

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

W.P.No.15731 of 2008

1.V.Natarajan (Deceased)

2.Krishnaveni

3.Anbuselvi

4.Pramila

5.Kamakshi ...petitioners

(petitioners 2 to 5 are substituted as Legal Heirs of the deceased first petitioner as per the order made in M.P.No.1 of 2014 dated 21.06.2018)

... Vs...

1.The Secretary to Government,
Transport Department,
Secretariat,
Chennai-600 009.

2.The General Manager,
Tamil Nadu State Transport
Corporation (Coimbatore Division-II) Ltd.,
Erode-1.

3.The Managing Director,
Tamil Nadu State Transport
Corporation (Coimbatore Division-II) Ltd.,
Erode-1.

...Respondents

Prayer:- Writ Petition has been filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 2nd respondent in his proceedings No.Pa.No.1/T5/27-C/Legal/Jeeva/93 dated 27.06.1994 and in Pa.No.5858-1/L6MCOP/TNSTC-E/2008 dated 24.05.2008 on the file of the 3rd respondent and quash the same and direct the 3rd respondent to reinstate the petitioner with all monetary and service benefit.

For petitioners : Mr.M.Vijayakumar

For Respondents : Mrs.Thanga Vadhana Bala Krishnan
Additional Govt. Pleader for R1
Mr.T.Chandrasekaran for R2&R3

ORDER

The petitioners prayed for a Writ of Certiorarified Mandamus to quash the proceedings in No.Pa.No.1/T5/27-C/Legal/Jeeva/93 of 2nd respondent dated 27.06.1994 and 3rd respondent proceedings in Pa.No.5858-1/L6MCOP/TNSTC-E/2008 dated 24.05.2008 and further direct the third respondent to reinstate the petitioner with all monetary and service benefit.

2. The petitioner was appointed on 11.08.1981 in the 3rd respondent office and had completed 14 years of service in the 2nd respondent office and he was the active member of the Union. The petitioner received a charge sheet in Proceedings @ L.No.Pa.No.1/T5/27-C/Legal/Jeeva/93 dated 09.03.1993 for the alleged charge of unauthorized absence from 24.01.1993 under the Provisions of 16 of standing order. Therefore, the representation was given by the petitioner on 23.06.1993 stating that, he had applied for leave on medical grounds and Medical Certificate was also furnished to that effect, considering his representations, he was permitted to join duty from 12.07.1993 by order dated 09.07.1993 of the 2nd respondent and to his shock and surprise, the 2nd respondent has issued a second Show Cause Notice for the same set of charges in Proceedings No.Pa.No.18046-1/T5/27-C/Legal/Jeeva/93 dated 03.12.1993.

3. The petitioner would further submit that, in the Second Show Cause Notice, it was stated that, in the enquiry he was set exparte and it was decided to terminate him from the service. But the petitioner would deny the same and would submit that he has appealed before the concerned Enquiry Officer on the very same day and the reason for delay to reach the enquiry sessions is due to the accident on the highway, which caused heavy and long diversion of traffic. In spite of him appearing on the same day with little delay, the Enquiry Officer has not condoned the same and deliberately and wantonly passed the final order on 03.11.1993 and had not considered his reasons and terminated him by order dated 27.06.1994 in Proceedings No.Pa.No.1/T5/27-C/Legal/Jeeva/93. The petitioner sent a representation and the 2nd respondent replied it on 10.02.1997, and thereafter the petitioner preferred 2-A petition as per the provisions of Industrial Disputes Act 1947 before The Commissioner of Labour, Coimbatore in Na.Ka.No.A/1073/2000. The proceedings ended in failure and the Commissioner of Labour, Coimbatore passed the conciliation failure report on 02.02.2001.

In 2001, the petitioner preferred a petition before the 1st respondent immediately on 26.11.2001 after the failure of conciliation.

4. The 2nd respondent sent a reply to the first respondent by letter dated 18.01.2002, addressing a copy of the same to the petitioner. Hence, the petitioner preferred a petition on 29.08.2006 before the Hon'ble Chief Minister's Special Cell. In spite of sending several reminders and representations, the same were not considered by the respondents. Hence the petitioner lastly sent a representation on 27.03.2008 and filed this Writ Petition.

5. The petitioner has submitted that the Second Show Cause Notice is against the provisions of law and the 2nd respondent, who has framed the charges, has issued the order of punishment and also acted as Judge and prosecutor for his own case, which is unconstitutional. The Enquiry Officer has not considered the petitioner's case, though the petitioner has attended the said enquiry on the same day with little delay and in spite of his representation for condoning the delay, he was set exparte and the final order was passed and impugned order was passed by the 2nd respondent, who has framed charges which is violative of principles of natural justice. The petitioner would further submit that, he was an Union activist and in order to victimize the petitioner for his activities, the 2nd respondent has passed the order unilaterally.

