... on 21 August, 2020

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

FRIDAY, THE 21ST DAY OF AUGUST 2020 / 30TH SRAVANA, 1942

WP(C).No.1550 OF 2020(P)

PETITIONER:

C.ANIL KUMAR
AGED 49 YEARS
AMBADIYIL VEEDU, VENDAR P.O., KOTTARAKKARA, KOLLAM
DIST-691 507 (CONDUCTOR,KSRTC,PUANLUR DEPOT)

BY ADV. SRI.N.SASIDHARAN UNNITHAN

RESPONDENTS:

- 1 KERALA STATE ROAD TRANSPORT CORPORATION
REP BY THE MANAGING DIRECTOR, KSRTC, FORT,
THIRUVANANTHAPURAM-695 023
- 2 EXECUTIVE DIRECTOR (ADMINISTRATION)
OFFICE OF THE MANAGING DIRECTOR, KSRTC, FORT,
THIRUVANANTHAPURAM-695 023
- 3 ASSISTANT TRANSPORT OFFICER,
KSRTC, PUNALUR DEPOT, KOLLAM DISTRICT-691 332
- 4 STATE OF KERALA,
REP BY THE SECRETARY TO GOVERNMENT, SOCIAL JUSTICE
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM-695 001

BY ADV. SRI.DEEPU THANKAN
BY SHRI.T.P SAJAN, SC, KERALA STATE ROAD TRANSPORT
CORPORATION - KSRTC
BY GOVERNMENT PLEADER:MABLE.C.KURIAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
21.08.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
SATHISH NINAN, J.

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WP(C) No.1550 of 2020

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Dated this the 21st day of August, 2020

JUDGMENT

The petitioner while working as Conductor in the first respondent Corporation, suffered a permanent disability of 85% as evidenced by Ext.P3 certificate of the District Medical Board, disabling him from resuming his work as a Conductor. The petitioner seeks assignment of light duty with the same scale of pay. There is a further claim for salary and other service benefits during the period of his absence.

2. Ext.P7 report of the Appellate Medical Board dated 24.07.2019 establishes the disability of the petitioner and that he is not fit to resume the work as a Conductor. The first proviso to Section 20(4) of the Rights of Persons with Disabilities Act, 2016 mandates grant of another post with the same scale of pay and other service benefits to an employee who acquires disability while in employment. Section 20(4) of the Act reads thus:- WP(C) No.1550 of 2020 :- 2 :-

"S.20(4) of the Rights of Persons with Disabilities Act, 2016 provides thus:

20. Non-discrimination in employment- (4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service: PROVIDED that, if an employee after acquiring disability is not suitable for the post he was holding, shall 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." This Court in Sajimon K.B. v. Kerala State Road Transport Corporation and Another [2020 (1) KHC 362] has held that such protection, with the same scale of pay and service benefits, is liable to be granted and that the Corporation cannot contract out of the statutory right granted to the employee.

3. In view of the above, the petitioner is entitled to be assigned a light duty with WP(C) No.1550 of 2020 :- 3 :-

protection of pay and service benefits. Let the needful be done within six weeks from today.

As regards the claim for salary and other benefits during the period of absence, the first respondent Corporation shall consider the same after hearing the petitioner and pass appropriate orders.

Sd/-

SATHISH NINAN JUDGE kns/-

//True Copy// P.S. to Judge WP(C).No.1550 OF 2020(P) APPENDIX PETITIONER'S/S EXHIBITS:

EXHIBIT P1 TRUE COPY OF DISCHARGE SUMMARY ISSUED FROM MEDICAL COLLEGE HOSPITAL, THIRUVANANTHAPURAM EXHIBIT P2 TRUE COPY OF FITNESS CERTIFICATE DATED 9.2.2016 ISSUED BY DR. SREEKUMAR OF UPASANA HOSPITAL KOLLAM EXHIBIT P3 TRUE COPY OF THE DISABILITY CERTIFICATE DATED 24.2.2015 ISSUED BY THE STANDING

DISABILITY ASSESSMENT BOARD ATTACHED TO THE A.A.RAHIM MEMORIAL DISTRICT HOSPITAL,KOLLAM EXHIBIT P4 TRUE COPY OF THE MEMORANDUM DATED 21.5.2015 ISSUED BY THE 2ND RESPONDENT EXHIBIT P5 TRUE COPY OF THE REPRESENTATION DATED 24.6.2019 OF THE PETITIONER SENT TO THE 1ST RESPONDENT EXHIBIT P6 TRUE COPY OF THE JUDGMENT DATED 2.7.2019 WP(C) NO.17957/2019 EXHIBIT P7 TRUE COPY OF REPORT OF THE APPELLATE MEDICAL BOARD DATED 24.7.2019 EXHIBIT P8 TRUE COPY OF THE MEMORANDUM DATED 12.12.2019 OF THE 1ST RESPONDENT EXHIBIT P9 TRUE COPY OF THE JUDGMENT REPORTED IN (2018) 1 SUPREME COURT CASES (L & S) 130
