

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 22.06.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition No.20199 of 2016
and
WMP. No.17372 of 2016

G.Rajasekaran

.. Petitioner

Versus

1. The Government of Tamil Nadu,
Rep. by its Chairman &
Principal Secretary to Government
Transport Department
Secretariat, Fort St. George,
Chennai-600 009.
 2. The Managing Director,
State Express Transport Corporation Tamil Nadu Ltd.,
Head Office, Thiruvalluvar House,
Pallavan Salai, Chennai.
 3. The General Manager (Administration),
State Express Transport Corporation Tami Nadu Ltd.,
Head Office, Thiruvalluvar House,
Pallavan Salai, Chennai.
 4. The Branch Manager,
State Express Transport Corporation Tamilnadu Limited,
Chennai Depot-III, Koyambedu,
Chennai-600 107.
- .. Respondents

Petition filed under Article 226 of the constitution of India to issue a Writ of Certiorarified Mandamus, to call for entire records in connection with the punishment order issued by the 3rd respondent in No.488/25950/TL5/SETC/2009 dated 08.07.2011, dismissing the petitioner from service and quash the same and for a consequential direction to the respondents to provide the petitioner with all the service and terminal benefits including salary arrears, pension, provident fund accumulation, gratuity, etc., as if he continued in service from the date of dismissal till the date of attaining the age of superannuation on 20.04.2012, within a stipulated time.

For Petitioner : Mr.R.D.Sudhakar

For Respondents: Mr.P.Chinnadurai
Government Advocate (R1)
Mr.S.Sairaman
Standing counsel for R2 to R4

O R D E R

This Writ Petition has been filed challenging the punishment order issued by the third respondent in No.488/25950/TL5/SETC/2009 dated 08.07.2011, dismissing the petitioner from service and quash the same and for a consequential direction to the respondents to reinstate him in service with all service and terminal benefits including salary, arrears, pension, provident fund accumulation, gratuity, etc., as if he continued in service from the date of dismissal till the date of attaining the age of superannuation on 20.04.2012, within a stipulated time.

2. The petitioner would state that he was appointed as conductor in the State Express Transport Corporation Tamilnadu Limited., (previously Tiruvallur Transport Corporation) and joined service on 24.12.1986. His service was regularised with effect from 01.01.1988 vide order dated 05.03.1988. During the course of such employment, the petitioner met with an accident on 17/18.05.2001 which resulted in the petitioner taking leave on medical grounds. However, leave was not granted to the petitioner and such a request was rejected, resultantly, his absence from duty has been treated as leave on loss of pay. Since, the petitioner was grievously injured and unable to perform his duties, he sought transfer to Pondicherry from Chennai which was granted on 06.09.2001. Further, he suffered multiple fractures in left arm and his right leg was severely injured and hence requested for alternate employment or light duty. As it was not provided by the concerned officials the petitioner was forced to go on leave for more than one year. As his leave period was treated as Earned Leave, he requested to consider his leave period as Medical leave which was not considered by the officials.

3. It is further stated that the petitioner was unable to continue his job as conductor as he suffered injuries in his arms severely and metal plate was inserted in his arm, hence he was constrained to be on leave. Thereafter, the respondent corporation without considering the same, issued Charge Memo on various dates i.e. on 01.12.2001, 31.10.2004 and 02.12.2006, alleging that the petitioner did not attend duty without prior notice or leave letter, for which the petitioner submitted his explanation to the charges with relevant documents. Upon perusing the records, the respondent officials found that he

made prior intimation of the leave availed by him to the superiors by sending proper leave letters and representations and therefore discharged him from the charges. In the meantime, he was asked to attend the medical Board for ascertaining his medical fitness. Though the petitioner appeared before the Medical Board on 22.07.2002, the result of his medical fitness was not intimated to him till date. Further, he was unable to continue his job as conductor due to the disability suffered by him as a result of the accident that took place on 18.01.2001. Thereafter, he was transferred from Pondicherry to the fourth respondent corporation.