6. The 2nd respondent has filed a counter affidavit denying all the allegations and the learned counsel for the respondents would submit that the petitioner has a previous history and his past service was not satisfactory. During his 13 years of service, he was continuously absent for duty without permission for 11 times, fine was imposed on him for 4 occasions, warned on 1 occasion; increment postponed on 4 occasions, and the absent days were treated as absent on 2 occasions, negligence in duty on 2 occasions and the serious allegation is that, he issued a bogus appointment order to the individuals, for which, he was suspended one time. Further without getting any authorization from the Management, he operated the vehicle and damaged the same, for which, he was suspended. The petitioner was absent from duty from 24.01.1993, he has not submitted any leave application and no medical certificate was produced in time to get the leave sanctioned. There was no information regarding the absence and due to his absence, the Respondent's Corporation has issued charge memo dated 09.03.1993 for the continuous absence, for more than 10 days from 24.01.1993 onwards, without notice or prior intimation to the corporation, under the provisions of clause 16(e) of the Model Standing Order. The absence of the petitioner has caused lot of inconvenience to the respondents

office and the maintenance work in the Branch Workshop was affected. The enquiry notice was served to the petitioner on 19.10.1993 and the enquiry was conducted on 27.10.1993. The reasons given by the petitioner was not convincing, and the Corporation has given him all the liberty and principles of natural justice was followed by the Corporation before passing the final order. After the Domestic enquiry, a chance was given to the petitioner and the second show cause notice was issued with his previous history of enquiry findings. His representation was deeply analyzed and since his explanation was not accepted and punishment was confirmed and orders were issued.

7. The respondents would further submit that the petitioner is an employee covered under the provisions of Certified Standing Order and other provisions of the labour laws. The petitioner has preferred 2(A) petition under the provisions of Industrial Disputes Act, 1947 before the Labour Officer, Coimbatore. After failure of conciliation proceedings, the failure report was issued on 02.02.2001 by the labour officer to the petitioner and therefore, the petitioner was dismissed from service with effect from 30.06.1994 by order dated 27.06.1994. The petitioner kept quite for six long years and the dispute was raised only in the year 2000, ie., after 6 years. Even after the failure report, instead of raising a dispute before the Labour Court, the petitioner has filed a Writ Petition in the year 2008 with a delay of 7 years. Hence, the petitioner has an alternative remedy to approach the authorities, instead he filed the Writ Petition under Article 226 of the Constitution of India without exhausting the alternate remedies available under the provisions of Industrial Disputes Act, 1947. The petitioner was irregular in his attendance and inspite of repeated warnings, he was in the continuous habit of ignoring his work responsibilities as a workman and therefore, the respondents sought for dismissal of the Writ Petition.

8. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused all the available materials on record.

9. The notice was sent by the respondents on 09.03.1993 for the alleged charge of unauthorised absence from 24.01.1993 without any previous permission. For the said letter, the petitioner has sent a reply on 22.06.1993 stating that, he was not well and he was taking treatment from the local Doctor in Mettupalayam and his wife was also not well and sought for pardoning him and pleaded for permitting him to rejoin the office from 22.06.1993. Again on 23.06.1993, he sent a letter to the local department stating that he was not well and his wife had paralytic attack and he has attached the medical certificate also and sought for the medical leave from 24.01.1993 to

11.07.1993. Based on the said letter, he was permitted to join duty without prejudice to the action to be taken against him and accordingly he joined duty from 12.07.1993 after 3 months. The Second Show Cause notice was issued as to why he should not be terminated for his absence and an enquiry was ordered to be conducted and on that day of enquiry, i.e., on 27.10.1993, the petitioner was not able to attend the enquiry at 3.00 pm due to the accident on the road and he came to the enquiry office only around 04.20 pm, on that day, he has given a letter to the respondents. In spite of said representation, he was set exparte. The disciplinary authority also while sending Show Cause notice based on his past history, has stated that if the petitioner does not appear on the day and if he does not give explanation within 7 days, orders will be passed setting him exparte. The department proceedings were initiated against him on 03.12.1993 and he was issued with a Second Show Cause notice dated 03.12.1993, the petitioner has received the same on 18.12.1993 and has given explanation, it was considered by the disciplinary authority and the General Manager passed an order stating that the explanation was not acceptable and the petitioner has been dismissed from service with effect from 30.06.1994.

10. The petitioner filed 2-A petition and the same was confirmed by the Appellate authority and the petitioner kept on sending representation after representation to consider his case, which was not considered by the respondents. The petitioner has worked for 14 years in the office. For the alleged absence in the past, he has been given an award of proper punishment and accordingly he has undergone the punishment. Once the punishment has been ordered and he has undergone the same and the same cannot be made in the fresh order wherein the authority considered the same and passed the final order of termination of the service.

