

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2018

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.23900 of 2004

S.Anbalagan

....Petitioner

Vs

1. The Managing Director
Tamil Nadu State Transport Corporation Ltd
(Salem District), Salem-7.
 2. The General Manager
Tamil Nadu State Transport Corporation Ltd.,
Salem District, Salem-7
-Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the order of the second respondent in his proceedings Pa.Mu.No.103/10557/T2A/TSTC/2003 dated 22.09.2003 and the order of the first respondent in his proceedings Ku.No.A6/1523/T1/TSTC/2003 dated 3.3.2004 and quash the same.

For Petitioner : Mr.K.Sathish Kumar
For Respondents : M/s.S.Rajani Ramadoss

O R D E R

The prayer sought for herein is for a writ of Certiorari calling for the records relating to the order of the second respondent in his proceedings Pa.Mu.No.103/10557/T2A/TSTC/2003 dated 22.09.2003 and the order of the first respondent in his proceedings Ku.No.A6/1523/T1/TSTC/2003 dated 3.3.2004 and quash the same.

2. The short facts which are required to be noticed for the disposal of this writ petition are as follows. The petitioner was appointed as Junior Engineer in the erstwhile Anna Transport Corporation at Attur from 01.07.1995. The said Corporation has been subsequently renamed as Tamil Nadu State Transport Corporation, ie., the respondents herein. While so, on 11.07.2003, a charge memo has been issued against the petitioner alleging that he has been unauthorisedly absent from 10.05.2003 and by virtue of such unauthorised absence, the respondent

Corporation has been put under inconvenience to make alternative arrangements. Based on the charge memo, a notice has been issued and the respondents had conducted an exparte enquiry by appointing an enquiry officer. After taking into account the documents filed and the witnesses deposed on behalf of the management, they came to a conclusion that the charges framed against the petitioner had been proved. Pursuant to the said enquiry officer's report, after giving an opportunity to the petitioner by way of a second show cause notice, the disciplinary authority ie., the second respondent has inflicted the punishment of removal of service on the petitioner on 22.09.2003, as against which, though the petitioner has preferred an appeal to the first respondent, the same was confirmed by the first respondent by an order dated 03.03.2004. Therefore, assailing the orders of punishment of removal of service dated 22.09.2003, as confirmed by the first respondent by an order dated 03.03.2004, the petitioner has filed this writ petition with the aforesaid prayer.

3. Mr.K.Sathish Kumar, learned counsel for the petitioner would submit that, the petitioner, because of ill health, could not attend duty from 10.05.2003 and he sought for medical leave from 10.05.2003 to 08.06.2003 and had made an application for sanctioning of medical leave in this regard to the respondents. However, without deciding the said application to sanction medical leave, the respondents issued the charge memo dated 11.06.2003, whereby framed charges as if the petitioner had been unauthorisedly absent from 10.05.2003.

4. Learned counsel for the petitioner would further submit that subsequently by a communication dated 18.06.2003, the respondents rejected the claim of the petitioner for sanction of medical leave for one month and on receipt of such communication rejecting the medical leave application of the petitioner, on 18.06.2003, the petitioner immediately made a request to the respondents on 24.06.2003 to sanction the said leave and also on 25.08.2003, requested the respondents to drop the proceedings initiated against him. However, without considering all those requests, the respondents had concluded the disciplinary proceedings exparte and ultimately inflicted the maximum punishment of removal of service for the alleged charge of unauthorised absence of the petitioner inspite of his application having been given to the respondents seeking for sanction of medical leave and therefore, the impugned order cannot be sustained.

5. Per contra, Ms.Rajani Ramadoss, learned standing counsel appearing on behalf of the respondent Corporation would submit that, the petitioner has not been unauthorisedly absent for the first time and even prior to that, on several occasions he had been absent for duty and every time he would send a request

belatedly for sanctioning of medical leave and in this regard, number of times he had been referred to medical board. Learned standing counsel would further submit that, just prior to the period in question, in the month of March-April 2003 also he sought for medical leave and he had been referred to the medical board and he appeared before the medical board on 07.05.2003 and as per the advice of the medical board, medical leave was sanctioned to the petitioner from 23.03.2003 to 06.04.2003 and further leave from 07.04.2003 to 07.05.2003 was sanctioned, not on medical grounds, but on loss of pay to the petitioner. After completion of this leave period, the petitioner joined duty on 08.05.2003. However, after working for two days i.e., on 08.05.2003 and 09.05.2003, he again applied for medical leave from 10.05.2003 and had been unauthorisedly absent from 10.05.2003.