4. It is further contended that after joining duty in the 4th respondent corporation, the petitioner requested for alternate employment in light job, as he was unable to work as conductor due to the fracture in his left leg and injuries in his right hand and leg. However, the fourth respondent, without providing alternate employment issued charge memo dated 07.09.2009, alleging three charges against the petitioner, which was received by him on 02.02.2010. According to the first charge, since 21.03.2009, the petitioner did not attend duties without prior intimation and without submitting leave letter. As far as second charge is concerned, it is alleged that due to his action, the bus could not be operated in the Route and it caused disturbance to the routine administrative work. The third charge is that he had acted contrary to the regulations of the Corporation. The petitioner submitted his explanation on 20.02.2010. Thereafter, he has sent numerous representations seeking to permit him to retire from service on voluntary retirement scheme. However his representations were not considered. The petitioner was neither permitted to retire from service on voluntary retirement nor allotted any light work in alternate employment. It is contended by the petitioner that in his explanation dated 20.02.2010, he had stated that further communications may be sent to the address as stated therein, i.e. at Melkavarapalayam, Kavaarapalayam (Post), Jeyamkondam Taluk, Ariyalur District. Despite the same, the respondent corporation had failed to send the future communications to the said address stated in his explanation but sent the communications to some other address available with them. Hence he was not issued with any notice calling him for enquiry. Thereafter to his utter shock, during the year 2014, the petitioner came to know that the third respondent herein had passed an order in No.488/25950/TL5/SETC/2009 dated 08.07.2011, dismissing him from service on the ground of unauthorised absence. It is further stated that in the said order dated 08.07.2011, the third respondent had sent summons for domestic enquiry to the petitioner's address which were returned as "left without instruction". Further, it was stated that the Enquiry Officer's Report sent to his address was also returned as "left without instructions". Further the order states that the show

cause notice sent to him was also returned as "No such Addressee". The address to which the summons, Enquiry Officer's Report and other communications sent was stated as D6, Ravindranath Tagore Street, Zone-20, Neyveli-3, which was not the petitioner's address on such dates and not the one stated by him in his written explanation dated 20.02.2010.

5. The petitioner would further contend that if the third and the fourth respondents have sent the summons to the petitioner's correct address, as stated by him in his explanation, he would have attended the enquiry and proved that he is innocent. It is further submitted that the superannuation of the petitioner is 20.04.2012, but however the respondent Corporation had removed him from service earlier i.e. on 08.07.2011 itself vide order of the third respondent dated 08.07.2011. The petitioner had sent representations to the respondents to consider his case sympathetically and to cancel the punishment order issued by the third respondent and to pass orders allowing him to retire from service considering 20.04.2012 as the date of retirement on which he attained the age of superannuation. Since, the same was not considered, the present Writ Petition has been filed.

6. The learned counsel for the petitioner would contend that the impugned order has been passed in violation of principles of natural justice. The enquiry was conducted behind the back of the petitioner. The respondents have wantonly sent the communications to some other address where the petitioner was not residing in spite of the fact that he has furnished his correct address. In any event, the respondents failed to consider the injury sustained by the petitioner during the course of his employment and the consequential ailment he suffered while passing the impugned order of dismissal and prayed for allowing the writ petition.

7. The learned counsel appearing for the respective respondents would justify the impugned order of dismissal. According to them, the respondents have followed all the procedures contemplated under law before passing the impugned order of dismissal and therefore they have prayed for dismissal of the writ petition.

8. I heard the counsel on either side and perused the materials placed on record. At the outset, this writ petition has been filed by the petitioner belatedly and on the ground of laches, the writ petition has to be dismissed.

