

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.31723 & 31724 of 2014
and WMP.No.10736 of 2017 & M.P.No.1 of 2014

D.M.Venkateswaralu

..Petitioner
in both W.Ps.

Vs.

1.The Managing Director,
Tamilnadu State Transport Corporation
Villupuram Ltd.,
Head Office, Villupuram,
Villupuram District.

2.The General Manager,
Tamilnadu State Transport Corporation
Villupuram Ltd.,
Kancheepuram Region,
Karapettai, Kancheepuram-631 552.

3.The Branch Manager,
Tamilnadu State Transport Corporation
Villupuram Ltd., Kancheepuram Region,
Kalpakkam Deport, Kancheepuram District.

.. Respondents
in both W.Ps.

W.P.No.31723 of 2014:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned charge memo vide No.317/2317/g11/T.N.S.T.C/14 dated 22.09.2014 issued by the 2nd respondent herein and quash the same and consequently direct the respondents to accept the petitioner's VRS application dated

2-9-2013 and allow him to retire from service.

W.P.No.31724 of 2014:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned Memo vide No.Ku.No.3344/Pa.6/T.N.S.T.C(Villu.)/Kanchi/2014 dated 01.10.2014 issued by the 2nd respondent herein and quash the same and consequently direct the respondents to accept the petitioner to retire from service on the basis of the earlier opinion of Regional Medical Board dated 22.5.2014 with all other consequential benefits.

In both W.Ps.

For Petitioner : Mr.K.Gandhi Kumar

For Respondents : Mr.P.Kannan Kumar

COMMON ORDER

The charge memos issued to writ petitioner dated 22.09.2014 and 01.10.2014, by the second respondent is under challenge in these writ petitions. A further direction is sought for to direct the respondents to accept the application submitted for voluntary retirement on 02.09.2013 and consequently allow him to retire from service with all benefits.

2.The learned counsel appearing on behalf of the writ petitioner made a submission that the writ petitioner has joined as a Junior Assistant on 13.03.1987 in the respondent Transport Corporation and subsequently promoted up to the post of Superintendent in the year 2013. The petitioner

has served about 25 years in the respondent Transport Corporation with clean records of service. The writ petitioner was suffering from certain ailments and accordingly, he was unable to perform his duties. Thus, he made an application seeking voluntary retirement on 02.09.2013. However, after submitting the application alongwith medical records, the 2nd respondent issued a charge memo in proceedings dated 22.09.2014, stating that the writ petitioner remained unauthorized absence and not attended the duty. The writ petitioner further states that even before the issuance of the charge memo in proceedings dated 22.09.2014, the petitioner appeared before the Regional Medical Board and the Medical Board has given an opinion that the petitioner is not fit for the post of Superintendent. The learned counsel for the writ petitioner urged this Court by stating that earlier the petitioner had filed W.P.No.23082 of 2014 and this Court passed an order dated 26.08.2014 directing the first respondent to consider the representation submitted by the writ petitioner and pass appropriate orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of copy of this order. Thus, the charge memo issued thereafter on 22.09.2014 is unsustainable.

3.The learned counsel for the writ petitioner is of the opinion that once the Medical Board declared the petitioner is unfit to perform his duties and the petitioner seeks voluntary retirement, then the respondent ought to have

allowed the petitioner to retire from his service. But on his application for voluntary retirement from service, instead of accepting the application, they have waited till 21.09.2014 and issued a charge memo dated 22.09.2014. Hence, the charge memo to be quashed.

