



WEB COPY

W.A.(MD) No.792 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.09.2020

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.A. (MD) No. 792 of 2020

(Through Video Conferencing)

V.Sarvanan

... Appellant

-Vs-

1.Tamil Nadu State Transport Corporation Ltd.
Rep. By the Managing Director
Tamil Nadu State Transport Corporation Ltd.
Kumbakonam Division - II
Kumbakonam, Head Office
Kumbakonam.

2.The General Manager
Kumbakonam Division -II
Tamil Nadu State Transport Corporation Ltd
Kumbakonam.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 03.06.2020 passed in W.P.(MD)No.14643 of 2012.

Prayer in WP(MD). 14643 of 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to order dated 24.08.2012 No.Th.A.Po.Ka / Kumba / Thriuchy / D1/ 4127 / 2007 passed by the 1st respondent confirming the order dated 13.07.2010 No.Th.A.Po.Ka / Kumba / Thriuchy / D1/ 4127 / 2007 passed by the 2nd respondent and 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 Appellant : Mr.S.Veeranasamy

JUDGMENT

[Judgment of the Court was delivered by **M.SATHYANARAYANAN, J.**]

The appellant is the writ petitioner and he made a challenge to the impugned order of the first respondent dated 24.08.2012 in and by which the dismissal order passed by the second respondent dated

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13.07.2010 was confirmed. The writ petition was entertained and after contest, came to be dismissed vide the impugned order dated 03.06.2020 and aggrieved by the same, the present writ appeal is filed.

2. The facts leading to this litigation have been narrated in detail in the impugned order, which is subject matter of challenge and therefore, it is not necessary to register the facts once again for the sake of brevity.

3. The appellant/writ petitioner joined the services of the first respondent Corporation as an Assistant Engineer (Trainee) on 15.12.1990 and got his promotion as Senior Assistant Engineer (Civil) and while he was in services of the first respondent corporation, got an opportunity to serve in a Civil Construction Company at Libia, which is one of the Gulf Countries. The petitioner submitted necessary application seeking leave to join the said post and due to the strained relationship between him and an official in the personnel department, it was not processed on time and in the light of the fact that the time line for joining the post has expired, the petitioner went abroad and joined the said company.

4. The appellant/writ petitioner was also visited with the disciplinary proceedings in the form of charge memo dated 07.07.2006 and it was put to challenge in W.P.(MD)No.4640 of 2006. A single Bench of this Court, vide order dated 31.10.2006, disposed of the writ petition, with a direction to consider the request of the petitioner, as to sanction of leave and depending upon the result of the same, granted liberty to take appropriate action. Thereafter, the petitioner was issued with a charge memo and domestic enquiry was conducted and the second respondent vide order/proceeding dated 13.07.2010, having found that the the appellant was absent for 2024 days and having noted all the other materials available on record has passed an order of dismissal.

5. The Departmental appeal preferred by the appellant/writ petitioner before the first respondent was also dismissed on 24.08.2012 and challenging both the proceedings, the appellant/writ petitioner has filed the writ petition and it was entertained. The respondents have also filed the counter affidavit.

6. The learned Judge having taken note of the rival submissions and other materials found that the appellant/writ petitioner had applied leave for two years from 27.12.2004, vide letter dated 10.12.2004 and before sanctioning the leave, he left the Country and joined a Construction Company at Libia and in the light of his unauthorised absence, disciplinary proceedings have been initiated.

7. The learned Judge also having taken note of the G.O.Ms.No.295, Personnel and Administrative Reforms (FR.II) Department, dated 14.09.1995, which deals with the procedure to be



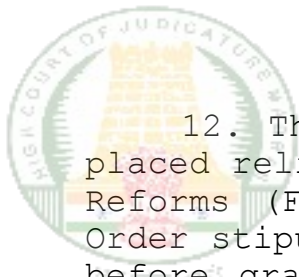
followed in respect of the Government Servant having employment at abroad, found that the leave application for going abroad was submitted on 10.12.2004 and it was signed only on 09.12.2005 and admittedly, before sanctioning the leave, he left this Country and joined a Construction Company at Libia and thereafter, started submitting leave applications, which also came to be rejected rightly and the notices sent for attending domestic enquiry were also returned four times and taking note of the cumulative facts and circumstances, the learned Judge found that it is not a fit case, wherein the impugned order of punishment warrants no interference and accordingly, dismissed the writ petition and hence this Writ Appeal.

8. The learned counsel appearing for the appellant/writ petitioner would vehemently contend that Mr.T.Pandian, who was employed as Superintending Engineer submitted an application seeking permission to leave the Country for one year on loss of pay from 25.06.2001 and it was placed before the Board and he was granted one year leave and had his case been put forth before the Board before leaving this Country, he would have definitely sanctioned the leave and indictedly he has been proceeded with the Departmental proceedings and imposed with the major penalty and prays for interference.

9. This Court has considered the rival submissions and also perused the materials placed on record.

10. The petitioner applied leave for two years to join a Civil Construction company at Libia vide letter dated 10.12.2004 and he has joined the said company before 27.12.2004. The petitioner has submitted the said letter just 17 days prior to the date of leaving this Country. The learned Judge, in paragraph No.8 of the impugned order found that though the application is dated 10.12.2004, it was signed by him only on 09.12.2005 that is after he left this Country and from Libia, he submitted four leave letters and all the leave letters were rejected. The Management, having found that the appellant/writ petitioner having remained unauthorised absence, has initiated departmental proceedings and sent notices to his last known address and those notices were also returned and having found from the materials and evidence placed that he is guilty of unauthorised absence, has dismissed the appellant/writ petitioner from service and on appeal, it was also confirmed by the first respondent.

11. It appears that the petitioner wants to enjoy the best of both worlds and he should have chosen the place of employment i.e., whether he wants to work in abroad or in the services of the respondent corporation. However, the petitioner wants the benefit of both employment and admittedly, before sanctioning of the leave, left this Country.



12. Though the learned counsel appearing for the appellant has placed reliance upon the G.O.Ms.No.295, Personnel and Administrative Reforms (FR.II) Department, dated 14.09.1995, the said Government Order stipulates that certain conditions/formalities to be fulfilled before granting the leave to go abroad and therefore, there is a discretion vest with the employer.

13. A perusal of the impugned order of the second respondent would also disclose that the appellant/writ petitioner remained absent for 2024 days and taking into consideration the period of absence, has rightly reached the conclusion to dismiss the appellant/writ petitioner from service and it is also concurred by the appellate authority.

14. It is a well settled position of law that as against the quantum of punishment imposed by the employer is concerned, the scope of interference by this Court in exercise of Article 226 of the Constitution of India is very limited. If this Court finds that the findings recorded are perverse or based upon no evidence, interferes with the same.

15. The learned Judge, having found that the case of the appellant/writ petitioner did not come in any of the parameters, has rightly reached the conclusion to dismiss the writ petition.

16. This Court in exercise of its appellate discretion under Clause 15 of the Letter Patent have a very limited role to play and finds no error or infirmity in the reasons assigned by the learned Single Judge in dismissing the writ petition.

17. In the result, this writ appeal is dismissed confirming the order dated 03.06.2020 passed in W.P.(MD)No.14643 of 2012. No costs.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Vsm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

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Rep. By the Managing Director
Tamil Nadu State Transport Corporation Ltd.
Kumbakonam Division - II
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2. The General Manager
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