

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:13.06.2017
CORAM:
THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
W.P.No.19000/2010

A.Thiruvengadam

..

Petitioner

Vs

The General Manager,
Tamilnadu State Transport Corporation
(Villupuram Ltd.,)
Kancheepuram Region
Kancheepuram.

Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus or any other appropriate writ, order or direction in the nature of Writ, calling for the records relating to the impugned order vide Memo No.114/1014/Sa.10/Ta.Aa.Po.Ka/06 dated 28.11.2008 passed by the Respondent and to quash it and consequently directing the respondent to maintain status quo as existed just before the day passing the impugned order.

For Petitioner : Mr.N.Sundaramurthy
For Respondent : Mr.S.Sairaman

ORDER

By consent, the writ petition is taken up for final disposal.

2 The petitioner challenging the order of punishment of postponement of five increments with cumulative effect imposed by the respondent vide final order and revised final order dated 04.08.2008 and 28.11.2008 respectively, came forward to file this writ petition.

3 The petitioner in the affidavit filed in support of this writ petition would aver among other things that he is working as a Conductor in the services of the respondent / Management and while he was on duty on 01.04.2006 in Route No.165-B in the Bus bearing Registration No.TN-21-N-0538 which was plying to Uthukottai, a surprise checking was done and at that time, there were 30 passengers travelling in the bus and all of them were found to be having valid tickets except three passengers and the Checking Inspector questioned the three

passengers as to why they did not purchase the tickets and they told that they boarded the bus at Mathanampet for the purpose of travelling to Uthukottai and also gave Rs.4/- each to purchase the tickets ; but the Conductor / petitioner herein, did not issue tickets. The petitioner would further state that though he offered plausible and reasonable explanation, it was not accepted by the Checking Inspector and he chose to believe the version of the passengers and accordingly, informed the Management and based on his report, the petitioner was issued with a charge memo stating that though he received a sum of Rs.4/- each from three passengers, he did not issue tickets. The petitioner, on receipt of the same, submitted his explanation and not satisfied with the same, an Enquiry Officer was appointed, who after conducting enquiry, held that the charge has been proved. The Disciplinary Authority, viz., the respondent herein, has issued a second show cause notice to the petitioner along with a copy of the Enquiry Report, for which also, the petitioner has submitted his explanation and the Disciplinary Authority, not satisfied with the explanation offered by the petitioner, found that the conclusion reached by the Enquiry Officer, is correct and therefore, originally passed an order dated 04.08.2008, imposing a punishment of postponement of five increments with cumulative effect at the rate of Rs.575/- and also reduced the basic pay from Rs.8885/- to Rs.8310/- and subsequently, the respondent / Management modified the order of punishment on 28.11.2008, by reducing the basic pay from Rs.9000/- to Rs.8425/- and the petitioner, made a challenge to both the orders by filing the present writ petition.

4 The learned counsel for the petitioner has drawn the attention of this Court to the Standing Orders of Pattukottai Azhagiri Transport Corporation Limited, Vellore-10, and would submit that as per the Standing Order XLI [f], "holding deficit cash balance or holding unauthorised cash in excess of Rs.20/- is considered to be a delinquent act and admittedly, even as per the charge memo, it is the case of the respondent / Management that the petitioner though has received a sum of Rs.4/- each of the three passengers amounting to Rs.12/- did not issue tickets and since the same amount falls below the deficit amount stipulated in the above Standing Order, the respondent has committed a grave error in proceeding with the disciplinary enquiry and also imposed an order of punishment. Alternately, it is submitted by the learned counsel for the petitioner that even assuming for the sake of argument that the reason concluded by the Disciplinary Authority in holding the charge proved against the petitioner, the said official is competent to postpone only five increments and cannot reduce the basic pay by reducing five increments and on that ground also the impugned orders warrant interference.

5 Per contra Mr.S.Sairam, the learned Standing Counsel appearing for the respondent / Management has drawn the attention of this Court to the counter affidavit and would contend that the petitioner, who is in a position of trust and confidence, though received a sum of Rs.4/- each from three passengers, did not issue tickets and thereby, misappropriated a sum of Rs.12/- and it is one of the serious acts of delinquency and after affording all reasonable opportunities, a fair conclusion has been reached to postpone five increments with cumulative effect and though it was opened to the respondent / Management to dismiss the petitioner from service, taking into consideration all the relevant aspects, major penalty has not been imposed and would further add that this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, may not interfere with the quantum of punishment imposed by the Disciplinary Authority and prays for dismissal of the writ petition.

6 This Court paid its best attention to the rival submissions and also perused the materials placed before it,

7 It is relevant to extract Standing Order XLI of Pattukottai Azhagiri Transport Corporation Limited, Vellore-10:-

"XLI- [a] Misappropriation of Corporation's money.

[b] Non-issue of tickets after receiving fares.

[c] Re-issue of old tickets.

[d] Issue of wrongly punched/unpunched tickets.

[e] Issue of lower denomination tickets.

[f] Holding deficit cash balance or holding unauthorised cash in excess of Rs.20/-.

[g] Obstructing passenger from getting in and getting down at foot board.

[h] Refusal to give unpunched tickets to the Checking Inspectors or other authorised officials of the Corporation.

8 As per the charge memo, the petitioner though received a sum of Rs.4/- each from three passengers, did not issue tickets and therefore, in effect, without issuing tickets he has misappropriated Rs.12/- and it also resulted in deficit cash balance to the tune of Rs.12/- and as per the above Standing Order, the deficit cash balance is less than Rs.20/- and it cannot be construed as misconduct and as already pointed out, the deficit cash balance at that point of time was Rs.12/-.

9 In the light of the said limit prescribed in the above cited Standing Order, this Court is of the considered view that the charge memo cannot be issued on that ground.

10 This Court also finds considerable force in the alternate submission made by the learned counsel for the petitioner for the reason that the order of punishment has visited the petitioner with postponement of five increments with cumulative effect and in stead of doing so, the respondent / Management has deducted five increments from his basic pay. It is also unsustainable. It is also brought to the knowledge of this Court that the petitioner, as on today, is in service. In the light of the above facts and circumstances and reasons stated above, this Court is of the considered view that the impugned orders of punishment warrant interference.

11 In the result, the writ petition is allowed and the impugned orders passed by the respondent / Management dated 04.08.2008 and 28.11.2008 respectively are hereby set aside and the respondent / Management is directed to confer all consequential service and attendant benefits to the petitioner as expeditiously as possible and not later than twelve weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The General Manager,
Tamilnadu State Transport Corporation
(Villupuram Ltd.,)
Kancheepuram Region
Kancheepuram.

+1 cc to Mr.S.Sairaman Advocate sr 42353

+1 cc to Mr.N.Sundarasmorthy Advocate sr 41850

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