



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2017

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBRMANIAN

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Writ Petition(MD)No.5081 of 2011

N.S.Chandramohan

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Transport
Corporation(Madurai)Ltd.,
Bye Pas Road,
Madurai-10.

2.The General Manager,
Tamilnadu State Transport
Corporation (Madurai) Ltd.,
Dindigul Region,
Dindigul.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records, connected with the impugned order passed by the second respondent in his proceedings Paravai: Sa Thee: A4 38, dated 12.04.2010 and the consequential order of the first respondent in Ref.No.98/CL3/TNSTC-MDU/2011 dated 15.04.2011 and quash the same and consequently direct the first respondent to reinstate the petitioner into service with continuity of service and other monetary benefits.

For Petitioner : Mr.S.Govindan

For Respondents : Mr.S.Baskaran

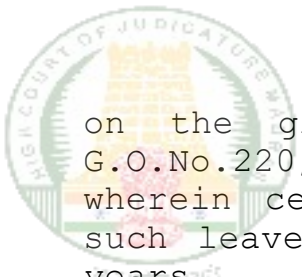
ORDER

The prayer in the writ petition reads as follows:-

"The writ petition has been filed for the issuance of a Writ of Certiorarified Mandamus, to call for the records, connected with the impugned order passed by the second respondent in his proceedings Paravai: Sa Thee: A4 38, dated 12.04.2010 and the consequential order of the first respondent in Ref.No.98/CL3/TNSTC-MDU/2011 dated 15.04.2011 and quash the same and consequently direct the first respondent to reinstate the petitioner into service with continuity of service and other monetary benefits."

<https://hcservices.ecourts.gov.in/hcservices/>

2.The petitioner who was working as Assistant Engineer with the respondent Corporation had applied for five years leave



on the ground that he has been offered employment abroad. G.O.No.220, dated 12.08.1994 provides leave for employment abroad wherein certain conditions have also been set out for availing such leave. The maximum period of such leave prescribed is five years.

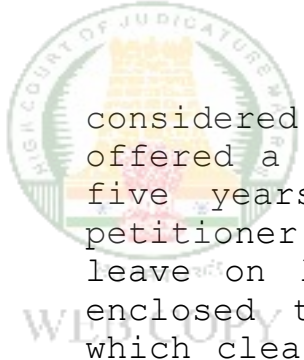
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3.It is the case of the petitioner that he had applied for leave without salary on the ground that he has got an employment at Dubai. Along with his application dated 11.11.2005, the appointment order issued by the foreign employer was enclosed wherein it was clearly stated that the period of contract of employment is five years. However, Board of the respondent Corporation sanctioned leave without salary for a period of one year initially and upon the request of the petitioner again it was extended for a further period of one year. Therefore, there was no renewal of the leave granted beyond the period of two years. However, the petitioner continued with his foreign employment. Hence, the respondent Corporation commenced disciplinary proceedings for his unauthorised absence. Since the notices issued to the petitioner were returned, the enquiry proceeded ex-parte and the petitioner was eventually imposed the punishment of dismissal from service. Certain minor punishments viz., censure, warnings etc., that were imposed earlier were also taken into account. Against the said order, the petitioner preferred an appeal before the Managing Director of Tamil Nadu State Transport Corporation. The appeal petition was also rejected. Aggrieved by the order in the appeal, the petitioner has come forward with the above writ petition.

4.Mr.R.Rengaramanujam, learned counsel for the petitioner would contend that the punishment of dismissal from service for the proved misconduct of unauthorised absence is disproportionate and thus would seek interference under Article 226 of the Constitution of India. He would also rely upon the judgment of the Division Bench of this Court in *Management of the Tamil Nadu State Transport Corporation, (Salem Division), Salem, Vs.The Presiding Officer, Labour Court, Salem* and another reported in 2013 (4) LLJ 418. In the said decision, the Division Bench had observed as follows:

"8.It is a well settled principle of law as laid down by the Hon'ble Supreme Court and the decisions of this Court, and it is abundantly clear that for charge of unauthorised absence, dismissal is too harsh, unless it is clearly proved that the absence was wilful and he was habitually absenting unauthorisedly with intention to dislocate the work of the employer/management."

<https://hcservices.ecourts.gov.in/hcservices/> 5.On the facts of this case, I find that there was non application of mind on the part of the respondent Corporation when the petitioner's request for leave on foreign employment was



considered itself. It is not in dispute that the petitioner was offered a job in a foreign country on a contract for a period of five years. The original application for leave filed by the petitioner itself clearly stated that he has applied for a special leave on loss of pay for a period of five years. He had also enclosed the appointment order issued by the foreign employer which clearly says the period of contract is five years. However, the respondent Corporation chose to grant one year leave initially and then it was renewed for a further period of one year with a condition that the individual will not be allowed further extension of leave on any account. This, in my opinion, is unfair. Having allowed the petitioner to join the work at abroad on a contract for five years, the respondent Corporation was not justified in granting leave for two years and requiring him to come back in the middle of contract period. Further, no reason has been assigned in the counter affidavit that the services of the petitioner are indispensable to the Corporation and hence, leave was not granted for five years that he had prayed for. From the order of the disciplinary authority as well as the appellate authority, I do not find that there is any discussion regarding the quantum of punishment to be imposed. Therefore, I have no hesitation in holding that the punishment of dismissal from service is too harsh and the same has to be modified.

6. While considering the question of punishment, the conduct of the petitioner should also be looked into. The petitioner who has accepted a job at abroad knowing fully well that the Corporation had granted leave only for a period of one year and the same was renewed for a further period of one year, subsequently. He made no attempt to come back. It appears that the petitioner had taken it for granted that leave will be automatically extended. The quantum of punishment has to be decided taking note of the conduct of the petitioner also. Therefore, I deem it fit to modify the punishment of dismissal into one of compulsory retirement so that the petitioner will be able to receive all the statutory retiral benefits. Accordingly, the order of the authorities imposing punishment of dismissal is set aside and the same is modified into one of compulsory retirement from 22.05.2006. The petitioner shall be entitled to get terminal benefits and pension in accordance with the standing orders of the transport corporation from 23.05.2006. The respondent Corporation is directed to sanction and pay the terminal benefits treating the petitioner as compulsorily retired from service from 22.05.2006. The arrears of pension and terminal benefits shall be calculated and paid to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.



7. With the above direction, the writ petition stands disposed of. No costs.

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Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To

1. The Managing Director,
Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Bye Pas Road,
Madurai-10.

2. The General Manager,
Tamilnadu State Transport
Corporation (Madurai) Ltd.,
Dindigul Region,
Dindigul.

+One cc to Mr.S.Baskaran, Advocate, SR.No.15446

+One cc to Mr.S.Govindan, Advocate, SR.No.15457

sms/vsg
RL/5C/4P/KP/SAR2/3.4.2017

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