

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.03.2019

CORAM :
THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.15068 of 2009

S.Natarajan

...Petitioner

Vs

1.The General Manager,
Tamil Nadu State Transport Corporation
(Villupuram) Limited,
Villupuram Division,
Villupuram.

2.The Branch Manager,
Tirukovilur Branch,
Tamil Nadu State Transport Corporation
Limited, Tirukoilur,
Villupuram District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent pertaining to his Proceedings in No.759/14152/D6/TNSTC/2007 dated 26.06.2009 and quash the same and consequently, direct the respondents herein to pay the salary to the petitioner for the period from 25.09.2007 to 10.12.2007.

For Petitioner : Mr.R.Jayaprakash

For Respondents : Ms.S.Rajeni Ramadoss,
Standing Counsel

ORDER

Challenging the correctness of the impugned Proceedings in No.759/14152/D6/TNSTC/2007 dated 26.06.2009 of the 1st respondent, thereby imposing a punishment of stoppage of increment for one year without cumulative effect from 25.09.2007 to 10.12.2007 and to quash the same, the present Writ Petition has been filed.

2. Learned Counsel appearing for the petitioner submitted that when the petitioner was serving as a driver in the 2nd respondent Corporation, namely, Tirukovilur Branch of Tamil Nadu State Transport Corporation Limited from 1985 with 24 years of continuous service, all of a sudden, he was issued with a Charge Memo dated 10.12.2007 in Proceedings bearing No.1452/TR/TNSTC/07

dated 10.12.2007 alleging that he has not attended office from 25.09.2007 to 10.12.2007 and as such, the work in the 2nd respondent office got affected and in spite of warning given to him, he has not attended the office.

3. The learned Counsel for the petitioner further submitted that in respect of the four charges alleged against the petitioner, namely, (a) Continuously absent for duty from 25.9.2007; (b) often remained absent from attending duty; (c) disturb the smooth operation of the Transport Corporation and (d) dereliction of duty without care, the petitioner has given a detailed explanation on 02.05.2008 denying all the charges and also clearly stated in the said explanation that he has been attending the 2nd respondent office on all the days from 25.09.2007 to 10.12.2007. In spite of his defence, the 2nd respondent did not allot him any duty and on the contrary, he was only allotting work to a group of people for the reasons best known to him. The Enquiry Officer, who held enquiry, on completion of the same, submitted a report holding him guilty of all the charges based on which the Disciplinary Authority imposed a punishment of stoppage of increment for one year without cumulative effect against the petitioner, as a result, the petitioner was subjected to deduction of Rs.145/- p.m. for a period of 12 months and subsequently, he also retired from service. Therefore, according to the petitioner, since the order imposing punishment of stoppage of increment for one year without cumulative effect has affected his salary for a period of one year, the same is liable to be set aside.

4. The learned Counsel for the petitioner also submitted that the respondents have not even kept any attendance register from 25.09.2007 till 10.12.2007 marking his absence from duty and the Attendance Register showing his absence from duty without prior permission has not been produced before the Enquiry Officer and the same was also not looked into by the Disciplinary Authority. Therefore, the impugned order of punishment is wholly untenable and unjustifiable. Hence, the impugned order of punishment of stoppage of increment for one year without cumulative effect from 25.09.2007 to 10.12.2007 is liable to be set aside by allowing the present Writ Petition.

5. Learned Standing Counsel for the respondents submitted that the present Writ Petition is liable to be rejected as it has been filed directly before this Court without approaching the Labour Court. When the petitioner had effective alternative statutory appellate remedy under the Industrial Disputes Act, 1947, the petitioner cannot come to this Court. Therefore, the Writ Petition is liable to be dismissed for the reason that this Court cannot sit under Article 226 of the Constitution of India to enquire into the correctness of the charges levelled against the petitioner, Enquiry Officer's Report and the impugned order

of punishment of the Disciplinary Authority, unless, the petitioner approaches the Labour Court and demonstrates before the Labour Court the correctness of the method adopted and also the quantum of punishment imposed against him, by producing all the relevant documents.

6. The learned Standing Counsel for the respondents further submitted that in the Enquiry Officer's Report, the Enquiry Officer has clearly mentioned that the petitioner has lost the opportunity of cross-examining any of the departmental witnesses that shows that the petitioner did not want to cross-examine any of the departmental witnesses. Further, when the petitioner has claimed before this Court for the first time that he has been wrongly targeted, he could have expressed his case before the Enquiry Officer for cross-examining any of the departmental witnesses which he has not done so. Secondly, when the petitioner claimed that he was present in office in all these days from 25.09.2007 to 10.12.2007, at no point of time, he had neither given a single page request to the respondents to provide him a job, nor he has approached any of the higher officials stating that he has denied employment and he was wrongly charged with absence from duty for the period from 25.09.2007 to 10.12.2007.

