

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2018

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.6174 of 2009

M.Sankar

.. Petitioner

Vs.

Tamilnadu State Transport
Corporation (Villupuram) Ltd.,
Kancheepuram Region,
Rep. By its General Manager,
Villupuram.

... Respondent

Petition filed under Article 226 of The Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order in Memo No. 318/318/Sa5/TNSTC/06 dated 11.03.2009, passed by the respondent, quash the same and consequently direct the respondent to treat the period of suspension on duty with pay for all purposes, with all consequential benefits.

For Petitioner .. Mr.V.Ajay Khose

For Respondent .. Mr.R.Balasubramanian for
Mr.T.Chandrasekaran

ORDER

The petitioner has approached this Court, seeking the following relief:-

"Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order in Memo No. 318/318/Sa5/TNSTC/06 dated 11.03.2009, passed by the respondent, quash the same and consequently direct the respondent to treat the period of suspension on duty with pay for all purposes, with all consequential benefits. "

2. The petitioner was appointed as a Conductor in the respondent Corporation. He was placed under suspension by order dated 03.11.2006 on the basis of the disciplinary proceedings initiated against him. Thereafter, he was issued with a charge memo dated 21.11.2006 and in the charge memo, it was alleged as

"(i) that on 01.11.2006 while I was working in Route No.200/E and the bus bearing No.TN-21.N0825, I received a sum of Rs.184 at the rate of Rs.46/- per head from a group of four passengers who travelled from Kalahasthi to Chennai but I had issued Rs.46/- tickets only to three of them and failed to issue ticket to the fourth person and thereby I misappropriated a sum of Rs.46/-.

(ii) that I was responsible for the loss caused to the Corporation and

(iii) that I failed to act as a responsible conductor."

3. However, the respondent proceeded with enquiry without considering the representation submitted by the petitioner that he did not commit any misconduct as alleged against him. In the mean while, his suspension order came to be revoked on 08.12.2006. The enquiry officer on conclusion submitted a report on 26.05.2008, holding the charges proved against the petitioner. Thereafter, the petitioner was directed to submit his explanation to the findings of the enquiry officer by a memo dated 03.06.2008. However, once again, not satisfied with the objection raised by the petitioner in regard to the findings of the enquiry officer, the second show cause notice was issued on 21.01.2009, proposing to impose penalty on the petitioner. In response to the second show cause notice, the petitioner submitted a representation on 12.02.2009, explaining various infirmities in conducting the enquiry. Not satisfied with the explanation, finally, the respondent vide proceedings dated 11.03.2009, imposed the punishment of reduction in pay, by reducing the basic pay of the petitioner by three stages and also postponed his increments for three years with cumulative effect. It is also seen that the further period of suspension from 06.11.2006 to 13.12.2006 was ordered to be treated as eligible leave to his credit. According to the petitioner, by the impugned action, three punishments have been imposed on the petitioner for single act of misconduct, even assuming the same is proved in the enquiry.

4. Upon notice, Mr.R.Balasubramanian, the learned counsel entered appeared on behalf of the respondent and filed a counter affidavit.

5. The learned counsel for the petitioner would submit that no passengers were examined during domestic enquiry and the

enquiry was concluded without affording reasonable opportunity to the petitioner. He would further submit that in any event, even assuming that the petitioner was found guilty of all charges, the punishment of reduction in pay for three stages is not provided for in the Service Rules and therefore, such imposition of penalty cannot be countenanced in law.

6. He would alternatively submit that three punishments cannot be imposed on the petitioner for the same charge as such punishments would be contrary to the rules.

7. At this, the learned counsel for the respondent Corporation would submit that in the past, the petitioner was imposed penalties on a number of occasions and he had been repeatedly committing the same act of misconduct. However, taking a lenient view in the matter, the administration had imposed the present penalty without actually removing him from service.

8. The learned counsel for the petitioner would submit that the petitioner on attaining the age of superannuation, retired from service in December, 2010 itself. The learned counsel for the petitioner would draw the attention of this Court to penalties enumerated in the service rules applicable to the Corporation employees which are reproduced below:--

25. Punishments for Misconduct:

1. The following shall be prescribed as punishment that may be awarded to workman.

i) Censure (Minor)

ii) Fine subject to the provisions of Payment of wages Act (Minor)

iii) Stoppage of increment: Stoppage of increment or without cumulative effect.

iv. A Recovery from wages whole or part of any pecuniary loss, caused to the Corporation by the negligence or breach of orders of the workers.

b. Recovery from pay to the extent necessary of the monetary value equivalent to the amount of increments ordered to be withheld, where such an order cannot be given effect.

c. Recovery from pay to the extent necessary of the monetary value equivalent to the amount of deduction to a lower stage

in a time-scale ordered where such an order where such an order cannot be given effect to.

Explanation: In cases of stoppage of increment with cumulative effect the monetary value equivalent to three times the amount of increment ordered to be withheld may be recovered.

v. Demotion to lower post or lower grades No workman shall be demoted to any post or grade lower than to which he was initially recruited under the Corporation.

vi. Suspension as a specific punishment not exceeding 30 days

vii. Removal from service or discharge.

vii. Dismissal from service."

9. He would submit that the reduction of basic pay by three stages is not provided for and therefore, the impugned punishment of reduction is without authority in the law.

10. This Court considered the rival submissions of the learned counsel for parties and perused the materials and pleadings placed on record. There is considerable force in the contention put forth by the learned counsel for the petitioner that as per the rules, the reduction in pay is not provided as one of the punishments and therefore, the imposition of such punishment is without the authority of law. More over, as rightly contended by the learned counsel for the petitioner that it is not open to the management to impose multiple punishments for the same act of misconduct. In this case, not only his pay has been reduced, but there was stoppage of increment for a period of three years with cumulative effect coupled with the fact that the suspension period was ordered to be treated as eligible leave to his credit. Thus the employee was imposed with three punishments, according to the learned counsel for the petitioner.

11. However, this Court is of the considered view that the regularisation of suspension period of an employee depends upon various factors and adjustment of leave to his credit during the period of suspension is one of the methods of regularization of suspension period. Therefore, this cannot be considered as one of punishment. But at the same time, the imposition of punishment of reduction in pay, is not provided for in the

cannot be countenanced both in law and on facts.

12. For the above said reasons, this Court sets aside the impugned penalty ordered by the respondent in Memo No. 318/318/Sa5/TNSTC/06 dated 11.03.2009 only to the extent, the imposition of punishment of reduction in pay by three stages. The other portion of the impugned order regarding stoppage of increment of three years and regularisation of suspension period shall remain as it is.

13. In view of the above, this Court directs the authority to pass suitable order as indicated above and grant attendant benefits to the petitioner on such modification of the penalty. The consequential order shall be passed by the respondent, within a period of eight weeks from the date of receipt of a copy of this order.

14. With the above direction, this Writ Petition is allowed in part. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To
Tamilnadu State Transport
Corporation (Villupuram) Ltd.,
Kancheepuram Region,
Rep. By its General Manager,
Villupuram.

+1cc to Mr.T.Chandrasekaran, Advocate, S.R.No.22118

+1cc to Mr.V.Ajay Khose, Advocate, S.R.No.22571

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GSP(10/04/2018)