



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.06.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P. (MD)No.14643 of 2012

V.Saravanan

... Petitioner

Vs.

1.Tamil Nadu State Transport Corporation Limited,
Rep. by the Managing Director,
Tamil Nadu State Transport Corporation Limited,
Kumbakonam Division II,
Kumbakonam, Head Office,
Kumbakonam.

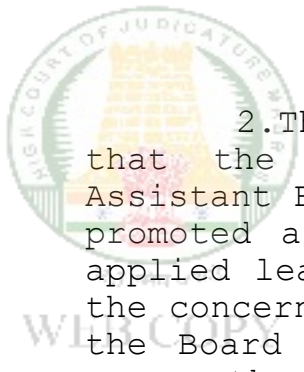
2.The General Manager,
Kumbakonam Division II,
Tamil Nadu State Transport Corporation Limited,
Kumbakonam. ... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order dated 24.08.2012 No.த.அ.போ.க/கும்ப/திருச்சி/டி1/4127/2007 passed by the first respondent, confirming the order dated 13.07.2010 No.த.அ.போ.க/கும்ப/திருச்சி/டி1/4127/2007 passed by the second respondent and to quash the same and consequently, direct the respondents to reinstate the petitioner in service with all consequential benefits including back wages and continuity of service.

For Petitioner : Mr.T.Antony Arulraj
For Respondents : Mr.D.Sivaraman

ORDER

The petitioner has filed the above Writ Petition to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order dated 24.08.2012 No.த.அ.போ.க/கும்ப/திருச்சி/டி1/4127/2007 passed by the first respondent confirming the order dated 13.07.2010 No.த.அ.போ.க/கும்ப/திருச்சி/டி1/4127/2007 passed by the second respondent and to quash the same and consequently, direct the respondents to reinstate the petitioner in service with all consequential benefits including back wages and continuity of service.



2.The learned counsel appearing for the petitioner submitted that the petitioner joined the respondent Corporation as an Assistant Engineer (Trainee) on 15.12.1990 and subsequently, he was promoted as Senior Assistant Engineer (Civil). The petitioner has applied leave for two years for going abroad from 27.12.2004 before the concerned respondent, but his application was not placed before the Board for consideration. Without considering the petitioner's case, the respondent / Corporation issued a charge-memo dated 07.07.2006. Challenging the same, the petitioner filed a Writ Petition in W.P(MD)No.4640 of 2006 and this Court by order dated 31.10.2006 ordered the Writ Petition observing that since the leave application is pending without passing any final orders, charge memo framed at this stage is not maintainable and if the leave application is rejected, it is open to the respondents to initiate appropriate action in accordance with law. Thereafter, by order dated 14.12.2006, the respondent Corporation declined the petitioner's request for grant of leave of loss of pay. Challenging the same, again the petitioner filed a Writ Petition in W.P(MD) No.2268 of 2007. Pending the said Writ Petition, the second respondent Corporation has passed the impugned order, dated 13.07.2010 removing the petitioner from service and in the said Writ Petition in W.P(MD)No.2268 of 2007, this Court by order dated 25.01.2012, directed the respondents to furnish a copy of the order within a period of two weeks and granted liberty to the petitioner to challenge the order of dismissal passed by the respondent Corporation in accordance with law and closed the Writ Petition. Accordingly, the petitioner filed a Writ Petition in W.P(MD)No.4524 of 2012, challenging the impugned order dated 13.07.2010 and this Court by order dated 10.04.2012 disposed of the Writ Petition permitting the petitioner to avail an alternate remedy by way of an appeal. Hence, the petitioner filed an application before the Managing Director seeking condonation of delay. The first respondent / Managing Director has passed the impugned order dated 24.08.2012. Challenging the same, the petitioner has filed the Writ Petition.

3.The respondents have filed the counter-affidavit and stated that the petitioner had applied for employment in abroad without permission and approval from the Management and subsequently, he applied leave for two years from 27.12.2004 by letter dated 10.12.2004. Before sanctioning of leave, he left the Country and joined in a company at Libia. Hence, disciplinary action was taken against the petitioner and charge memo was issued to him. The petitioner filed a Writ Petition in W.P(MD)No.4640 of 2006 to sanction leave for two years from 27.12.2004 and the Writ Petition was disposed of on 31.10.2006 with the observation that the charge-memo is not maintainable at this stage, since the leave application is pending without passing any orders. In case, the leave application is rejected, it is open to the respondent Management to initiate appropriate action in accordance with law. The management



by letter dated 14.12.2006 rejected the leave application applied by the petitioner and issued a fresh charge-memo and proceeded with the disciplinary action.