9. It is seen from the records that the impugned order was passed by the third respondent on 08.07.2011, which is challenged by the petitioner in the year 2016. Even during the year 2014 vide communication dated 29.10.2014, 01.11.2014,

10.12.2014, the petitioner was informed about the order of dismissal passed against him. As per the representation of the petitioner dated 27.07.2015, he was given charge sheet in the year 2009, which was received in the year 2010. Thereafter, he has got given the explanation immediately, it took him nearly five years to submit his explanation. Apart from that he had also admits that he has not worked in the respondent corporation in view of the fact that he has not given alternate employment. He has also not given proper explanation for his absence from work. Therefore, there is latches on his part, which is not curable. Therefore, the petitioner is guilty of latches on his part in approaching this Court belatedly.

10. As far as the contention of the petitioner with regard to the change of his residential address, as per the address given in records, clear intimation was done by the respondents. Hence, this contention of of the petitioner is not acceptable.

11. In view of the same, this Court do not find any reason to interfere with the order of dismissal passed against the petitioner. This Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

arr/rsh

To

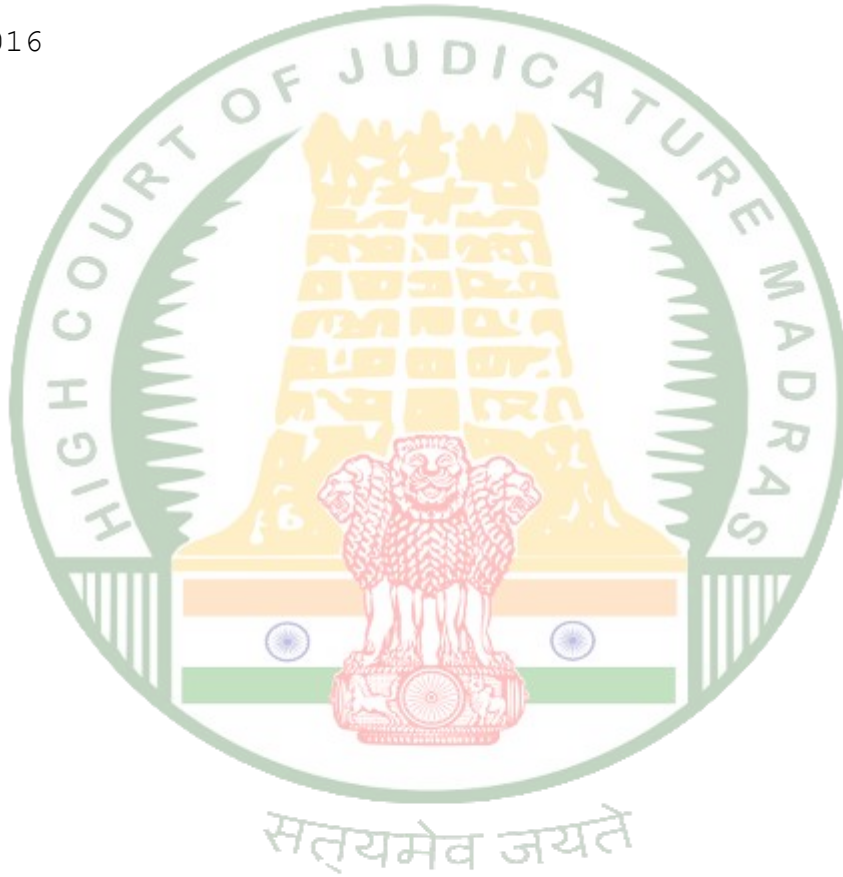
1. The Chairman and Principal Secretary
The Government of Tamil Nadu,
Transport Department
Secretariat, Fort St. George,
Chennai-600 009.
2. The Managing Director,
State Express Transport Corporation Tamil Nadu Ltd.,
Head Office, Thiruvalluvar House,
Pallavan Salai, Chennai.
3. The General Manager (Administration),
State Express Transport Corporation Tami Nadu Ltd.,
Head Office, Thiruvalluvar House,
Pallavan Salai, Chennai.

4. The Branch Manager,
State Express Transport Corporation Tamilnadu Limited,
Chennai Depot-III, Koyambedu,
Chennai-600 107.

+1 cc to Government Pleader sr.34941

WP No.20199 of 2016

aa27/07/2016



WEB COPY