

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2018

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.26016 of 2010

R.Kannan

.. Petitioner

Vs.

1. The Managing Director,
Metropolitan Transport Corporation,
Anna Salai, Chennai-600 002.
2. The Joint Managing Director,
Metropolitan Transport Corporation,
Anna Salai, Chennai-600 002. ... Respondents

Petition filed under Article 226 of The Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to 2nd respondent's order made in No.9755-Se.Pe(O.Na)15/Ma.Po.Ka/2007 dated 25.02.2008 and as confirmed by the appellate authority/the 1st respondent herein in even number proceedings dated 04.11.2010, to quash the same and consequently direct the respondents to extend all benefits both service and monetary by treating the penalty as compulsory retirement.

For Petitioner .. Mr.L.Chandrakumar

For Respondents.. Ms.S.Rajeni Ramadoss

ORDER

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

"Writ of Certiorarified Mandamus calling for the records relating to 2nd respondent's order made in No.9755-Se.Pe(O.Na)15/ Ma. Po. Ka /2007, dated 25.02.2008 and as confirmed by the appellate authority/the 1st respondent herein in even number proceedings dated 04.11.2010, to quash the same and consequently direct the respondents to extend all benefits both service and monetary by treating the penalty as compulsory retirement."

2.The petitioner was employed as driver in the respondent Corporation on 31.08.1981. He was issued a charge memorandum on 16.05.2007, for remaining absent for a period of eight consecutive days. In pursuance of the charge memorandum dated 16.05.2007, the petitioner submitted his explanation on 05.07.2007, stating that he was suffering from ailment and produced medical certificate to that effect. After accepting his explanation, the petitioner was also allowed to rejoin duty.

3.While so, the disciplinary authority passed an order on 24.11.2007, proposing to impose a penalty of removal from service. Before issuance of the show cause notice, no enquiry was conducted as contemplated under the service rules. Unfortunately, the petitioner did not choose to submit his explanation to the show cause notice and thereafter, the penalty was imposed, removing the petitioner from service and notice indicating such penalty was pasted on the notice board on 14.12.2007, which notice was also confirmed by the disciplinary authority in his proceedings dated 25.02.2008. As against the penalty order, the petitioner filed an appeal during April, 2008 which was not disposed of. However, in the meanwhile, the petitioner has approached this court challenging the order of penalty dated 25.02.2008, in W.P.No.15440 of 2009. However, this Court by its order, dated 16.07.2010, disposed of the writ petition by directing the appellate authority to pass orders on the appeal filed by the petitioner in April 2008. Thereafter, the appellate authority passed an order on 04.11.2010, rejecting the appeal thereby confirming the order of penalty of removal from service. The proceedings of the disciplinary authority as well as the appellate authority are put to challenge in the present writ petition.

4.Upon notice, Ms.S.Rajeni Ramadoss, the learned Standing Counsel entered appearance on behalf of the respondents and made her submissions.

5.The learned Standing Counsel appearing for the respondents Corporation would vehemently contend that the writ petition is not maintainable as the petitioner has not exhausted the statutory remedy available under the provisions of the Industrial Dispute Act. Without exhausting the same, the petitioner had directly approached this Court invoking its extraordinary jurisdiction under Article 226 of Constitution of India. Therefore, on this ground alone, this writ petition has to be rejected.

6.As regards on the merits of the case, the learned counsel for the respondents would submit that the authority while imposing the penalty of removal from service had taken into consideration the earlier punishment imposed on the petitioner on a number occasions for the same act of misconduct of remaining unauthorised absence. In spite of the earlier punishments, the petitioner continued to be absent unauthorisedly and therefore, the authority felt that his further retention in service was

against public interest and therefore, he was removed from service. The appellate authority has also taken into account the relevant factors before confirming the order of the disciplinary authority. Therefore, the impugned punishment imposed on the petitioner does not call for interference by this Court.

7. On the other hand, the learned counsel appearing for the petitioner would strongly contend that the Corporation has given a complete go by to the procedure to be followed particularly, when severe penalty of removal from service being imposed on the delinquent employee. No such procedure has been followed. Admittedly, the disciplinary authority after obtaining the explanation from the petitioner, has directly passed the order of removal from service by merely issuing a show cause notice prior to the impugned penalty. Such procedure adopted by the disciplinary authority is contrary to the mandatory rules and therefore, the order passed by the disciplinary authority is liable to be interfered with.

8. Further, the learned counsel for the petitioner would also submit that the appellate authority has rejected the appeal of the petitioner in a printed form which is prima facie disclosed non application of mind by the appellate authority and therefore, as the said order is contrary to the disciplinary rules, the same is liable to be interfered with.

9. This Court considered the rival submissions of the learned counsels and perused the materials and pleadings placed on record.

10. This Court is in agreement with the submissions made on the behalf of the petitioner as materials would disclose that no enquiry was conducted into charges alleged against the petitioner and the disciplinary authority has directly issued the show cause notice to the petitioner before issuing penalty dated 28.02.2008. Therefore, on this ground alone, the punishment has to be set aside. Nevertheless, as rightly contended by the learned counsel for the respondent that the petitioner remained absent even on earlier occasions for which he was imposed punishment and in fact, such past antecedents were made as part of the chargememo against the petitioner. In spite of the same, he refused to correct himself and remained absent unauthorizedly for which the action was taken by the disciplinary authority and he was removed from service as a culmination of his earlier minor punishments.

