

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

C O R A M

THE HONOURABLE Mr.JUSTICE M.GOVINDARAJ

W.P.No.21805 of 2005

M.Thangaraj

.. Petitioner

-Vs.-

The Managing Director
Pondicherry Tourism and
Transport Development Corporation Ltd.,
Pondicherry

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorarified mandamus calling for the order of the respondent dated 06.12.2004 in No.0128/P.T.D.C/Administ/1991/1176-A and quash the same.

For petitioner Mr.M.Gnanasekar
For respondent Mr.A.R.Nixon

O R D E R

The Writ Petition has been filed seeking to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in No.0128/P.T.D.C/Administ/1991/1176-A dated 06.12.2004 and quash the same.

2. The petitioner was appointed as a Driver by the respondent. The said appointment was made through the employment exchange following regular selection method. During the year 2003, he fell ill and submitted a leave letter for a period of two months, enclosing medical certificate. Thereafter, by letter dated 04.12.2004, the petitioner requested the respondent to transfer him from Karaikal to Pondicherry on medical grounds and to treat the leave period between 2003 and 2004 as earned leave. However, to his surprise, simple termination, by way of discharge, was issued to him on 06.12.2004. Hence, the petitioner made a representation to set aside the punishment. However, no action was taken. Hence, the petitioner is before this Court with the present Writ Petition.

3. The learned counsel for the petitioner would rely on standing orders pertaining to the employees of the respondent-Corporation under the Industrial Employment (Standing Orders) Act, 1946, as per which, the procedures have been laid down for imposing punishment pre-requiring the management to put workmen on notice. Sub Clause (4) of Part III of Section 21 specifies "No punishment shall be imposed unless the workman is informed in writing of the alleged misconduct". In so far as this case is concerned, the petitioner was not informed of the alleged misconduct till the date of the order of punishment. Further, if the termination is imposed for abandonment of employment under Section 25 of the Standing Orders, it is subject to the provisions of the Industrial Disputes Act. Section 25 of the Standing Orders is extracted hereunder:

"25. Termination of service for abandonment of employment :- A workman who absents from duty or overstays his authorised leave for 8 consecutive days or more without permission or intimation giving reason to the satisfaction of the management for such absence or overstayed shall be liable for termination of service on the ground of abandonment of employment subject to the provisions of Industrial Disputes Act, 1947".

Since the petitioner was terminated from service without following the procedures laid down in the Standing Orders, the same is illegal or violative of the principles of natural justice and it is liable to be set aside.

4. The respondent has filed a detailed counter affidavit and the learned counsel would rest his arguments on the basis of the averments made in the counter affidavit. According to the learned counsel for the respondent, the petitioner absented himself for 34 days in the year 1999, 33 days in the year 2000, 180 days in the year 2001, 311 days in the year 2002, 360 days in the year 2003 and was further absent throughout 2004 till the date of dismissal. It is also contended that the petitioner was arrested by the Tamil Nadu Police for smuggling illicit liquor and when he was chased by them, he rushed into the Office and jumped out from the backside of the workshop of the respondent-Corporation. During the year 1998, the petitioner caused damages to the vehicle to the tune of Rs.400/- and in the year 1999, to the tune of Rs.500/- and all these monies were recovered from him. After absented himself from duty, a notice was issued to the petitioner on 05.08.2004 to show cause as to why disciplinary action should not been taken against him. The said notice was returned with an endorsement "no such address". Again on 15.09.2004, a call letter to attend the enquiry was issued and the said letter also returned with an endorsement "left". Another notice was also issued on 08.11.2004 to the

petitioner to show cause as to why he should not be removed from service, which was also returned with the same endorsement "left". After that, on 06.12.2004, the disciplinary authority has taken a decision to impose the simple termination by way of discharge and the same was communicated to the petitioner, which was also returned. Therefore, the petitioner, who is an unauthorised absentee and involved in smuggling of illicit liquor, cannot be kept in service. Hence, on the basis of these contentions, the respondent seeks dismissal of this Writ Petition.

5. I have heard the submissions on both sides and perused the materials available on record.

6. At the outset, it is seen that the petitioner was appointed as a Driver being sponsored by the Employment Exchange having requisite qualifications. It appears that the petitioner has absented himself from duty, even though he claimed that he has submitted the leave letter. It is found that there were allegations of theft, offences under Prohibition and Excise and jumping out bail orders. Due process of law requires that the allegation of misconduct be informed to the delinquent. Industrial standing orders followed by the respondent reveal that no punishment shall be imposed unless the workman is informed. Relevant Portion is extracted as under:

"No punishment shall be imposed unless the workman is informed in writing of the alleged misconduct"

The respondent had sent letters after letters to the very same address, which were returned with an endorsement "left". There is no useful purpose in sending the letters to the same address when they are returned with endorsement "left". In effect the service was not effected. The procedure requires that it should be informed to the delinquent, but in the instant case, he was not informed. In the event letters were returned unserved, the respondent ought to have issued a publication in newspaper having wider circulation in the area in question. In as much as the publication was not made, it cannot be construed that the delinquent was informed of the alleged misconduct. Further, the principles of natural justice require conduct of enquiry, that too when allegation of theft, smuggling and absconding from police were made against the petitioner. The stigma cast upon the petitioner will cause civil consequences in his life and career. In such circumstances, principles of natural justice will come into play and fair opportunity shall be accorded to the petitioner by conducting enquiry. The respondent has not appointed any enquiry Officer nor proved the charges made against him. Simply because the petitioner did not receive the communication and failed to appear for enquiry, it cannot be

said that all the other mandatory procedures can be dispensed with. The petitioner was not at all served with the charges in the manner known to law and no enquiry Officer was appointed and no enquiry proceedings were conducted to prove the allegations of misconduct. Thus, prima facie, the order of punishment stands vitiated for violation of the principles of natural justice. Therefore, the impugned order of punishment in proceedings No.0128/P.T.D.C/Administ/1991/1176-A dated 06.12.2004 is liable to be set aside and accordingly set aside.

7. The Writ Petition is allowed as prayed for. No costs.

8. The learned counsel for the petitioner would submit that the petitioner is willing to forgo his back-wages and to join duty. Considering the submission, a direction is given to the respondent to re-instate the petitioner without back-wages and if he is not found fit, to take any other alternative measures in conformity with principles of natural justice. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

srn

To

The Managing Director
Pondicherry Tourism and Transport Development Corporation Ltd.,
Pondicherry

+1 cc to Mr.A.R.Nixon Advocate sr11710
+1 cc to Mr.M.Gnanasekar Advocate sr11684

W.P.No.21805 of 2005

aa18/02/2020