

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2018

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P.No.46986 of 2006

S. Ashokan

.. Petitioner

Vs

The General Manager (Administration)
The State Express Transport
Corporation, Tamilnadu Division-I Ltd.,
Pallavan Salai, Chennai - 2. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the respondent in order No.20/063025/DS7/Setc/97, dated 14.03.2000 and quash the same as illegal and against the principles of natural justice and consequently direct the respondent to reinstate the petitioner with entire backwages.

For Petitioner : Mr. Ajoy Khose
For Respondent : Mr. R. P. Pratap Singh

ORDER

The prayer sought for in this writ petition is to challenge the proceedings of the respondent in order No.20/063025/DS7/Setc/97, dated 14.03.2000 and quash the same as illegal and against the principles of natural justice and consequently, direct the respondent to reinstate the petitioner with entire backwages.

2.The short facts, which are required to be noticed for the disposal of this writ petition, are as follows:

(i)The petitioner is the Engineer, holding Diploma in Mechanical Engineering and with that qualification, he was appointed at the respondent Corporation on 01.09.1987 as Junior Engineer. Originally, the petitioner was appointed at Trichy Division, later on, he was transferred to Nagapattinam and Kumbakonam Division and he was in the said place upto 1996.

(ii) Thereafter, the petitioner was transferred to Chennai and appointed as Assistant Engineer. Since the petitioner's family was not interested to stay at Chennai, they insisted upon the petitioner to get transfer to the original place.

(iii) This is the claim of the petitioner that ever since from the date of employment, the petitioner had been very sincere to the management and there had been no charge or punishment against the petitioner. Therefore, throughout for all the ten years, where he worked at the respondent Corporation, he had unblemished service.

(iv) Due to the family problem, the wife of the petitioner was died and because of the sudden death of the wife of the petitioner on suspicion, a criminal case had been filed against him and because of that, the petitioner's life has been completely shattered and he could not respond to the management, when notices were issued for the alleged unauthorised absence in his part during the year 1998.

(v) After great struggle, the petitioner has come out from the criminal case filed against him, due to sudden death of his wife. In the meanwhile, though it was claimed by the management that the notices had been sent to the petitioner for his appearance to the domestic enquiry conducted by the management against the petitioner, according to the petitioner, notices sent for the disciplinary action initiated against him on 29.01.1998, 17.02.1998 and 05.03.1998 were not at all served on the petitioner. Probably, since the petitioner had changed his residential address and according to the petitioner, even though the change of address was intimated to the respondent, notices had not been served on the new address and because of non serving of notices, the petitioner could not attend the enquiry even though once he attended the enquiry.

(vi) It seems, ultimately, enquiry officer concluded the enquiry and had given report that the charges framed against the petitioner for his unauthorised absence had been proved. Based on the said enquiry officer's report, it is the claim of the management that though two show cause notices had been given, the same could not be served on the petitioner and ultimately, the disciplinary authority decided to inflict the punishment of dismissal of service and the said punishment had been imposed on the petitioner by the impugned order dated 14.03.2000. Aggrieved over the said punishment order, the petitioner has filed this writ petition with the aforesaid prayer.

3. Learned counsel for the petitioner would submit that, because of the family circumstances and as the wife of the petitioner suddenly died, based on the suspicion, a criminal case was slapped on him as if that he was guilty for the death

of his wife and therefore, the total life path of the petitioner had been changed and shattered in fact and with the result, he was mentally depressed and he was also shifted his residence. In the meanwhile, even though it was claimed by the management that notices had been sent requiring the petitioner to appear for enquiry, admittedly, none of the notices had been served on the petitioner, therefore he could not attend the enquiry. By taking the said situation in their hand, the management had completed the enquiry exparte and ultimately concluded that the petitioner had been guilty for his unauthorised absence and accordingly, maximum punishment of dismissal of service had been inflicted on the petitioner.

