

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2020

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

W.P.No.41316 of 2006

S.Pugalenth

...Petitioner

Versus

- 1.The Government of Tamilnadu
represented by its Secretary to Government,
Transport (undertakings) Department,
Fort St.George, Chennai-600 009.
- 2.The Managing Director,
Tamilnadu State Transport
Corporation Limited, 19.
Kumbakonam Division-II,
Trichi-620 001.
- 3.The General Manager,
Tamilnadu State Transport
Corporation Limited,
Kumbakonam Division-II,
Trichi-620 001.

... Respondents

PRAYER: Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondents, especially the third respondent relating to his proceedings made in Tha Aa Poka/Kumba/Trichi/D4/1534/91 dated 16.07.2005 as confirmed by the second respondent pursuant to his proceedings made in Tha Aa Poka/Trichi/Kumba/D4/1534/91 dated 16.08.2005 and further confirmed by the first respondent pursuant to his proceedings made in letter No.2407/C2/2006 dated 06.06.2006 and quash the same as null and void, illegal and invalid and consequently directing the respondents to reinstate the petitioner in service with all service and monetary benefits besides ordering for the damages for the flagrant violation of the order of this Hon'ble Court dated 13.12.2004 made in W.P.No.21808/2001 proceeding with the enquiry as their own without either reinstating the petitioner or paying any subsistence allowance therefor apart from ordering for the disbursement of monetary benefits with interest at the rate of 18% per annum from 23.05.1991.

For Petitioner : Mr.A.Amalraj
For Respondents: Mr.K.Magesh
Special Government Pleader for R1
R2 & R3 : NA

O R D E R

This Writ Petition has been filed challenging the order passed by the third respondent in Tha Aa Poka/Kumba/Trichi/D4/1534/91 dated 16.07.2005 as confirmed by the second respondent pursuant to his proceedings made in Tha Aa Poka/Trichi/Kumba/D4/1534/91 dated 16.08.2005 and further confirmed by the first respondent pursuant to his proceedings made in letter No.2407/C2/2006 dated 06.06.2006 and quash the same as null and void, illegal and invalid and consequently directing the respondents to reinstate the petitioner in service with all service and monetary benefits besides ordering for the damages for the flagrant violation of the order of this Court dated 13.12.2004 made in W.P.No.21808/2001 proceeding with the enquiry as their own without either reinstating the petitioner or paying any subsistence allowance therefore apart from ordering for the disbursement of monetary benefits with interest at the rate of 18% per annum from 23.05.1991.

2. It is the case of the petitioner that he was working as a Junior Engineer (Civil) at Chozhan Roadways Corporation, Kumbakonam. While he was in service, a charge memo was issued to the petitioner and subsequently, an enquiry officer was appointed. After the enquiry, the charges leveled against the petitioner were proved and the order was passed on 15.04.1991. The said order was challenged before this Court in W.P.No.21808/2001 and this Court passed an order dated 13.12.2004, setting aside the order of the enquiry officer and directed to conduct fresh enquiry and examine three witnesses viz., watchman, loadman and one Thangam and give an opportunity to the petitioner to cross-examine those witnesses and dispose the matter in accordance with law.

3. It is further case of the petitioner that once again the enquiry officer conducted fresh enquiry. Subsequently, the enquiry officer examined five witnesses and marked 14 documents and given findings that the charge leveled against the petitioner was proved. Based on the enquiry report, the disciplinary authority passed an order to remove the petitioner from the service. Challenging the order of disciplinary authority, the petitioner filed an appeal before the appellate authority and the appellate authority dismissed the order and challenging the same, he has also filed the revision petition before the Government. The Government also dismissed the

revision. Therefore, challenging all the three orders, the petitioner has filed the present Writ Petition to set aside the orders and reinstate the petitioner to the service.

