

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2020

CORAM

THE HON'BLE MR.JUSTICE M. DHANDAPANI

W.P.Nos. 15007 and 15008 of 2013

and

M.P.Nos. 1 to 1 of 2014

G. Kesavan

..Petitioner
[in both WPs]

Vs.

1. Tamilnadu State Transport Corporation (Villupuram) Limited,
Represented by its Managing Director,
Vazhudhareddy,
Villupuram.

2. The General Manager,
Tamilnadu State Transport Corporation (Villupuram) Limited,
Vazhudhareddy,
Villupuram.

.. Respondents
[in both WPs]

Prayer in W.P.No.15007 of 2013: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order dated 31.05.2011 issued by the second respondent in Ka.Ku.No.694/5194/D7/TNSTC (V)/10, quash the same and consequently to direct the respondents to refund the petitioner the amounts recovered from the petitioner towards the monetary value of the said punishment, together with interest, award exemplary costs.

Prayer in W.P.No.15008 of 2013: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration, declaring that the action of the respondents in not granting the petitioner promotion to the post of Foreman with effect from 01.03.2011 based on his seniority in the post of Selection Grade Tradesman as illegal and consequently to direct the respondents to give the petitioner promotion with effect from 01.03.2011 with arrears and all other consequential benefits till his date of superannuation and also to pay the petitioner the revised terminal benefits including pension based on the pay payable to the petitioner in the post of Foreman as on the date of his superannuation, award costs.

For Petitioner : Mr.V. Ajoy Khose & M.Muthupandian
(in both WPs)

For Respondents : Mr.C.S.K. Sathish
(in both WPs)

COMMON ORDER

As the relief sought for in both petitions are inter-connected, they are disposed of by this common order.

2. The case of the petitioner is that he joined the service of the 1st respondent corporation as Junior Tradesman on 29.09.1980 and he was made permanent in the said post, thereafter, received various promotions. Lastly he was working as Selection Grade Tradesman in the RC Unit at Villupuram. It is the averment of the petitioner that he belongs to Tamilnadu Arasu Pokkuvarathu Ozhiyar Sangam, which is affiliated to CITU union and further he stated that he held various position in the Branch Union as well as in the Central Unit of his Union and he was lastly holding the position of Vice President in the Central Committee. While so, the 2nd respondent, issued a charge memo dated 12.08.2010 alleging that on 24.07.2010, he participated in the en-masse representation/demonstration at the Head Office in which the workmen participated along with their family members, that he absented for duty without prior permission and thereby caused disturbance to essential service, that they entered the Head office without prior permission and caused disturbance to office work and also disturbed the movement of the employees from one section to another and movement of the files and thereby caused disturbance to the peaceful and smooth functioning of the office. After receipt of the charge memo, he made a representation dated 17.08.2010 and another representation dated 05.03.2011 and requested to provide him the basic documents and complaint, however the same was not provided. The 2nd respondent vide his notice dated 05.02.2011, ordered for an enquiry and fixed enquiry on 05.05.2011 and also appointed an Enquiry Officer. The enquiry was initiated against the petitioner as well as against 18 other workmen on similar charge for the alleged incident on 24.07.2010. All of them attended the enquiry and submitted their request for change of enquiry officer. However no action was taken on their representation. As the petitioner was due to retire on 31.05.2011, the 2nd respondent by his letter dated 26.05.2011 informed the concerned departments about the pending disciplinary proceedings against the petitioner for the purpose of stoppage of disbursement of the terminal benefits.

2.1.It is the further averment of the petitioner that to his shock and surprise he was served with a memo dated 30.05.2011 on 31.05.2011 i.e., on the date of his superannuation holding that in view of the charges against him being held proved and also considering his past service record, it was proposed to impose a punishment of cut in increment for three months without cumulative effect and explanation was sought for from the petitioner. However, the petitioner was issued with the impugned final order dated 31.05.2011 imposing the punishment of cut in increment cut for a period of one month without cumulative effect. His further promotion to the post of Foreman, was denied on account of the said punishment. Though the petitioner made several attempts for revocation of the punishment, however, his request for the same was denied by the 2nd respondent. Therefore, the petitioner made a representation on 17.08.2012 to the Managing Director requesting to revoke the order of punishment, for which no response is forthcoming till date. Therefore, the present petition has been filed challenging the impugned punishment order passed by the 2nd respondent.