7. I also find merits on the submission of the learned Standing Counsel for the respondents. The reason being that when the petitioner has submitted his explanation for the Charge Memo dated 04.01.2008 alleging that (a) he continuously absented himself from attending for duty from 25.9.2007; (b) often remained absent from attending duty; © disturbed the smooth operation of the Transport Corporation and (d) caused dereliction of duty without care, the petitioner has given a detailed explanation on 02.05.2008 denying that he was not deliberately absented from duty, but he was always making himself available for allotment of duty and the respondents only applying pick and choose formula, denied him allotment of duty and also wrongly charged. When the petitioner was all along claiming himself made available requesting the respondents or any superior officers to allot him any duty by making representation, as rightly canvassed before this Court, it is not known as to why the petitioner did not come forward to cross-examine anyone of the departmental witnesses and has not approached the Labour Court. Therefore, it is clear that the petitioner is not able to establish that the charges levelled against him stood proved was wrong. While so, by imposing the punishment of stoppage of increment for one year without cumulative effect, the respondents have deducted Rs.145/- p.m. for one year and now, he also retired from service. Therefore, nothing survives in the Writ Petition.

8. In the result, the Writ Petition fails and the same is accordingly dismissed. No costs.

Sd/-
Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The General Manager,
Tamil Nadu State Transport Corporation
(Villupuram) Limited,
Villupuram Division,
Villupuram.

2.The Branch Manager,
Tirukovilur Branch,
Tamil Nadu State Transport Corporation
Limited, Tirukoilur,
Villupuram District.

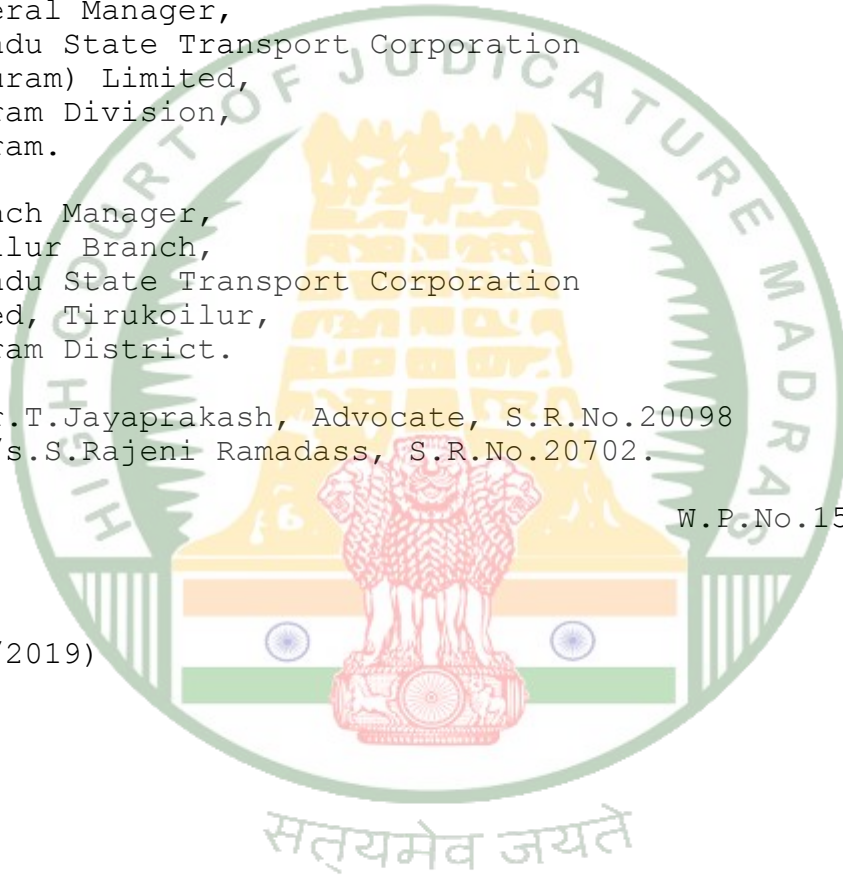
+1cc to Mr.T.Jayaprakash, Advocate, S.R.No.20098

+1cc to M/s.S.Rajeni Ramadass, S.R.No.20702.

W.P.No.15068 of 2009

SSV (CO)

RRS (27/04/2019)



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