

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2019

C O R A M

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.NO.8912 OF 2013

K.Thangavel

... Petitioner

Vs.

The Asst. Manager,
Tamilnadu State Transport Corporation
(Coimbatore) Ltd.,
Erode Division,
Erode District.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records in respect of the order passed by the respondent in his proceedings Pa.No.1/t8/49/Sattam/T Apo Ka/2013 dated 04.03.2013 and quash the same.

For petitioner : Ms.N.Premalatha
for Mr.R.Nalliyappan

For Respondent : Mr.P.Kannan Kumar

ORDER

The instant writ petition has been filed, challenging the order dated 04.03.2013 in Pa.No.1/t8/49/Sattam/T Apo Ka/2013 passed by the Assistant Manager/the respondent herein, imposing a punishment of stoppage of increment for a period of six months with cumulative effect, on the petitioner.

2. The petitioner was working as Driver in the Tamil Nadu State Transport Corporation (Coimbatore) Limited, Erode Division, Erode District. He states that he was suffering from severe jaundice. He was not able to attend the duty for a period of three months. He was given a charge memo, for unauthorised leave. The petitioner states that he gave a representation and he was permitted to re-join the duty. By the impugned order the penalty for stoppage of increment for a period of six months, was imposed.

3. The learned counsel for the petitioner states that the major penalty has been imposed on the petitioner, without affording any opportunity to the petitioner, to represent the case. According to the petitioner, the rules have not been adhered to and therefore the penalty imposing on the petitioner, is not valid and therefore, it is requested to be set aside.

4. On the other hand, the learned counsel for the respondent would contend that the appeal has been provided under the Service Rules and therefore the petitioner ought not to have approached the Hon'ble High Court by filing the writ petition without exhausting the alternative remedy available to the petitioner.

5. Heard the learned counsel for the parties.

6. Rule 20 of the Service Rules, reads as under:-

"20.Appeals:

(i) An employee may appeal against an order imposing upon him any of the penalties (excepting warning, Censure and Fine) specified in Rule 4. The appeal shall lie to the authority specified in the schedule.

Note-1: Every employee preferring an appeal shall do so separately and in his own name, notwithstanding that the penalty was imposed by a "Common Proceedings" under Rule 10.

Note-2: No appeal shall lie against minor penalties like warning, censure and fine.

(ii) An appeal shall be preferred within ninety (90) days from the date of communication of the order appealed against, provided that the appellate authority may entertain the appeal, after the expiry of the said period, if it is satisfied that the appellant had sufficient cause for not submitting the appeal in time.

(iii) The appeal shall be legibly written, be accompanied by a copy of the order appealed against, shall contain all material statements and arguments relied on by the appellant, shall contain no disrespectful or improper language, shall be complete in itself, and shall be addressed to the appellate authority specified in the schedule and submitted to the authority whose order is appealed against through the usual official channel.

(iv) The authority whose order is appealed against shall forward the appeal together with its comments and the records of the case to the appellate authority within fifteen (15) days.

(v) The appellate authority shall consider whether the findings are justified or whether the penalty is excessive or inadequate and pass appropriate orders within three months of the date of receipt of the appeal. The appellate authority may pass orders confirming, enhancing, reducing or setting aside the penalty on remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case."

7. A perusal of the abovesaid rule would show that there is an alternate effective remedy available to the petitioner under the service rules and not he has approached this Court, under Article 226 of the Constitution of India.

8. Perusal of the abovesaid rules, would show that an appeal should have been filed within 90 days from the date of communication of the order. The material on record shows that the petitioner was suffering from viral hepatitis and therefore he was not able to attend the duty for the period of three months.

9. It is well settled that every unauthorised absent cannot be said to be willful. Unauthorised absent are due to circumstances beyond the control of the employee. Hence, unauthorised absent can be condoned.

10. Keeping the abovesaid principle in mind and in view of the fact that the petitioner had filed the instant writ petition, this Court directs the petitioner to avail the alternate remedy. The petitioner is directed to file an appeal before appellate authority, within a period of four weeks, from the date of receipt of a copy of this order. The appellate authority is directed to consider the matter on merits and disposed the appeal, within a period of ten weeks from the date of filing of the appeal, within the above mentioned period.

11. Writ petition is disposed of with the above mentioned terms. No Costs.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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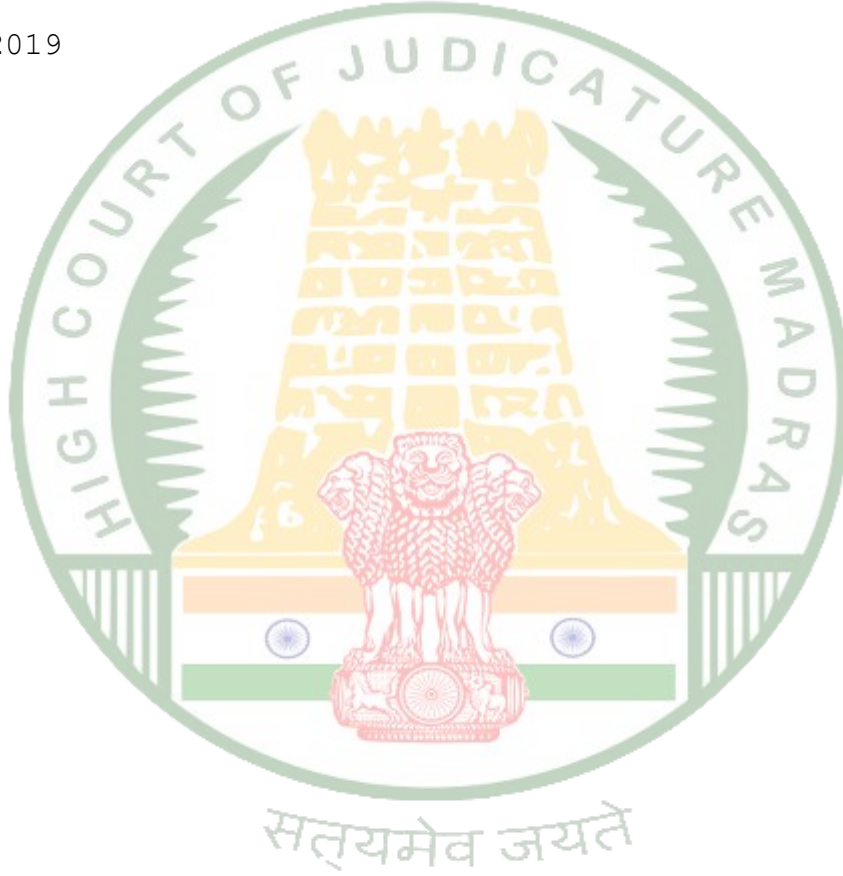
To

The Asst. Manager,
Tamilnadu State Transport Corporation
(Coimbatore) Ltd.,
Erode Division, Erode District.

+1cc to Mr.R.Nalliyappan, Advocate, S.R.No.91867
+1cc to Mr.P.Kannan Kumar, Advocate, S.R.No.91452

W.P.No.8912 of 2013

KK(CO)
CS/05/12/2019



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