

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2016

CORAM:

THE HON 'BLE MR. JUSTICE B.RAJENDRAN

Writ Petition No.38752 of 2002

P.Veerappan

... Petitioner

Versus

1. The Managing Director,
Tamilnadu State Transport Corporation,
Madurai Division - V Ltd.,
Virudhunagar - 626001

2. The General Manager,
TNSTC, Madurai Division - V Ltd.,
Virudhunagar - 626 001

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records relating to the order, dated 24.07.2002 in Ref. No.337/2002 of the first respondent herein, confirming the order, dated 06.07.2001, in Ref. No.Laws/S2/54/3/2001 of the second respondent herein and quash the same and consequently, direct the respondents to reinstate the petitioner into service with all attendant benefits from the date of order of dismissal from service.

For Petitioner : Ms. A.L.Ganthimathi

For Respondents : Mr. P.Paramasivadoss

सतयमेव जयते
O R D E R

Heard Ms.A.L.Ganthimathi, learned counsel appearing for the petitioner and Mr.P.Paramasivadoss, learned counsel appearing for the respondents and with the consent of the learned counsel appearing on either side, the Writ Petition is taken up for final disposal.

2.This writ petition has been filed by the petitioner, challenging the order, dated 24.07.2002 in Ref. No.337/2002 of the first respondent herein, confirming the order, dated 06.07.2001, in Ref. No.Laws/S2/54/3/2001 of the second respondent herein and consequently, to direct the respondents to reinstate the petitioner into service with all attendant benefits from the date of order of dismissal from service.

3. According to the petitioner, he was appointed as Driver on temporary basis in the Respondent-Corporation on 09.12.1992, on a daily wage basis at Rs.67/-, and by an order, dated 16.06.1994, he was made permanent. While so, due to illness, the petitioner applied for Medical Leave, along with Medical Certificate, from 21.02.2001 to 24.02.2001 and then from 15.04.2001 to 14.05.2001. The petitioner also met the Divisional Manager of the respondents, in-person, on 15.03.2001 and explained the situation of the petitioner. In spite of the same, by order, dated 15.03.2001, the petitioner was transferred to Sengottai Branch. But, due to medical reasons, the petitioner had not joined there.

4. It is the further case of the petitioner that, to his shock and dismay, he was served with a Charge Memo, dated 15.03.2001, (in his residence) for his continuous absence from 25.02.2001. Pursuant thereto, an enquiry was conducted and in spite of his request for adjournment of enquiry, an exparte enquiry was conducted and ultimately, the same resulted in imposition of punishment of dismissal from service. The petitioner was also served with a show cause notice, dated 16.06.2001, asking him to show cause as to why he should not be terminated from service.

5. It is the further case of the petitioner that, the said show cause notice was challenged by way of a writ petition in W.P.No.10663 of 2001 before this Court. After hearing both the parties, this Court, by an order, dated 30.05.2001, has disposed of the said writ petition, directing the petitioner to appear for enquiry on 06.06.2001 and the Enquiry Officer was directed to proceed with the enquiry, afresh, failing which, the petitioner is directed to submit his explanation within one week. The petitioner submitted his reply, dated 05.07.2001, to the respondents. But, without considering the same, the order, dated 06.07.2001, came to be passed by the first respondent. The said order was challenged by filing an Appeal Petition by the petitioner before the respondents. Since the Appeal Petition filed by the petitioner was not considered by the respondents, the petitioner filed a writ petition in W.P.No.22760 of 2002, praying to dispose of the appeal filed by him. This Court, after hearing both sides, disposed of the said writ petition, with a direction to decide the appeal within a

period of four weeks. Pursuant, thereto, by the impugned order, dated 24.07.2002, the first respondent dismissed the Appeal Petition filed by the petitioner, by confirming the punishment of dismissal from service. Aggrieved against the said order, this writ petition came to be filed by the petitioner.

6. Heard the learned counsel appearing for both sides.

7. The learned counsel appearing for the petitioner submitted that, even assuming that the petitioner has admitted that the charges levelled against the petitioner are proved, the punishment of dismissal from service is excessive and disproportionate. He further submitted that the petitioner is the sole bread winner of the family and due to the current (impugned order) order of dismissal from service, the family of the petitioner is struggling for survival.

8. Per contra, the learned counsel for the respondent / Department contended that it is not a question of mere absence from duty, and on several occasions, the petitioner had suffered several punishments, rightly for the indiscipline attitude, the punishment has been imposed on the petitioner.

9. As per the Judgement of the Hon'ble Supreme Court in the case of STATE OF U.P. v. JAIKARAN SINGH [(2003) 9 SCC 228], normally, the Court in exercise of power under Article 226 does not interfere with the quantum of punishment alone if the charges are established against the delinquent and there is no lacuna in the procedure adopted in the departmental proceedings. But, at times if the Court feels that the punishment inflicted is grossly unjust and shocks the conscience then in appropriate cases, the Court may interfere.

10. Having regard to the facts and circumstances of the present case and also taking into consideration of the fact that the petitioner had served the respondent organisation for about more than 14 years, this Court is of the view that ends of justice would be met if the order of dismissal is altered to one of compulsory retirement. Basing on the said Judgment, the petitioner pleaded for modifying the extreme punishment of dismissal from service into one of 'Compulsory Retirement'.

11. This Court finds some force in the arguments advanced by the learned counsel for the petitioner. On a perusal of the materials available on record, it is clear that the second respondent has passed the order dated 07.07.2001, dismissing the petitioner from service, without considering the explanation dated 06.07.2001 submitted by the petitioner. Further more, the first respondent has passed the dismissal order, dated 24.07.2002, without considering the appeal grounds and confirmed

the punishment of dismissal from service. Further, taking into consideration of the fact that the Writ Petition is pending before this Court for the past fourteen years and the petitioner had undergone the ordeal of facing the disciplinary proceedings, and as the petitioner is now aged about 54 years, if the punishment of dismissal from service is confirmed, definitely, it would affect his future career.

12. Therefore, there is no point in remanding the matter to the appellate authority or the lower authority as the matter itself is pending for the past more than fourteen years. In view of the above, it is clear that punishment given to the petitioner is definitely excessive and it also affects the conscience of the Court.

13. Therefore, for the foregoing discussions, this Court is of the view that grave prejudice and irreparable hardship will be caused to the petitioner, if the order is not passed, on merits in respect of altering the punishment. Hence, instead of quashing the punishment imposed on the petitioner in its entirety, this Court modify the punishment to the limited extent of discharging the petitioner from service, so that at least the petitioner's previous service could be taken note of and he can get some benefits.

In the result, this Writ Petition is partly-allowed, to the extent indicated above. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Managing Director,
Tamilnadu State Transport Corporation,
Madurai Division - V Ltd.,
Virudhunagar - 626001
2. The General Manager,
TNSTC, Madurai Division - V Ltd.,
Virudhunagar - 626 001.

+1cc to Mr.P.Paramasivadosh, Advocate SR.48292
+1cc to Mrs.Gandhimathi, Advocate SR.48440

W.P.No.38752 of 2002

lrs[co]
srg 30/09/2016