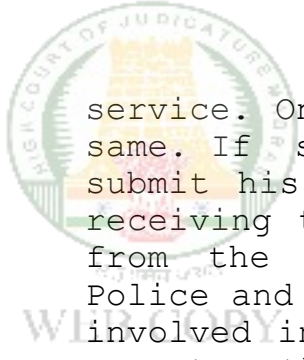
4. In the meantime, the petitioner filed another Writ Petition in W.P(MD)No.2268 of 2007 challenging the letter dated 14.12.2006 and to grant leave for the period of five years from 27.12.2004. After enquiry, the petitioner was subsequently dismissed from service by order dated 13.07.2010. When the Writ Petition came up for hearing on 25.01.2012, it was represented before the Court that he has not been served with the copy of the dismissal order and this Court directed the respondent to furnish the copy of the dismissal order. Accordingly, he was furnished with a copy of the dismissal order. Again the petitioner has filed a Writ Petition in W.P(MD) No.4524 of 2012 to quash the order dated 13.07.2010 and to reinstate him in service and this Court by order dated 10.04.2012 disposed of the Writ Petition granting liberty to the petitioner to approach the appellate authority and to file an application to condone the delay.

5. The petitioner preferred an appeal petition for condoning the delay in filing the appeal and also to quash the proceedings dated 13.07.2010 before the first respondent. The appeal petition was rejected by the first respondent by order dated 24.08.2012. It is further stated that merely because the issuance of charge-memo was not in order, the same cannot render the presumed communication as one without merits and the petitioner has not satisfied the preconditions for the leave and prayed for dismissal of the Writ Petition.

6. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

7. From the materials available on record, it is seen that the petitioner applied leave for two years from 27.12.2004, by letter dated 10.12.2004 and before sanctioning of leave, he left the Country and joined in a company at Libia. After detailed enquiry, four charges have been framed against him. The first charge was that as per G.O.No.295, dated 14.09.1995, without obtaining prior permission and approval, the petitioner has agreed to work at Libia and gone to abroad, the second charge was that he was absent from work without obtaining prior approval from 27.12.2004 to 17.01.2007, the third charge was that due his absence, construction work of the Corporation has been affected and the fourth charge was that since his leave application was rejected on 14.12.2006 and he was informed to join duty, till date the petitioner has not joined the duty.

8. Admittedly, as per G.O.Ms.No.295, Personnel and Administrative Reforms (FR.II) Department, dated 14.09.1995, any person, who is employed in the Government service, have to get prior permission from the Department concerned to apply for any foreign



service. Only after obtaining such permission, he can apply for the same. If such permission was obtained by the petitioner, he has to submit his passport and visa to the concerned authority and after receiving the same, it will be verified by the concerned authority from the Directorate of Vigilant Department, Superintendent of Police and the concerned Police Station that whether such person has involved in any criminal case. Only after considering all the said aspects, the petitioner's request will be considered or rejected. After getting prior permission from the Department, they can join in the foreign service. But, without even following the said procedure, the petitioner left the Country and joined in the foreign service and submitted the leave application on 10.12.2004 seeking leave from 27.12.2004 for a period of two years and the application was signed by him on 09.12.2005. When the plea of the petitioner was not sanctioned, the petitioner has joined in the foreign Country and again on 09.12.2005, the petitioner sent an application seeking for sanctioning the said leave, as he has been working in Dubai. Since the petitioner, who is an Engineer, joined in the foreign Country, without even getting ratification and important construction work had been going on in the Corporation, the petitioner's leave application dated 10.12.2004, 09.12.2005 and 13.11.2006 was rightly rejected by the respondent on 14.12.2006 and he was also directed by the Department to join duty immediately, but till 17.01.2007, he did not approach the authority concerned and hence, the petitioner's case was considered and rejected as per the Rules of the Corporation. The act of the petitioner is against 28(AZ) of the Conduct Rules of the Corporation and the petitioner did not obey the orders of the higher officials.

9.The enquiry officer sent a notice dated 28.02.2007 to the petitioner's address by registered post to appear for enquiry on 13.03.2007. Even after receipt of the same, the petitioner did not appear for enquiry and thereafter four notices viz., 13.03.2007, 07.02.2007, 22.05.2007 and 05.06.2007 were sent to the petitioner to appear for enquiry. All these notices have been sent through registered post. In spite of receiving the same, the petitioner did not appear for enquiry would show the misconduct and indiscipline action of the petitioner. The petitioner's act of non-appearing and unauthorised absence have rightly been considered by the authorities concerned and accordingly, dismissed him from service.

10.The petitioner is only a servant of a Government and he cannot accept the employment in the foreign country when he was working in the Corporation. The petitioner's act would definitely fall under the essential services and when the approval was not granted to him, he cannot accept the same and join in the duty, without obtaining ratification and the petitioner has not acted according to the Conduct Rules and the disciplinary action taken against him is legal and appropriate action has been initiated against him, after giving him an opportunity and the first respondent has rightly rejected the appeal filed by the petitioner



and dismissed him from service. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (AD II)

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Sub Assistant Registrar(CS)

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To

1.Tamil Nadu State Transport Corporation Limited,
Rep. by the Managing Director,
Tamil Nadu State Transport Corporation Limited,
Kumbakonam Division II,
Kumbakonam, Head Office,
Kumbakonam.

2.The General Manager,
Kumbakonam Division II,
Tamil Nadu State Transport Corporation Limited,
Kumbakonam.

+1 CC to M/s.T.ANTONY ARUL RAJ, Advocate (SR-13036[F] dated 03/06/2020)

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-13056[F] dated 03/06/2020)

Order made in
W.P. (MD) No.14643 of 2012
Dated:
03.06.2020

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