



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANANTHAN

W.P. (MD) . No. 19532 of 2018

and

W.M.P. (MD) . No. 17320 of 2018

M.Rahamadullah

... Petitioner

Vs

1. The Additional Chief Secretary to Government,
Transport Department,
Government of Tamil Nadu Cum
Ex-officio Chairman,
All Tamil Nadu State Transport Corporation Limited,
Fort. St.George,
Chennai-600 009.

2. The Managing Director,
Tamilnadu State Transport Corporation,
Madurai Ltd.,
Bye-pass Road,
Madurai District.

... Respondents

PRAYER: Petition filed under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the first respondent in Letter No.17041/C.1/2017, dated 09.01.2018 and quash the same and consequently direct the respondents to refund the recovered increment cut amounts to the petitioner.

For Petitioner : Mr. K.Gokul

For R1 : Mr.R.Sethuraman

Special Government Pleader

For R2 : Mr.A.Jeyaram for Transport Standing
Counsel

O R D E R

<https://hcservices.ecourts.gov.in/hcservices/>
This writ petition has been filed to call for the records pertaining to the impugned order passed by the first respondent in Letter No.17041/C.1/2017, dated 09.01.2018 and quash the same and



consequently direct the respondents to refund the recovered increment cut amounts to the petitioner.

2.The petitioner joined service as a Technical Assistant on 20.07.1981 in the second respondent corporation and now working as Assistant Manager (Disposal) of Madurai Region in the second respondent Corporation. In such circumstances, the second respondent issued a show cause notice vide Ref:No.TNSTC: Corp/Legal/CL1:207/14, dated 06.10.2014, alleging that the petitioner has not obtained administrative approval for supplying vegetables to the Branches in Madurai Region.

3.On 07.04.2016, the petitioner has given his explanation to the show cause notice. Not satisfied with the petitioner's explanation, the second respondent has imposed a punishment of six months increment cut without cumulative effect. Thereafter, no enquiry was conducted and no opportunity was given to the petitioner.

4.The learned counsel for the petitioner would submit that thereafter, the petitioner has preferred appeal before the first respondent against the order of punishment imposed by the second respondent on 21.09.2016, 12.01.2017 and 20.06.2017. Since, the petitioner had to retire on superannuation on 31.12.2017, the petitioner has sent representation on 10.10.2017. Thereafter, W.P. (MD).No.20039 of 2017 was filed and this Court by its order dated 15.11.2017, directed the first respondent as follows:

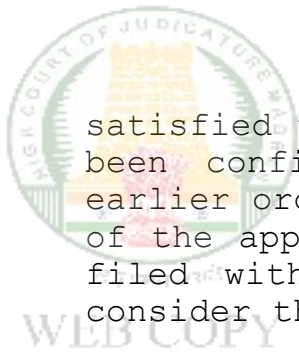
"4.Having regard to the limited prayer sought in this writ petition, this Court, directs the first respondent to take a decision regarding entertaining the appeal beyond the period of limitation on or before 15.12.2017 and if the delay is condoned, dispassionately consider the appeal filed by the petitioner."

5.Pursuant to the order of this Court, the impugned order dated 09.01.2018 has been passed confirming the order of the second respondent by holding as under,

"dereliction in duty and not followed the standing instructions of the Management in maintaining file and in getting approval of the Management regarding purchase of vegetable for the staff canteens run in Madurai Region of the Corporation",

thereby imposed a punishment of six months increment cut without cumulative effect. Against the said order of punishment, the petitioner has preferred this writ petition.

6.A glance at the earlier order would make it very clear that both the orders are non-speaking orders and admittedly no enquiry has been conducted. The petitioner was issued with a memo of show cause notice for which a reply has been given and having not



satisfied with the explanation, the punishment was imposed. It has been confirmed by the appellate authority on 09.01.2018. The earlier order of the second respondent has got merged with the order of the appellate authority. Though, the appeal ought to have been filed within time, this Court directed the first respondent to consider the petitioner's appeal, if the delay is condoned.

7. Though there appears to be a delay, the impugned order is not valid in the eye of law and that even the punishment imposed cannot be treated as precedent in the light of the decision reported in **1987 (2) LLJ 491 Gau in Workmen of Tanganagaon Tea Estate vs. Management of Tanganagaon Tea..** in which it is held as follows:

" 14. It is a fundamental principle of justice that punishment should be commensurate with the guilt. ' **Judex acquitatem semper spectare debet:** a Judge ought always to have equity before his eyes'.... As regards antecedents, unless the workman was earlier punished after disciplinary enquiry, no inference of guilt could be normally drawn."

8. The antecedents of the employee cannot be considered as a past record, if the workman is punished, without any enquiry. In this case, no enquiry has been conducted and unfortunately, the appellate authority without interfering with the order of the second respondent, has simply confirmed the order of the second respondent, that was passed without any enquiry.

9. Finding much force in the contentions of the petitioner, this Court is of the view that the order of the first respondent is liable to be set aside.

10. Therefore, the order of the first respondent in Letter No.17041/C.1/2017 dated 09.01.2018 is set aside and the respondents are directed to refund the amount that was recovered from the petitioner by way of increment cut within a period of four weeks from the date of receipt of a copy of this order.

11. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar (CS-IV)



1. The Additional Chief Secretary to Government,
Transport Department,
Government of Tamil Nadu Cum
Ex-officio Chairman,
All Tamil Nadu State Transport Corporation Limited,
Fort. St.George,
Chennai-600 009.

2. The Managing Director,
Tamilnadu State Transport Corporation,
Madurai Ltd.,
Bye-pass Road,
Madurai District.

+ 1 CC TO Mr.K.GOKUL, ADVOCATE IN SR No. 83564
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 83674

PNN

TE/PM/SAR-4 : 19/11/2018 : 4P/5C

ORDER MADE IN
W.P.(MD) . No. 19532 of 2018 and
W.M.P.(MD) . No. 17320 of 2018
10.09.2018