4. The learned counsel for the petitioner would submit that without referring to any material and evidence, the enquiry officer has given findings that the petitioner attempted to remove the property of the Transport Corporation. Challenging the said order the petitioner filed Writ Petition before this Court in W.P.No.21808/2001, and the same was set aside and this Court, further directed to conduct a fresh enquiry and especially directed to examine three witnesses namely watchman, loadman and one Thangam. Therefore, the enquiry officer have to examine the three witnesses as directed by this Court and however, out of the three witnesses, only one witness was examined and other new witnesses have been examined. The direction of this Court has not been followed by the enquiry officer. The enquiry officer once again relied on the report of the loadman though they have stated that he was not available. Without giving opportunity for cross examination, the report was said to have been filed by the enquiry officer and the same cannot be considered for giving findings against the petitioner. Further, no material has been produced. He further submitted that the petitioner has filed application to produce certain documents. Even the department has not given the copy of the attendance register of the employees who were present on the date of occurrence and evidences were also not let in. Once the petitioner filed petition to produce the documents, the respondent has not produced the same and the Court can take adverse inference against the department. He further submitted that the non production of attendance register and the examination of persons who were present on that day, lies against the Department. Therefore, whether the witnesses who have been examined, were present on that day and that they were working on the day, has to be established. But they have not produced any documentary evidence submitted and simply based on the evidence of PW1, the person who is acting against the petitioner has taken into consideration and given the findings. Therefore, the petitioner has given the representation ; but without considering the representation, the 3rd respondent had passed an order of punishment of removal from service which is disproportionate to the charge leveled against him. Thereafter, he filed an appeal before the appellate authority. Even the appellate authority without discussing anything about the merit of the case, simply endorsed the view of the disciplinary authority. Thereafter, the petitioner filed a revision before the Government / 1st respondent and even the 1st respondent has not looked into report and oral and documentary evidence and simply stated that the revision filed by the petitioner is rejected.

5. The learned Special Government Pleader would submit that the witnesses have been examined and the enquiry officer found that the charge levelled against the petitioner was proved. The department need not prove the allegation as criminal case beyond reasonable doubt and preponderance of probability is enough for passing the order of removal from service. Therefore, the order of the enquiry officer is right and appellate authority also confirmed the same. There is no merit in the writ petition and hence, prays for dismissal of the same.

6. Heard both sides and perused the materials available on record.

7. Admittedly, the petitioner was working as Junior Engineer and during his service, a charge memo was issued against the petitioner on 20.03.1991 and explanation was called for. Since the explanation given by the petitioner was not satisfied by the department, an enquiry officer was appointed. After the enquiry, the enquiry officer filed a report on 15.04.1991. Based on the enquiry report, he was dismissed from the service. Challenging the same the petitioner filed petition under section 33(2) of I.D Act in W.P.No.13071/1992 and this Court passed an order dated 19.07.2000 which reads as follows:

"Under the circumstances it is sufficient if a direction is issued to the appellate authority -Managing Director of respondent Corporation to hear the appeal filed by the petitioner afresh on merits after affording an opportunity of hearing to the petitioner to raise all the objections raised in this Writ petition before the appellate authority. The appellate authority shall pass the orders without being influenced by the earlier orders passed by the General Manager within a period of three months from the date of receipt of a copy of this order. With the above observations, the Writ petition is disposed of"

8. Against the above said order, he filed the appeal before the appellate authority and the appellate authority dismissed the appeal and confirmed the dismissal order of the disciplinary authority on 06.12.2000. Thereafter, he filed the writ petition before this Court in W.P.No.21808 of 2001 and this Court had set aside the order and directed the respondent to conduct fresh enquiry and also directed the respondents to examine three witnesses. Once again the enquiry was conducted and a report was filed, found that the charge leveled against the petitioner was proved. Therefore, he filed the appeal before the appellate authority. The appellate authority confirmed the order of the disciplinary authority and dismissed the same. Further he filed

a revision before the 1st respondent / Revisional Authority and the same also dismissed. The charge levelled against the petitioner was that he made an attempt to remove the property, viz., 4 G.I.Sheets, of the Transport Corporation. Against which, he filed petition before this Court in W.P. No.13071/1992 and this Court set aside the same and given a direction to conduct fresh enquiry. Further they have examined the witnesses and not examined two of the witnesses as directed in the Writ Petition and stated that the load man was not examined as he was not available. Even then the petitioner has given notice to produce certain documents. The respondents have not produced those documents and they have not given any reason for non production of those documents. The non production of the required documents itself is in violation of principles of natural justice and proper opportunity was not given to the petitioner. When he filed the appeal, the appellate authority has to independently appreciate the entire evidence and they have to give independent findings. But on the reading of the order of the appellate authority, it is seen that they have not discussed anything about the merits of the case and not discussed about the appreciation of the oral and documentary evidence and had simply endorsed the view of the enquiry officer without giving any independent findings.