4.Learned counsel for the petitioner would further submit that since no fullfledged enquiry had been conducted by giving appropriate opportunity to the petitioner and admittedly, no second show cause notice had been given based on the exparte enquiry report submitted by the enquiry officer, the entire disciplinary proceedings culminated in the impugned order of punishment is vitiated. Therefore, interference of this Court is very much required.

5.Per contra, Mr.R.P. Pratap Singh, learned Standing Counsel for the respondent would submit that, several opportunities had been given to the petitioner to appear before the enquiry officer. Notices had been given on 17.02.1998 and 05.03.1998 pursuant to the request made by the petitioner. Thereafter, again on 07.04.1998 further notice had been sent. In spite of these notices having been served on the petitioner, he did not choose to appear before the enquiry officer. Thereafter, for giving further chance, enquiry had been deferred to 28.04.1998 and 12.05.1998, thereafter on 25.05.1998. At one point of time, the petitioner had been referred to medical board and after getting certificate, he had been reinstated on 06.10.1998. However, after having worked for two days from 09.10.1998 onwards, he had been again continuously absent. Therefore, ten charges had been framed against the petitioner and served on him. Though notices had been sent for domestic enquiry, those notices could not be served, because of want of correct address, as the petitioner had, without information, shifted his residence. Therefore, management has no option to complete the enquiry exparte and based on the exparte enquiry report, it was proposed by the disciplinary authority to impose the punishment of dismissal of service. Therefore, minimum to that effect, second show cause notice dated 28.01.2000 was issued and the same was also could not be served on the petitioner.

6.Therefore, learned Standing Counsel for the respondent would submit that, in spite of every opportunity, which was

possibly to be given to the petitioner, having been given, the same has not been properly utilised by the petitioner and therefore, the blame, he tries to put on the management side in not conducting enquiry by giving opportunity properly to the petitioner, cannot have basis and therefore, on that ground, impugned order of punishment issued against the petitioner need not be interfered with.

7.I have heard the rival submissions made by the parties and also have gone through the materials placed before this Court.

8.Even though the domestic enquiry was contemplated against the petitioner and initial notice had been served on the petitioner, atleast once the petitioner had attended the enquiry, subsequently, due to several problems, as he lost his wife suddenly, based on which suspicion, a criminal case also filed against him, therefore, he had to face the criminal charge and in the result, his life path had been completely shattered.

9.It is an admitted case on the side of the respondent that even though best efforts had been taken to serve the final notice to the petitioner to complete the enquiry, the same could not be served on the petitioner, as the said notices sent by registered post had been returned and the attempt made by the management to serve notice to the petitioner in person through the special messenger also ended in failure. It is also an admission on the side of the management as reflected in the impugned order that, even though second show cause notice dated 28.01.2000 could not be served on the petitioner, attempt made in this regard to send second show cause notice by sending special messenger also ended in failure.

10.These facts would go to show that even during the enquiry and also even after the enquiry, notices could not be served on the petitioner and without even the notices being served on the petitioner before finalising the disciplinary proceedings including second show cause notice, since the impugned order of punishment had been inflicted, this Court feels that a full opportunity to the delinquent, which should have been given as contemplated under the law, had not been given in this case, to the satisfaction of this Court, as admittedly, the notices for enquiry and the second show cause notice for the final stage of the final enquiry and also the second show cause notice before the proposed punishment had admittedly not been served on the petitioner, therefore, this Court feels that the impugned order, since has been given for the maximum punishment of dismissal of service, has to be necessarily interfered with.

