

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.10377 of 2004
and WPMP.No.96 of 2015

R.Ramamoorthy

.. Petitioner

vs.

1. Tamil Nadu State Transport Corporation,
(Kumbakonam Division III) Ltd.,
Rep. by its Managing Director,
Marudhupathi, Managiri Road,
Karaikudi-630 307.

2. The General Manager,
Tamil Nadu State Transport Corporation,
(Kumbakonam Division III) Ltd.,
Marudhupathi, Managiri Road,
Karaikudi-630 307.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the respondent in connection with the charge memo, vide its proceedings Ref.TNSTC/TS/T6/19 dated 20.03.2004 and consequent Enquiry Notice vide its Ref.TNSTC/TS/T6/19 dated 02.04.2004 instructed the petitioner to appear on 19.04.2004 at 9.45 a.m at Karaikudi Head Office and quash the same.

For Petitioner : Mr.R.Ramamoorthy/Party-in-Person

For Respondents : Mr.P.Paramasivadoss
Standing Counsel

WEB COPY
ORDER

The petitioner, challenging the impugned charge memo alleging that he has unauthorizedly absented himself from duty between 17.02.2004 to 15.03.2004, has come forward with this writ petition.

2. The petitioner, in the affidavit filed in support of this writ petition, would state that he joined in the services of the respondent corporation on 01.11.1978 as conductor at Pandian Roadways Corporation, Madurai and thereafter, he was dismissed from service on the ground that he absented himself from duty unauthorizedly. The respondent/management seeking approval of the said order of dismissal, filed Approval Petition No.90 of 1994 and it was dismissed, vide order dated 05.08.1999. The respondent/management, aggrieved by the dismissal of the approval petition, filed W.P.No.15183 of 2000 and it was entertained and interim order was granted subject to the condition that entire backwages to be deposited to the credit of Petition No.90 of 1994, against which the writ petitioner filed a vacate stay petition and the interim order was made absolute, subject to the condition that the respondent/management shall deposit the entire back-wages in Indian Overseas Bank, Esplanade Branch within a period of three weeks and out of the said deposit, a sum of Rs.50,000/- shall be paid to the writ petitioner and there was also yet another direction directing the respondents to pay the last drawn pay to the petitioner with a default clause.

3. The respondent/management, in compliance of the same, deposited a sum of Rs.2,58,641/- and the petitioner is receiving interest from the fixed deposit and further received a sum of Rs.50,000/- and further claimed that as per Section 17(b) of the Industries Disputes Act, 1947, the mandate cast upon the respondent/management have not been complied with for the reason that he has not been reinstated and therefore, he has filed a Claim Petition in C.P.No.2 of 2004 before the Labour Court and it is pending. The petitioner filed WPMP.No.9968 of 2003 in W.P.No.15183 of 2000, praying for a direction to the respondent to pay full wages as Senior Conductor in the Time Scale of Pay of Rs. 3460-75-4210-80-5420 with effect from 27.07.2002 and an order was passed on 01.12.2003 and though he was reinstated with effect from 27.07.2002 as Senior Conductor, he has not been paid salary as per the order of this Court and ultimately, the writ petition filed by the management challenging the order of approval petition was also dismissed.

4. The respondent/Corporation, issued the impugned charge memo vide proceedings dated 20.03.2004, stating that the petitioner was unauthorizedly absent from duty from 17.02.2004 to 15.03.2004 and on account of the same, the daily activities of the respondent corporation was affected and he has violated Rule 24(6A) of the Standing Order of the Corporation. It is the claim of the petitioner that though he has repeatedly approached the office of the second respondent to assign him

duty and despite very many requests, he has not been favoured with any response and as such, it cannot be said that he was unauthorizedly absent from duty and therefore, came forward to file this writ petition.

5. This Court, while entertaining the writ petition, had granted interim orders in WPMP.No.12095 of 2004, the respondent /management filed a vacate stay petition in WVMP.No.1677 of 2005 and both the petitions were taken up together and the interim stay of the disciplinary proceedings initiated against the petitioner was vacated by this Court, vide order dated 17.03.2006.