3. Learned counsel appearing for the petitioner while reiterating the submissions as raised in the grounds in support of his plea, laid emphasis on the impugned order and submitted that no reason whatsoever has been given in the said order in and by which the punishment was inflicted on the petitioner. He further stressed that a cursory perusal of the order would reveal that the said order has been passed only to victimise the petitioner, as there is not even an iota of reason justifying the said punishment. He further submitted that though the petitioner had participated the en-masse/demonstration without any prior approval, he did not agitate in-front of the office, he just assisted the employees who had assembled in front of the Managing Director office and he did not make any disturbance in the office, however similarly situated persons were imposed punishment only in a sum of Rs. 100/- whereas the petitioner has been inflicted with a major punishment which will affect his future promotion and, therefore, he pleaded for setting aside the impugned order and allowing the present petition.

4.Learned Standing Counsel appearing for the official respondents, while sought to sustain the impugned order, vehemently opposed granting the relief and submitted that a different punishment was imposed on the petitioner as he had a major role in the said strike. However, alternatively it is submitted that if this Court, is of the view that the order passed by the respondents is a non-speaking order, this Court may remand the matter back to the respondents for fresh consideration in accordance with law within a particular time frame.

5. This Court heard the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record.

6. The facts in issue are not in dispute. The main ground of attack spearheaded by the learned counsel for the petitioner is that the order passed by the respondents is a non-speaking order. A cursory perusal of the impugned order reveals that the plea as raised by the petitioner deserves to be accepted. The authority, without adverting to the materials and forming an opinion to cause punishment on the petitioner, has, in a routine manner, passed the order, without giving any reasons for coming to the said view. When a major punishment, such as the one inflicted on the petitioner, is sought to be given, the disciplinary authority is required to consider all the materials and pass a just and reasoned order, which is one of the basic requirements in law and only on the basis of the reasons cited therein, the order could be tested. However, in the present case, the petitioner received a charge memo on the ground that he participated in the en-masse representation/ demonstration at the office of the Managing Director, Villupuram, for which he was imposed with a major punishment. Mere participation in an en-masse protest does not entail inflictment of a major punishment and further in this case, the petitioner also taken a ground that based on an exparte enquiry report, the subsequent show cause notice was issued on him on 30.5.2011 and on the next day, he was issued with the impugned final order which itself clearly shows that the enquiry was not conducted in a fair and proper manner. Further, as pointed out above, no reasons whatsoever has been given by the disciplinary authority while imposing the said order of punishment.

7. Though, for all purposes, the matter ought to be remitted back to the respondents for passing a speaking reasoned order, however, in view of the fact that the delinquency committed by the petitioner is a minor one, no useful purpose would be served in remitting the matter back to the respondents. Therefore, in the interests of justice and to render substantial justice, this court is of the considered view that on the basis of the delinquency committed by the petitioner, this Court, sitting under Article 226 is vested with powers to modify the said order. Therefore, in the light of the above factual scenario, this Court is of the considered opinion that the punishment imposed on the petitioner deserves to be modified, as the delinquency committed by the petitioner does not attract a major punishment.

8. Accordingly, these writ petitions are allowed; the order passed by the 2nd respondent imposing major punishment on the

petitioner is set aside and, instead the petitioner shall suffer a punishment of forfeiture of a sum of Rs.200/- from the amount to be paid to the petitioner. Further, it is made clear that in view of the modification of punishment from major to minor, the said punishment will in no way affect the petitioner's future promotion aspect.

9. Accordingly, the impugned order of punishment is set aside by modifying the punishment to one of forfeiture of a sum of Rs.200/- from the amount to be paid to the petitioner. Any excess amount recovered from the petitioner shall be refunded to the petitioner. Further, in view of the modification in punishment to a minor one, the 1st respondent is directed to grant promotion to the petitioner from the date of his actual entitlement and settle all other monetary and other service benefits to which he is eligible, within a period of 24 weeks from the date of receipt of copy of this order. However, there shall be no order as to costs.

Sd/
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

Jrs

To

1.The Managing Director
Tamil Nadu State Transport
Corporation (Villupuram) Limited,
Vazhudhareddy, Villupuram.

2. The General Manager,
Tamilnadu State Transport
Corporation (Villupuram) Limited,
Vazhudhareddy,
Villupuram.

+1 cc to Mr.V.Ajay Khose Advocat sr38853

W.P.Nos. 15007 and 15008 of 2013

sr(co)
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