4. This Court is of the opinion that, mere submission of an application for voluntary retirement will not confer any right on the employee to remain absent from the duty. Even an application for voluntary retirement is preferred, the employees have to attend duty till they are permanently relieved by the competent authorities in accordance with rules. Submitting the voluntary retirement application is an option, that can be exercised by an employee. If such an application is submitted by the employees, the competent authorities have to scrutinize the same in accordance with the rules and after 90 days, they are at liberty to pass appropriate orders, accepting or rejecting the voluntary retirement application. Thus, the writ petitioner has to attend duty till the application for voluntary retirement of service is accepted and he is relieved from duty in accordance with rules in force. The mere submission of application cannot be a ground for the writ petitioner to say that he has submitted an application and declined to perform his duty and therefore remained absent. However, these merits are to be considered by the competent authorities based on the charge memo issued to the writ

petitioner on 22.09.2014. This Court is not inclined to go into the merits and demerits and the allegations set out in the charge memo and it is left open to the petitioner to participate and to prove his innocence before the enquiry proceedings to be initiated by the disciplinary authority.

5.This Court is of the view that writ petition challenging the charge memo cannot be entertained in a routine manner. The power of Judicial review in respect of quashing of charge memo is to be exercised by the High Court only in exceptional circumstances and not in a routine manner. Intermittent intervention in departmental disciplinary proceedings are not preferable and only in exceptional circumstances, the High Court may interfere in the disciplinary proceedings. The very purpose and the object of disciplinary proceedings are to run clean and independent public administration by the State and other State organizations. This being the prime object of the Discipline and Appeal Rules, whenever the competent authority initiated disciplinary proceedings against an employee under the Conduct Rules by invoking the powers under the Disciplinary and Appeal Rules, the Court must allow the authority to proceed in accordance with the rules by providing an opportunity to the delinquent and conclude the proceedings in accordance with rules within a reasonable time.

6.Intermittent intervention in interdepartmental disciplinary

proceedings are not preferable. Even in case of certain discrepancies or lapses, the same is to be rectified without any further delay. In certain cases *de novo* inquiry is permissible, if any error took place during the process of inquiry. Thus, the very object of the disciplinary proceedings ought to cull out the truth observed in the allegations set out by the disciplinary authority in the charge memorandum.

7. Intermittent intervention will cause inconvenience to the disciplinary authority. Thus, a charge memorandum can be quashed only on certain legal grounds as cited in earlier paragraphs. Judicial review is also certainly limited and the Courts must be cautious while undertaking the process of quashing the very charge memorandum itself. Every institution created under a statute or constitution must be allowed to exercise its powers in accordance with law. So also the competent authorities, on initiation of the disciplinary proceedings should be allowed to conclude the same in accordance with rules. The delinquent officials filing the writ petitions with an idea to prolong and protract the proceedings cannot be encouraged and the Court must have a pragmatic approach by allowing the competent authorities for concluding the departmental disciplinary proceedings. Long delay in concluding the disciplinary proceedings will cause hindrance and will not provide a way for a logical conclusion. Lapse of many years will dilute the disciplinary proceedings

and probably that may be the idea of the delinquent in some occasions. When a situation is not favorable to the delinquents, obviously they make all attempts to prolong and protract the proceedings. However, the Courts must be cautious while entertaining such claims or grounds at the instance of the delinquent officers. No doubt, if the charge memorandum itself is untenable on the legal grounds cited supra, then the Courts must have to interfere, but not otherwise.

8.This, being the principles to be adopted in respect of the initiation and conduct of the disciplinary proceedings against the government employees, this Court is not inclined to consider the grounds raised in the writ petition in respect of the merits of the case. Thus, the writ petitioner has to submit appropriate documents/explanations if any, to the competent authorities and it is for the authorities to consider the same in accordance with rules by conducting full fledged inquiry as per law. Thus, no further adjudication is required in these writ petitions.

9.This Court is of the opinion that the charges against the petitioner are relating to unauthorized absence and certainly the same can be inquired into and a decision can be taken as early as possible. Thus, the respondents have to proceed with the inquiry proceedings and complete the same by providing all reasonable opportunities to the writ petitioner and pass final orders in the

disciplinary proceedings within a reasonable period.