6. The petitioner/party-in-person would submit that though he has repeatedly approached the second respondent to assign him duty, the respondent/duty with malafide and oblique motive, did not assign any duty and as such, he cannot be blamed for unauthorized absentism and would further aver that the earlier orders passed by this Court have not been complied with in letter and spirit and therefore, prays for quashment of the impugned order and conferment of all other consequential benefits. The petitioner/party-in-person would further contend that he has already attained the age of superannuation on 30.06.2008 and therefore, disciplinary proceedings initiated against him deemed to have been lapsed and therefore, prays for quashment of the impugned charge memo and other consequential service benefits.

7. Per contra, Mr.P.Paramasivadosh, learned Standing Counsel appearing for the respondent/Corporation would contend that though the petitioner has obtained stay of the disciplinary proceedings initiated against him on 19.04.2004, at their instance, the interim order was vacated on 17.03.2006 and the petitioner, on being aware of the same, ought to have participated in the disciplinary proceedings, but he deliberately absented himself from duty and would further add that the respondent/management would conclude the disciplinary proceedings as expeditiously as possible and impose punishment in proportionate to the delinquency and prays for dismissal of this writ petition.

8. This Court has considered the rival submissions and also perused the entire materials placed before it.

9. The fact remains that the petitioner was visited with disciplinary proceedings on an earlier occasion on the very same

allegation of unauthorized absence and though a conclusion has been reached to dismiss him from service, the approval petition filed by the respondent/management came to be dismissed and it was put to challenge in W.P.No.15183 of 2000 and initially interim stay was granted and later on it was vacated and the petitioner, challenging the vacation of the interim order, has filed W.A.No.390 of 2006 and it was set aside, by allowing the Writ Appeal and therefore, the interim order got revived and continued till the disposal of the writ petition on 20.01.2007 and on that day, the writ petition filed by the management was dismissed and therefore, the petitioner was permitted to join duty and it is his claim that though he was ready and willing to perform his duty, he was unjustly denied employment by not permitting him to work from 17.02.2004.

10. A perusal of the typed set of documents would disclose that the petitioner, in response to the allegation of unauthorized response, submitted his explanation/statement of defence wherein he has specifically stated that he has reported to duty, but he has been unjustly denied employment and also sent a legal notice, for which no response was forthcoming. It is not in dispute that the petitioner had attained superannuation on 30.06.2008 and it is the submission of the learned Standing Counsel appearing for the respondents, on instructions, that since the petitioner did not cooperate for early conclusion of disciplinary enquiry, he has not been permitted to retire and if this Court grants time, disciplinary proceedings will be concluded and orders will be passed as expeditiously as possible to give a quietus to the long drawn litigation.

11. This Court has put a specific question to the learned Standing Counsel appearing for the respondents as to the availability of any rule for extending the service period beyond the period of superannuation for the purpose of continuing the disciplinary proceeding. The learned Standing Counsel appearing for the respondent/Corporation fairly submitted that no such rules are in existence.

12. The impugned charge memo was passed as early as on 20.03.2004 for which the petitioner has offered explanation dated 29.03.2004 and the respondent has issued notice of enquiry dated 02.04.2004. This Court, while entertaining the writ petition, initially granted interim orders and later on it was vacated and it was put to challenge in W.A.No.542 of 2008 and it was allowed and as a consequence, the interim order got revived. It is also to be noted at this juncture that the interim order is in subsistence, as on today, in this writ petition. In the considered opinion of the Court, by virtue of the subsistence of the interim order passed in this writ petition, the

respondent/management is not in a position to proceed with the enquiry.

13. In the light of the said development in the form of the petitioner attaining the age of superannuation on 30.06.2008 and even for the sake of arguments that this Court rejects the case of the petitioner, the fact remains that the respondent/management cannot proceed with the disciplinary enquiry for the reason that there are no rules available to continue the services of the petitioner beyond the age of superannuation and in that event, no purpose would be served in granting time to the respondent/management to conclude the enquiry as expeditiously as possible and therefore, the impugned order warrants interference and it is liable to be set aside.

