

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.A.Nos.888 and 1399 of 2017
and
C.M.P.No.19134 of 2017

W.A.No.888 of 2017:

R.Ramamoorthy ... Appellant

-vs-

- 1.The Tamil Nadu State Transport Corporation Limited
(Kumbakonam Division III) Ltd.
Rep.by its Managing Director,
Maruthapathi, Managiri Road,
Karaikudi-630 307.
- 2.The General Manager,
Tamil Nadu State Transport Corporation Limited
(Kumbakonam Division III) Ltd.
Maruthapathi, Managiri Road,
Karaikudi-630 307. ... Respondents

W.A.No.1399 of 2017:

- 1.The Tamil Nadu State Transport Corporation Limited
(Kumbakonam Division III) Ltd.
Rep.by its Managing Director,
Maruthapathi, Managiri Road,
Karaikudi-630 307.
- 2.The General Manager,
Tamil Nadu State Transport Corporation Limited
(Kumbakonam Division III) Ltd.
Maruthapathi, Managiri Road,
Karaikudi-630 307. ... Appellants

-vs-

R.Ramamoorthy ... Respondent

W.A.No.888 of 2017 filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.10377 of 2004 dated 13.06.2017, in so far as denial of back wages is concerned. 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.

W.A.No.1399 of 2017 filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.10377 of 2004 dated 13.06.2017. 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 Appellant in W.A.No.888/2017
& respondent in W.A.No.1399/2017 : Mr.A.Ilaya Perumal

For respondents in W.A.No.888/2017
& appellants in W.A.No.1399/2017 : Ms.S.Rajeni Ramadoss

COMMON JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

The appellant in W.A.No.888 of 2017 / respondent in W.A.No.1399 of 2017, joined the services of the Tamil Nadu State Transport Corporation Limited (Kumbakonam Division III) Ltd., Karaikudi on 01.11.1978 as Conductor at Pandian Roadways Corporation, Madurai. The employee was issued the charge memo vide proceedings dated 20.03.2004 stating that he was unauthorisedly absent from duty from 17.02.2004 to 15.03.2004 and on account of the same, the daily activities of the Corporation have been affected and he has violated Rule 24(6A) of the Standing Orders of the Corporation. The claim of the employee is that though he has repeatedly approached the office of the General Manager of the Corporation, 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 unauthorisedly absent from duty. The employee filed a writ petition before this Court in W.P.No.10377 of 2004, challenging the charge memo issued by the Transport Corporation.

2.The learned single Judge, considering the facts and circumstances of the case, allowed the writ petition by order

dated 13.06.2017 by quashing the charge memo, but however, observed that the employee is not entitled for back wages for the period during which he had not worked. Further, the learned single Judge has also ordered to count the said period for conferment of all other consequential and terminal benefits.

3.Challenging the said order, the employee has come up with W.A.No.888 of 2017 and the Management has come up with W.A.No.1399 of 2017.

4.The learned counsel for the appellant in W.A.No.888 of 2017/ employee, has submitted that the employee cannot be denied the back wages during the period which he had not worked, because only the Corporation had not allowed him to work and it is not his fault. Thus, this writ petition has been filed only challenging the aspect of back wages as ordered by the learned single Judge.

5.The learned counsel for the appellant-Transport Corporation in W.A.No.1399 of 2017 has submitted that the learned single Judge has erred in holding that the order of permitting the Management to continue with the charge memo would be an illegality, since the common service Rules of the Corporation does not provide the Management to proceed departmentally after the period of retirement. The learned counsel also submitted that the order passed by the learned single Judge to count the period during which the individual had not worked, for conferment of all other consequential and terminal benefits, is not correct.

6.Heard the learned counsel on either side and perused the materials available on record.

7.The fact remained that against the charge memo dated 20.03.2004, the appellant in W.A.No.888 of 2017/employee has offered explanation dated 29.03.2004. This Court, while entertaining a writ petition filed by the Management in this connection, initially granted interim stay and later on it was vacated. Thereafter, the matter culminated in the revival of the interim order and the employee has been directed to be reinstated in service. Finally, by the impugned order, this Court held that the employee is not entitled to get back wages for the period he had not worked, but the said period shall be counted for conferment of all other consequential service and terminal benefits. Now the employee has come up with W.A.No.888 of 2017 challenging the impugned order in so far as not granting the back wages. In this connection, we are of the considered opinion that on the ground of 'no work no pay', the employee is not entitled for any back wages during the period he had not worked, ie. from 17.02.2004 till the date of his superannuation, ie., 30.06.2008. At this juncture, the learned counsel for the employee has submitted that the employee has worked during the said period and he is having the relevant documents to that

effect. If that be so, the employee may produce such documents before the Management and in that event, it is for the Management to consider the same in accordance with law.

8. With the above observation, W.A.No.888 of 2017 is disposed of. No costs.

9. The writ petition filed by the Management in W.A.No.1399 of 2017 stands dismissed, since we are concurring with the stand taken by the learned single Judge in respect of the claim made by the Management, in the impugned order. No costs. Consequently the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

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

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

+ 2 ccs to Mr.A.Ilaya Perumal, Advocate Sr.47876

+ 1 cc to Mr.D. Venkatachalam, Advocate Sr.48186

W.A.Nos.888 and 1399 of 2017

and

C.M.P.No.19134 of 2017

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EU (16/08/2018)