10. Under these circumstances, the respondents are directed to complete the enquiry in all respects and pass final orders in the disciplinary proceedings within a period of three months from the date of receipt of copy of this order. The writ petitioner is directed to co-operate for the completion of the enquiry proceedings in all respects and in the event of non-cooperation, the respondents are at liberty to record the same in the enquiry proceedings itself. After passing the final orders in the departmental disciplinary proceedings, the application submitted by the writ petitioner for voluntary retirement of service shall be considered in accordance with law and a decision is to be taken within a period of four weeks thereafter.

11. Accordingly, these writ petitions stands disposed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also closed.

16.11.2017

Speaking Order
Index : Yes
Internet: Yes
rm

Copy to:

1. The Managing Director,

Tamilnadu State Transport Corporation
Villupuram Ltd.,
Head Office, Villupuram,
Villupuram District.

2.The General Manager,
Tamilnadu State Transport Corporation
Villupuram Ltd.,
Kancheepuram Region,
Karapettai, Kancheepuram-631 552.

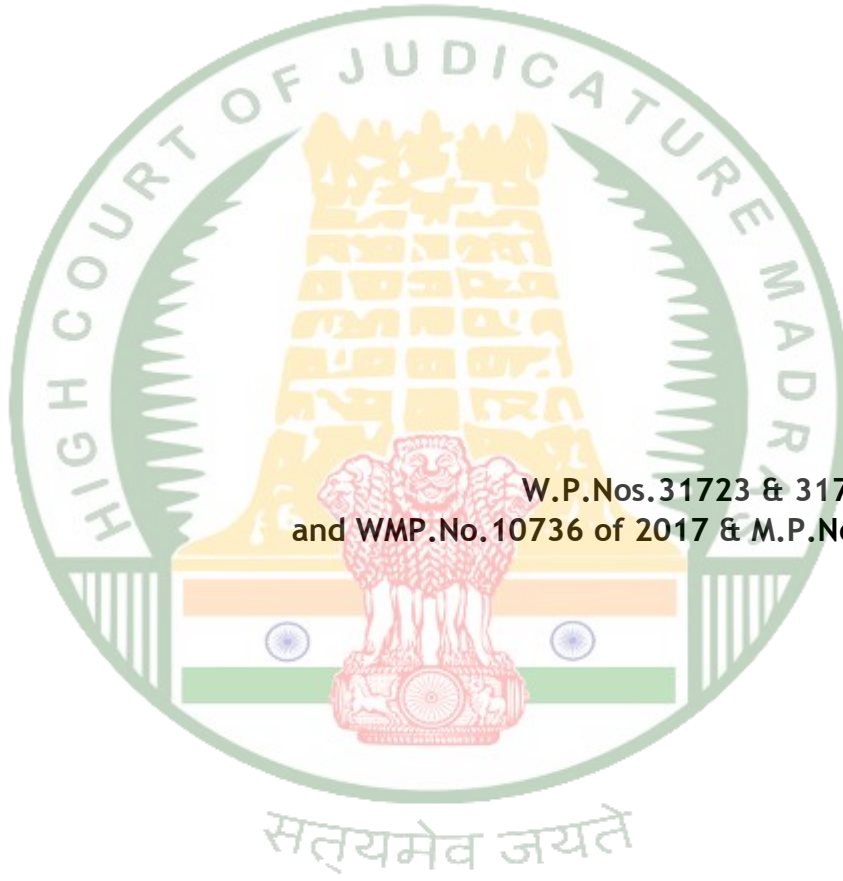
3.The Branch Manager,
Tamilnadu State Transport Corporation
Villupuram Ltd., Kancheepuram Region,
Kalpakkam Deport, Kancheepuram District.



WEB COPY

S.M.SUBRAMANIAM, J.

rm



W.P.Nos.31723 & 31724 of 2014
and WMP.No.10736 of 2017 & M.P.No.1 of 2014

WEB COPY

16.11.2017