9. Therefore, under these circumstances the order of the enquiry officer and also the appellate authority are liable to be set aside and the petitioner is liable to be reinstated and the respondents are directed to reinstate the petitioner and since the petitioner already attained superannuation, the respondent is liable to pay all the notional monetary benefits to the petitioner since now the age of the petitioner is about 70 years, the respondents are directed to complete the said exercise within a period of two months from the date of receipt of a copy of this order.

10. With the above direction, this Writ Petition is disposed of. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

mpa

To

1. The Secretary to Government,
Transport (undertakings) Department,
Fort St.George, Chennai-600 009.

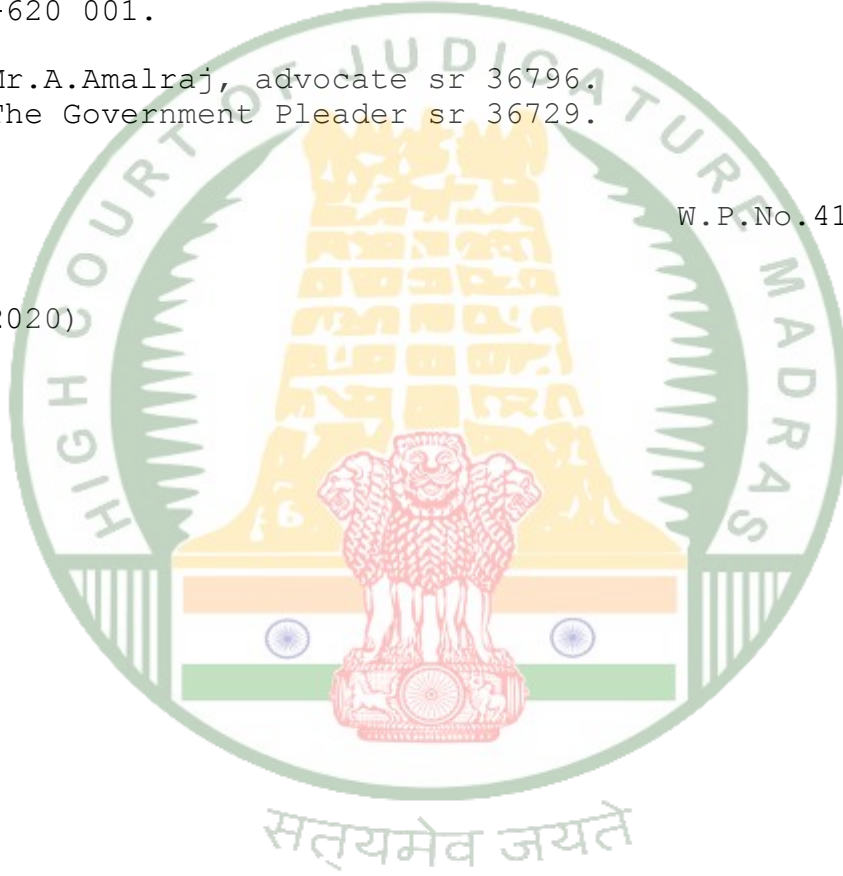
2. The Managing Director,
Tamilnadu State Transport
Corporation Limited, 19.
Kumbakonam Division-II,
Trichi-620 001.

3. The General Manager,
Tamilnadu State Transport
Corporation Limited,
Kumbakonam Division-II,
Trichi-620 001.

+1 CC to Mr.A.Amalraj, advocate sr 36796.
+1 CC to The Government Pleader sr 36729.

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SR(CO)
SP(08/12/2020)



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