11.It is the submission of the learned counsel for the petitioner that the petitioner is still having service of four years, as currently, his age is 53. Further the fact remains that due to unauthorised absence, though disciplinary proceedings initiated against him, it is also the fact that the petitioner did not come forward to join duty before and there is no proof to show that he has made an attempt to join duty during the enquiry period before passing the impugned order. Therefore, for the entire period from the date of dismissal till the date, admittedly the petitioner had not worked for the respondent corporation. Hence by invoking the theory of 'no work no pay', he is not entitled to claim backwages. However, at the same time, since the enquiry and the disciplinary proceedings is found to be defective, for the said reason, non issuance of notices as admitted by the respondent, the petitioner is entitled for reinstatement. However, such a reinstatement, in order to meet the ends of justice, shall only be for the future period for wages and in this regard, the petitioner shall not entitle for any backwages.

12.In the result, the writ petition stands disposed of with the following directions:

(i) The impugned order is quashed and the petitioner shall be reinstated on service. However, the petitioner shall not be entitled for any backwages for the entire absent period or non service period.

(ii) However, the service can be taken into account, only for the purpose of retirement and pensionary benefit on superannuation of the petitioner.

(iii) The aforesaid exercise shall be done by the respondent Corporation within a period of two months from the date of receipt of a copy of this order.

(iv) It is made clear that after reinstatement, current pay can be fixed for the petitioner by taking into account his entire service notionally. No costs.

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Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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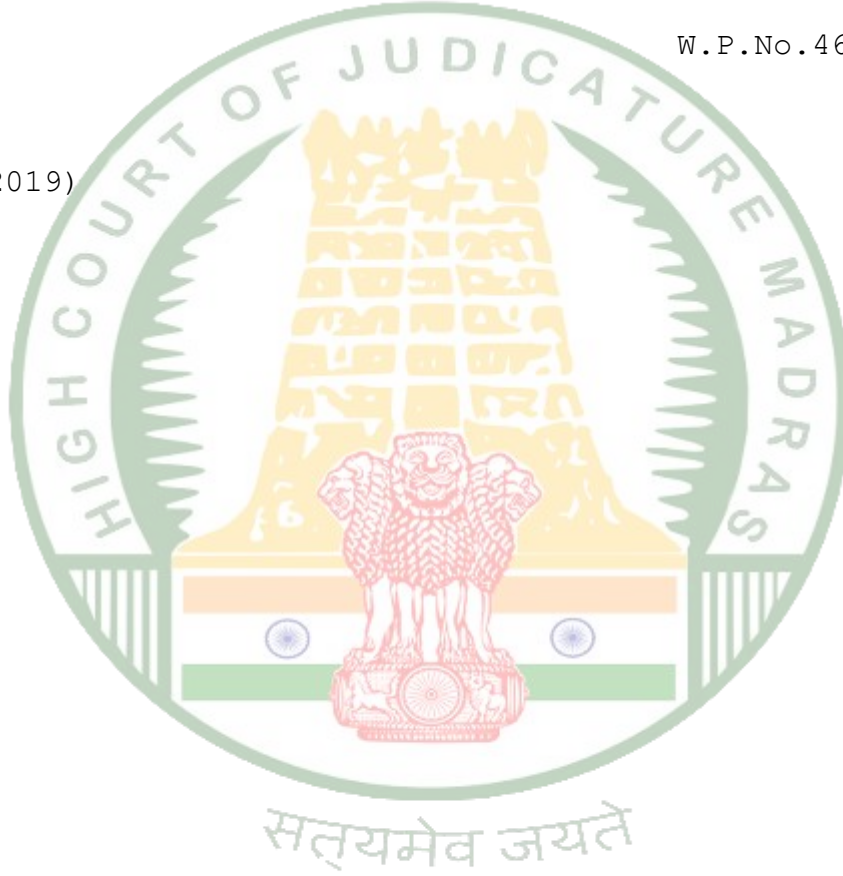
To

The General Manager (Administration)
The State Express Transport
Corporation, Tamilnadu Division-I Ltd.,
Pallavan Salai, Chennai - 2.

+lcc to Mr.V.Ajoy Khose, Advocate, S.R.No. 67984
+lcc to Mr.R.P.Prathap Singh Advocate, S.R.No. 68411

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VBA (CO)
GN (15/03/2019)



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