6. She would further submit that therefore, only in that circumstances, his request for medical leave was turned down. Accordingly, the authorities issued show cause notice against him and the petitioner neither chose to reply to the show cause notice nor had chosen to appear before the enquiry officer for the enquiry. Subsequently, the enquiry was conducted ex-parte and the enquiry officer's report was served on the petitioner seeking for reply by way of a second show cause notice. Even that was not responded to by the petitioner and therefore the disciplinary authority, by applying his mind independently, has passed the order inflicting the punishment of removal from service, as the petitioner had been continuously unauthorisedly absent for months together. Therefore, the learned counsel appearing for the respondent department would submit that, there is no infirmity in the impugned order passed by the disciplinary authority, which was confirmed by the appellate authority as every formality in respect of a disciplinary proceedings to be adopted, has already been adopted in this case. Learned counsel for the respondents, therefore, would submit that the impugned order does not require any interference from this Court.

7. I have considered the rival submissions made by the learned counsel for both sides and also perused the materials placed before this Court.

8. It is submitted by the learned counsel for the petitioner that the charge memo dated 11.06.2003 itself was very vague as it has been mentioned that the petitioner has been continuously absent from 10.05.2003. In the enquiry report, it is specifically mentioned that even though the petitioner had made an application seeking sanction of medical leave from 10.05.2003 to 08.06.2003, the same was rejected by the respondent management and it has been communicated to the petitioner and in spite of that he had been continuously absent for duty. However, the fact remains that admittedly the petitioner had

made an application seeking sanction of medical leave from 10.05.2003 till 08.06.2003. The said application was rejected by the respondents on 18.06.2003. However, before passing the order rejecting the application for medical leave, the charge memo was issued against the petitioner on 11.06.2003. In that charge memo, it has been specifically mentioned that he has been continuously absent unauthorisedly without any prior permission, from 10.05.2003. Therefore, the fact remains that on the date of issuance of the charge memo, the application submitted by the petitioner seeking sanction of medical leave was pending consideration before the respondents. Without taking any decision on such application filed by the petitioner for sanction of medical leave, which has been subsequently rejected only on 18.06.2003, the respondents have framed the charges on 11.06.2003 itself stating that the petitioner has been absent unauthorisedly from 10.05.2003.

9. These documents would go to show that the very basis for framing the charges against the petitioner as on 11.06.2003 would not be sustainable because on that date, whether the petitioner's absence from 10.05.2003 was unauthorised one or sanctioned medical leave, was yet to be decided by the respondents and on that date application submitted by the petitioner was pending and it was not rejected, since the same has been rejected subsequently ie., on 18.06.2003. Therefore, this Court has no hesitation to hold that the very basis of the charges against the petitioner cannot stand in view of the facts as per the own documents of the respondent corporation that the petitioner's application for medical leave was rejected only on 18.06.2003.

10. Subsequently, on receipt of 18.06.2003 rejection order, though the petitioner had made a request to reconsider the same by making an application in this regard on 26.04.2003 and also on 25.08.2003, at least at that juncture, the respondents should have considered the same. Unfortunately, the respondents proceeded with passing of the impugned order of punishment on 22.09.2003, which was also confirmed by the first respondent, appellate authority.

11. In view of the aforesaid factual matrix, since the very basis of the charge itself cannot have a legal backing to sustain, this court is of the view that, the impugned punishment which was the culmination pursuant to the disciplinary proceedings initiated against the petitioner pursuant to the charge memo dated 11.06.2003 cannot be sustained. Therefore based on the same, punishment ought not to have been given to the petitioner, that too major punishment of removal from service. In that view of the matter, this court has no hesitation to hold that the impugned order is liable to be interfered with. Resultantly,

- (a) The impugned order dated 22.09.2003 as confirmed by the first respondent by his order dated 03.03.2004 is hereby quashed.
- (b) The petitioner shall be entitled to seek for reinstatement and there shall be a direction to the respondents to offer reinstatement to the petitioner.
- (c) Insofar as the backwages from 22.09.2003 onwards, since admittedly the petitioner had not been in service from 2003, he shall not be entitled to seek for full wages. However, since the very basis of the charges framed against the petitioner itself has been quashed and as there has been no basis for such charges, the mistake committed by the respondents shall also be taken into account and therefore, the respondents shall pay 50% of the backwages to the petitioner.

12. This order will not stand in the way for the respondents to take any action against the petitioner in case in future if the petitioner is unauthorisedly absenting from duty without any plausible reason. The directions as indicated above shall be complied with by the respondents within a period of two months from the date of receipt of a copy of this order. With these directions, the writ petition stands allowed. No costs. Consequently, connected W.M.P. is closed.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

kst

To

1. The Managing Director
Tamil Nadu State Transport Corporation Ltd
(Salem District), Salem-7.

2. The General Manager
Tamil Nadu State Transport Corporation Ltd.,
Salem District, Salem-7

+1 CC to Mr.S. Rajini Ramadoss, Advocate sr 61860.

+1 CC to Mr.K. Sathish Kumar, Advocate sr 61330.

W.P.No.23900 of 2004

SV(CO)

SP(26/09/2018)