

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2019

CORAM:

THE HONOURABLE Mr.JUSTICE T.RAJA

W.P. No.28359 of 2008 and
W.M.P. No.121 of 2017

A.Venkatachalam

.. Petitioner

-vs-

Tamil Nadu State Transport Corporation,
(Salem) Limited,
rep. by its Managing Director,
No.12, Ramakrishna Road,
Salem-636 007,
Salem District.

.. Respondent

Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari calling for the records relating to the order of the respondent dated 11.09.2005 in Circular No.218-30632-D2.Tha.A.Poka.2003 and the Proceedings of the respondent dated 24.10.2008 in Proceedings Ref. No.C.03/08285/TSTC(SLM)/2008, quash the same.

For petitioner : Mr.K.Selvaraj

For respondent : Ms.S.Rajini Ramadass,
Standing Counsel

ORDER

The writ petition has been filed challenging the impugned Proceedings dated 24.10.2008 issued by the respondent confirming the order of punishment imposing stoppage of increment for a period of two years.

2.Learned counsel appearing for the petitioner would submit that the petitioner was appointed as Superintendent on 17.10.1984 in Labour Welfare and he was promoted as Assistant Manager on 26.12.1994. When he was transferred to the post of Assistant Manager, he was given the additional duty in the Motor Accident Claims Tribunal. While so, one N.Muthusamy, Ex. Conductor who was discharged from service on medical grounds, filed a writ petition in W.P. No.13178 of 2000 praying for

alternative employment in the Corporation. This Court, by order dated 20.01.2003, passed an order in his favour. After receipt of the judgment copy, the case papers and the vakalatnama were sent to the Panel Advocate on 17.03.2003, who received the case papers on 18.03.2003. However, the Deputy Manager (Legal), who was in charge of the legal matters has not filed the counter affidavit for more than 2½ years and not acted as per the direction of this Court and further he has not guided the higher authorities to place the subject in the Board of Directors Meeting held on 08.03.2003 for taking a decision and he had not taken immediate follow up action to file the appeal.

3.Learned counsel appearing for the petitioner would further submit that the petitioner was given additional duties of service matters only on 25.03.2003. As already the case papers and vakalatnama were sent and received by the Panel Advocate, the petitioner sent reminders to the Panel Advocate requesting to file an appeal against the orders dated 15.05.2003, 14.06.2003, 17.06.2003 and 23.07.2003. After six months from the date of receipt of the case papers, the panel Advocate sent an opinion that it is not a fit case for appeal. However, the respondent corporation ordered to place the subject in the ensuing Board of Directors Meeting to get approval for the reinstatement of N.Muthusamy as per the legal opinion of the Panel Advocate. This Court, by order dated 28.11.2003, passed an order directing the respondent to comply with the judgment dated 20.01.2003 in the above W.P. and report before 05.12.2003 and the said N.Muthusamy has been reinstated. While so, the petitioner was placed under suspension by order dated 08.12.2003, but the respondent issued a charge memo on 22.12.2003, after fourteen days from the date of the order of suspension and thereafter, the same has been revoked and the petitioner was permitted to join duty by order dated 08.03.2004. After nine months from the date of enquiry, a show cause notice dated 06.11.2004 was issued to the petitioner as to why his increment should not be postponed for two years with cumulative effect. Thereafter, the petitioner furnished an explanation for show cause notice on 24.11.2004.

4.According to the learned counsel appearing for the petitioner, for no fault on the part of the petitioner, the above said Charge Memo was framed against him even though the records of the respondent clearly proves that the case papers and the vakalatnama were sent to the Panel Advocate on 17.03.2003. According to the learned counsel appearing for the petitioner, since the petitioner was given additional charges of service matters only on 25.03.2003, no disciplinary proceedings could be initiated against him. Though the petitioner has submitted his explanation to the Show Cause Notice dated 06.11.204 as early as on 24.11.2004 itself, the respondent had

passed the final order of punishment only on 11.09.2005, after completion of one year from the date of issuance of show cause notice.

5.Learned counsel appearing for the petitioner would further submit that due to the long delay even in passing final order, the right of the petitioner to get increment from 01.10.2005 has been postponed for two years with cumulative effect. Even before the petitioner was given the additional charge of service matter, the appeal papers have been sent to the panel advocate on 18.03.2003 and therefore, it is the duty of the panel advocate to file the appeal and there is no dereliction of duty on the part of the petitioner since the petitioner has requested the panel advocate to file the appeal by sending reminders on 15.05.2003, 14.06.2003, 17.06.2003 and 23.07.2003. Therefore, the charge that the petitioner did not hand over the appeal papers to the panel advocate for filing appeal against the order dated 20.01.2003 is totally erroneous. Hence, the impugned order passed by the respondent is liable to be quashed.

6.Learned Standing Counsel appearing for the respondent would submit that the petitioner, while working as an Assistant Manager in the respondent Corporation from 21.01.2003 to 07.03.2004, was in charge of all Court cases. While so, one N.Muthusamy, Conductor of the Corporation, discharged from service due to medical invalidation, has filed the above Writ Petition in W.P. No.13178 of 2000 to provide him alternative employment in the respondent corporation. This Court by order dated 20.01.2003 passed orders directing the respondent to consider the case of the petitioner. However, the Management of the respondent Corporation has decided to file an appeal against the order in the above Writ Petition. Accordingly, vakalatnama and the relevant papers were sent to Panel Advocate on 17.03.2003, but the writ appeal ordered to be filed was not filed for a considerable time. Accordingly, disciplinary action was taken against the petitioner and the charges levelled against him were proved in the enquiry and therefore, the impugned order dated 11.09.2005 imposing punishment of postponing of increment for two years with cumulative effect was passed rightly.

7.Heard both sides.

8.It is seen that a letter dated 17.03.2003 has been issued by the respondent Corporation to the Standing Counsel for getting legal opinion. However, the petitioner was given additional duties of service matters only on 25.03.2003. As already the case papers and vakalatnama were sent and received by the Panel Advocate, i.e. on 18.03.2003, the petitioner and his subordinates sent reminders to the Panel Advocate requesting

to file Appeal against the above said order on 15.05.2003, 14.06.2003, 17.06.2003 and 23.07.2003. After six months from the date of receipt of the case papers, the Panel Advocate sent an opinion dated 03.10.2003 stating that when an employee becomes medically unfit due to the injuries sustained during the course of his employment, he should be provided with an alternate job and hence, it is not a fit case for appeal.

9.As it is clear from the records that the respondent Corporation and the then Deputy Manager (Legal), who was in charge of the legal matters did not take steps to file the appeal from 20.01.2003 to 24.03.2003 and the Panel Advocate sent an opinion dated 03.10.2003 stating that it is not a fit case for appeal, the respondent ought not to have passed the impugned order imposing stoppage of increment for a period of two years with cumulative effect when no fault on the part of the petitioner. Therefore, the impugned order passed against the petitioner is liable to be quashed and the same is quashed. Accordingly, the writ petition is allowed. Consequently, connected W.M.P. is closed. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vga

To

Tamil Nadu State Transport Corporation,
(Salem) Limited,
rep. by its Managing Director,
No.12, Ramakrishna Road, Salem-636 007, Salem District.

+1 cc to Mr.K.Selvaraj, Advocate Sr.No.15643

+1 cc to M/s.Rajini Ramadass, Advocate Sr.No.16132

W.P. No.28359 of 2008 and

W.M.P. No.121 of 2017

SJ(CO)

CSL/03.04.2019

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