11. Considering the submissions of the learned counsel for the respondents that the petitioner's removal from service was in the public interest and therefore, it appears that the disciplinary authority without conducting enquiry into the charges, had directly imposed the punishment removing the petitioner from service which was also confirmed by the appellate authority. Therefore, this Court is of the view that the orders passed by the disciplinary authority as well as the

appellate authority are clearly in contravention of mandatory disciplinary rules and therefore, the same cannot be sustained. However, as regards the petitioner's prayer in the writ petition is concerned, it has to be seen that the petitioner himself has prayed for quashing the impugned penalty and consequently to extend all the attendant benefits by replacing the penalty as compulsory retirement. On the face of such prayer of the petitioner, this Court cannot go behind the same and grant any further benefits to the petitioner. In any event, it appears that the petitioner has been unauthorisedly absent quite frequently and therefore, his retention of service was found to be not in the public interest by the Corporation.

12. In the course of arguments, this Court is informed that the petitioner had attained the age of superannuation in April, 2010 itself.

13. In view of the above said facts and circumstances, this Court has no hesitation in allowing the writ petition as the orders passed by the disciplinary authority as well as the appellate authority cannot be countenanced in law and the same have to be set aside.

14. While setting aside the impugned orders, what relief to be granted to the petitioner has to be evaluated on the facts and circumstances of the present case. Since this Court concluded that the petitioner was a habitual absentee, it refrains from ordering reinstatement of the petitioner. However considering the overall circumstances, this Court is of the view that it is a fit case that the punishment of removal from service can be modified as one of the "Compulsory Retirement".

15. In the above circumstances, this Court modifies the penalty of removal from service to one of "Compulsory Retirement" and the same shall be effected from the date of removal from service i.e. 25.02.2008 and the petitioner on such modified penalty, is entitled to all other attendant benefits as admissible and payable to him. The respondents are directed to pass consequential order by giving effect to the above direction, within a period of eight weeks from the date of receipt of a copy of this order.

16. With the above direction, this writ petition stands allowed. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

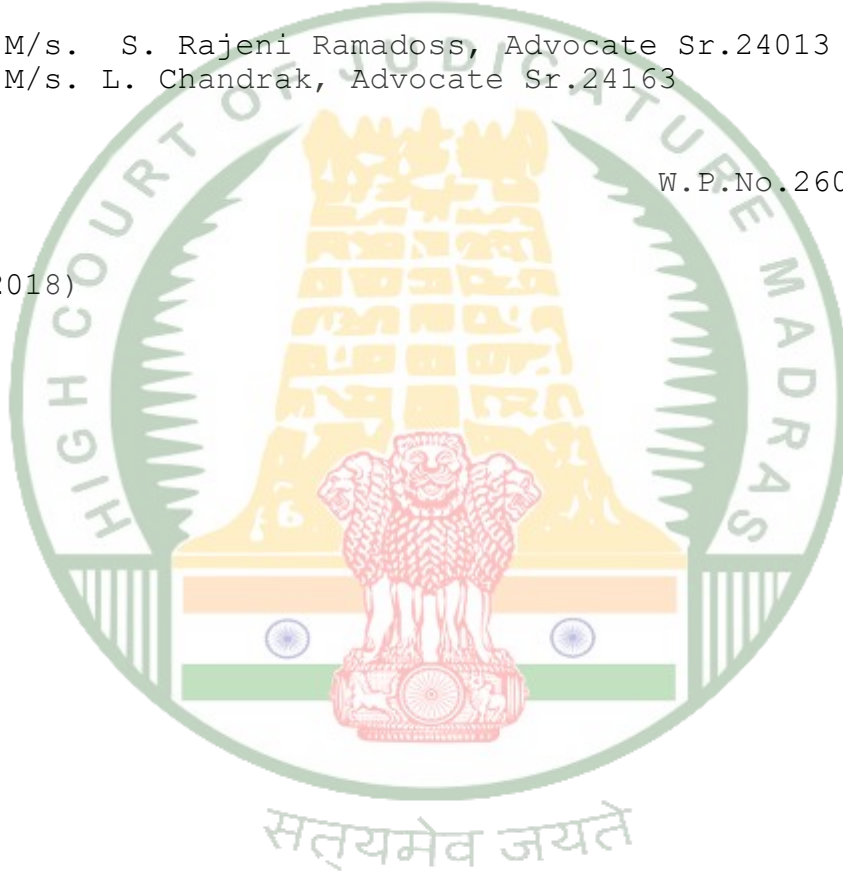
To

1. The Managing Director,
Metropolitan Transport Corporation,
Anna Salai, Chennai-600 002.
2. The Joint Managing Director,
Metropolitan Transport Corporation,
Anna Salai, Chennai-600 002.

+ 1 cc to M/s. S. Rajeni Ramadoss, Advocate Sr.24013
+ 1 cc to M/s. L. Chandrak, Advocate Sr.24163

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AK(CO)
EU(16/04/2018)



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