11. The petitioner's absence was only initially for 2 months, wherein he has given a letter that he was unable to attend the same due to an accident on the same day itself and after he reached the office, he has given explanation, which was not at all considered by the department. Again the medical certificate was issued by the Doctor but the department states that it has been made up after the issuance of Show Cause Notice. Whatever might be, there is no such finding by the authorities in the impugned order regarding the medical certificates produced by the petitioner himself. The petitioner died on 30.05.2014 and his legal heirs were brought on record, as per the orders and necessary amendments were made as per the order of this Court dated 21.06.2018. For the charge of unauthorized absence, the punishment of dismissal of workman is too harsh. The punishment of dismissal for unauthorized absence has to be considered only in a case where there is a severe misconduct, which affects the general public. The petitioner has

taken leave due to the health condition of him and his wife and he has also produced the medical certificates for the same, which was not considered. For mere absence due to bad health is a justifiable ground and the award of punishment of removal is not proportionate to the charge of absence. The petitioner also died and the entire family which is totally depending on him will force to starve. This Court finds that the punishment of removal from service is harsh instead directing the respondents to consider his service and calculate the amount/benefits to be paid to him for the qualifying service in the said 14 years to the legal heirs of the deceased. Since the delinquent should be given an opportunity of hearing and that the order being an ex parte order and no opportunity was given to the petitioner to put forth his arguments and the defence and evidences produced by him were not considered, the order of disciplinary authorities has to be set aside and this Court shall remit the matter back to the disciplinary authority for passing fresh orders based on the evidences. But since the petitioner is dead and the legal heirs are impleaded, this Court is of the opinion that the order of the respondents can be modified to the extent of "Compulsory Retirement". The petitioner's service of 14 years has to be taken into account and all the benefits for the qualifying service in the said 14 years service of the petitioner has to be paid to him.

12. In the above facts and circumstances, the order of the respondents is modified and the petitioner now deceased, is directed to be "Compulsory Retired" from service. Since the petitioner had put in the minimum qualifying service, Rule 13(a) of TNSTC Employees' Pension Fund Rules can be taken into account and the petitioner is entitled for the pensionary benefits. All the pensionary benefits for the qualifying service of the petitioner across 14 years of service have to be paid to the legal heirs of the deceased petitioner. The respondents are directed to settle the pensionary benefits, which are eligible to the petitioners, within a period of three months from the date of receipt of the copy of the order.

13. With the above direction and modification of the impugned order, the writ petition is disposed of. No Costs.

s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

To

1.The Secretary to Government,
Transport Department,
Secretariat,
Chennai-600 009.

2.The General Manager,
Tamil Nadu State Transport
Corporation (Coimbatore Division-II) Ltd.,
Erode-1.

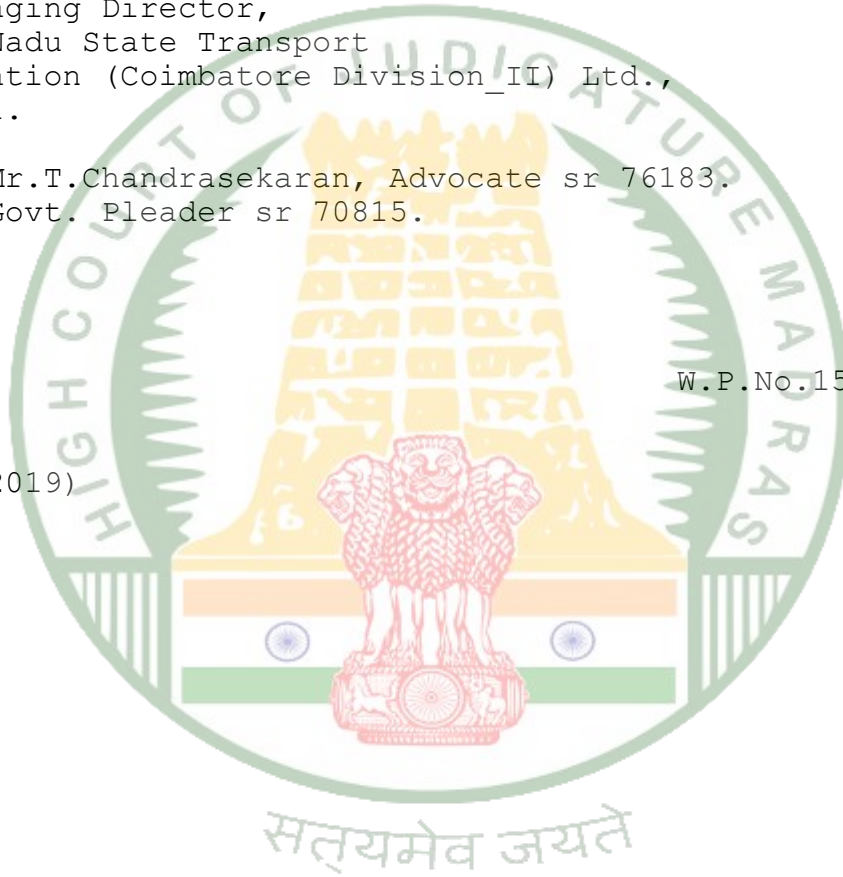
3.The Managing Director,
Tamil Nadu State Transport
Corporation (Coimbatore Division_II) Ltd.,
Erode-1.

+1 CC to Mr.T.Chandrasekaran, Advocate sr 76183.

+1 CC to Govt. Pleader sr 70815.

W.P.No.15731 of 2008

RSI (CO)
SP(12/03/2019)



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