

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.20042 of 2011

ORDER:

This Writ Petition is filed for the following relief:

“.....Writ of Mandamus to declare the impugned proceedings No.E2/1(10)/2005-YGT, dated 14.09.2006 of the 4th respondent by removing the petitioner from service and proceedings No. PA/19(79)/08-RM.N, dated 22.07.2008 of the 2nd respondent by rejecting the review petition of the petitioner and also consequential proceedings No PA/19(24)/09-Dy.CTM:N, dated 25.03.2009 of the 3rd respondent by rejecting the appeal of the petitioner on sole ground that, the appeal and review is time barred that to be the said above removal order is passed against the petitioner on the ground only the petitioner was unauthorizedly absent for duty is highly, illegal, arbitrary, unreasonable and also in-violation of Art 14, 16, 21 of Constitution of India and declare the same as bad-in-law and set-aside the same and consequently direct the respondents to reinstate the petitioner into service with continuity of service and back wages with all consequential attendant benefits and pass such order

Heard Sri C.Rajashekar Reddy, learned counsel for the petitioner and Sri A.Ravi Babu, learned Standing counsel for TSRTC.

It has been contended by the petitioner that he was appointed as a Grade-II Conductor in the respondent Corporation in the year 1990 and since then he has been discharging his duties to the best satisfaction of his superiors and everyone concerned. It is further contended that while he was discharging his duties as a Conductor, he has applied for

one day leave on 24.02.2005 and after informing his immediate superiors, he went to his native place. After going to his native place, the petitioner has suffered viral fever and consequently he could not attend the duties from 25.02.2005 to 04.03.2005. After recovering from the illness, the petitioner has reported to duty on 05.03.2005. But the disciplinary authority construed the absence of the petitioner from 25.02.2005 to 04.03.2005 as a misconduct and initiated disciplinary proceedings against the petitioner and after conducting a regular enquiry, imposed the major punishment of removal from service against the petitioner vide proceedings dated 14.09.2006. Aggrieved by the same, the petitioner has filed the present writ petition.

Learned counsel for the petitioner contends that the petitioner was absent for duties from 25.02.2005 to 4.03.2005 owing to ill health, but the disciplinary authority, without considering the same, has imposed the major punishment of removal from service, instead of imposing a minor punishment. Learned counsel further contends that since it was the lone incident in the entire career of the petitioner, the disciplinary authority ought to have imposed a lesser punishment than that of removal of the petitioner from service. He further contends that though the petitioner has preferred an appeal and review petition before the appellate and reviewing authorities, the said authorities instead of entertaining the appeal and review petitions on merits, rejected the same on the ground that appeal and review are time barred. Therefore, he contends that

appropriate orders be passed in the writ petition by setting aside the orders of removal and direct the respondents to reinstate the petitioner into service as a fresh appointee by modifying the order of removal from service.

Learned Standing counsel for the respondent-Corporation contends that the disciplinary authority had imposed the punishment of removal from service against the petitioner for the proven misconduct in the enquiry and the punishment of removal from service is not disproportionate and is commensurate to the charges leveled against the petitioner. He further contends that the case of the petitioner was examined by the appellate authority and the reviewing authority and since the appeal and review preferred by the petitioner were time barred, the appellate authority and the reviewing authority have rightly rejected the appeal and the review. Therefore, there are no merits in the writ petition and the same is liable to be dismissed.

This Court, having considered the rival submissions made by the learned counsel on either side, is of the considered view that the matter can be remanded to the reviewing authority to reconsider the punishment of removal of the petitioner from service by duly taking into account that this is a lone incident in the entire career of the petitioner. The disciplinary authority has not applied proportionality theory while imposing the punishment of removal from service. It could have imposed any other lesser punishment other than removal from service at least

by appointing the petitioner afresh without there being any monetary benefits, continuity of service and attendant benefits.

With the above observations, the Writ Petition is disposed of. No order as to costs.

As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

20.06.2019
dv