14. In the result, this Writ Petition is allowed and the impugned charge memo in proceedings Ref.TNSTC/TS/T6/19 dated 20.03.2004 and the consequential enquiry notice in Ref.TNSTC/TS/T6/19 dated 02.04.2004 are set aside and the petitioner deemed to have retired from service on 30.06.2008. Insofar as the payment of backwages is concerned, the petitioner did not work between 17.02.2004 till the date of attaining superannuation on 30.06.2008 and therefore, he is not entitled to get backwages for the said period. However, the said period shall be counted for conferment of all other consequential service and terminal benefits and the respondents are directed to pay/settle the said benefits to the petitioner as expeditiously as possible and not later than ten weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

jvm

To

1. The Managing Director,
Tamil Nadu State Transport Corporation,
(Kumbakonam Division III) Ltd.,
Marudhupathi, Managiri Road,
Karaikudi-630 307.

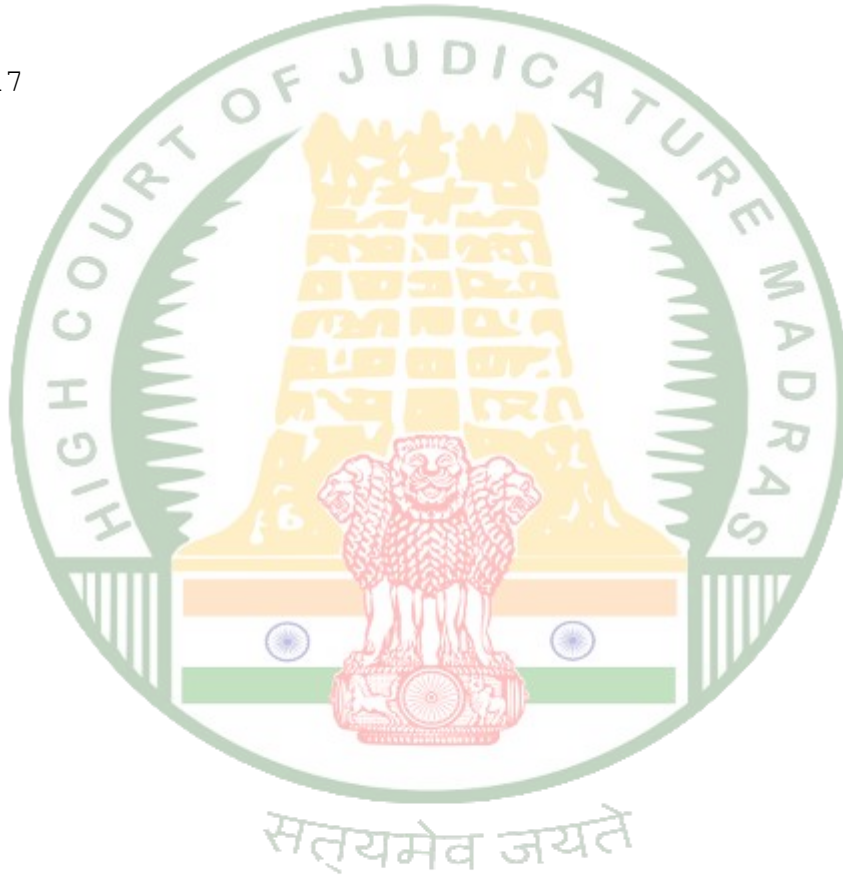
WEB COPY

2. The General Manager,
Tamil Nadu State Transport Corporation,
(Kumbakonam Division III) Ltd.,
Marudhupathi, Managiri Road,
Karaikudi-630 307.

+1cc to Mr.R.Ramamoorthy, Advocate, S.R.No.41779
+1cc to Mr.P.Paramasivadoss, Advocate, S.R.No.42346

W.P.No.10377 of 2004

AD(CO)
CS/23/06/17



WEB COPY