



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2020

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.10688 of 2014

A. William Lawrence

..Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Madurai.

2.The General Manager,
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Dindigul Region,
Bye Pass Road,
Dindigul.

..Respondents

PRAYER:- This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned orders of punishment of reprimand by the 2nd respondent in his proceedings in Ref:No. Sa.Du: A51716, dated 02.01.2010 Ref: SA.Du.A5 1717 dated 02.01.2010, Ref: Sa.Du:A5 1718 dated 02.01.2010 and Ref.Sa.Du.A5 1719 dated 02.01.2010 and consequential impugned order of rejection in Sa.du: A5 794 dated 31.07.2012 and quash the same a illegal and consequently, direct the 2nd respondent herein to regularize the period of alleged unauthorised absence from the duty of driver from 25.05.2007 to 12.03.2009 as service period of the petitioner and consequently, pay all the service and monetary benefits for the said period within the time stipulated by this Hon'ble Court.

For Petitioner : Mr. J.Lawrance

For Respondents : Mr. J. Senthilkumaraiah

ORDER

This Writ Petition has been filed to quash the impugned orders of punishment of reprimand by the 2nd respondent in his proceedings in Ref:No. Sa.Du: A51716, dated 02.01.2010 Ref: SA.Du.A5 1717 dated 02.01.2010, Ref: Sa.Du:A5 1718 dated 02.01.2010 and Ref.Sa.Du.A5 1719 dated 02.01.2010 and consequential impugned order of rejection in Sa.du: A5 794 dated 31.07.2012 and quash the same, and to consequently direct the 2nd respondent herein to regularize the period of alleged unauthorised absence from the duty of driver from 25.05.2007 to 12.03.2009 as service period of the petitioner and consequently, pay all the service and monetary benefits for the said period within the time stipulated by this Court.



2. The case of the petitioner is that he was working as a Driver in the respondent / Corporation from 03.05.1989 and he had retired from service from the respondent / corporation on 31.01.2010 on attaining the age of superannuation. While the petitioner was on duty on 09.05.2006 in the bus bearing No.TN 45 N 1643 plying in the route Dindigul to Pollachi, near Komangalampudur, the bus had met with an accident on collusion with a lorry. In the result of the said accident, the petitioner had sustained grievous injuries all over the body and also had bone fractured in both legs and his left leg was amputated. Due to this, the petitioner filed a petition in W.C.No.272 of 2006 before the Deputy Commissioner of Labour, Dindigul and prayed for compensation under the Workman Compensation Act. The Deputy Commissioner of Labour, Dindigul had awarded a sum of Rs.2,33,738/- as compensation by an order dated 14.09.2009. In pursuant to the said award of the Deputy Commissioner of Labour, Dindigul, the respondents / Corporation had deposited the above said award amount and the same was also withdrawn by the Petitioner.

3. It is further case of the petitioner that due to the injury sustained in the accident he was hospitalized and got discharged on 30.04.2007. The respondent Corporation also provided a medical leave up to 24.05.2007. After that, the petitioner had not reported for duty and had continuously absented himself from 25.05.2007 to 12.03.2009 without giving any intimation or requesting for further sanctioning of leave to the respondent Corporation. Hence the respondents Corporation issued charge memos and conducted domestic enquiry by the Enquiry Officer. In the findings report submitted by the Enquiry Officer it is held that the charge levelled against the petitioner is proved. After adopted all the legal formalities on the basis of facts and evidences by following the principal natural justice, the petitioner was imposed the punishments of severe record warning vide. Ref:No. Sa.Du: A51716, dated 02.01.2010 Ref: SA.Du.A5 1717 dated 02.01.2010, Ref: Sa.Du:A5 1718 dated 02.01.2010 and Ref.Sa.Du.A5 1719 dated 02.01.2010. Further, in the meantime, the respondent Corporation provided alternate employment to the petitioner till his retirement i.e., upto 31.01.2010. Thereafter, the petitioner filed W.P(MD).No. 5803 of 2012 prayed that to regularize the period of alleged unauthorised absence for the period from 25.05.2007 to 12.03.2009 as service period and consequently, to pay all the service and monetary benefits within the time stipulated by this Court by considering his representation dated 03.03.2012 and the same was ordered on 13.06.2012 directing the second respondent to consider the representation of the petitioner dated 03.03.2012 and pass appropriate orders on merits and in accordance with law. In pursuant to the same, the respondent Corporation had disposed the petitioner's representation dated 03.03.2012 vide reference No. Sathu/A5/794 dated 31.07.2010 and thereby, rejected his claim. Aggrieved over the same, the petitioner has filed the present Writ Petition before this Court with the above said prayer.

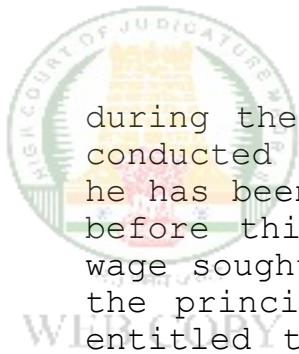


4. The learned counsel appearing for the respondents / Corporation submitted that due to the said accident, the petitioner's left leg was amputated and he filed a claim petition before the Labour Court, Dindigul and he was awarded a sum of Rs.2,33,738/- and the same was also paid to him by the respondent Corporation. Even though the petitioner was hospitalized and discharged on 30.04.2007, medical leave was granted upto 24.05.2007 which is almost 25 days. In spite of the said leave been granted, the petitioner did not turn up for duty from 25.05.2007 to 12.03.2009 without being sanctioned any medical leave. Only due to his absence from duty without intimation, charge-memo was issued and an enquiry officer was appointed and proper enquiry was held after following the principles of natural justice and later on, he was imposed with severe record warning and he was also given alternative employment.

5. Earlier, the petitioner filed a Writ Petition in W.P (MD).No.5802 of 2012 to regularize the period of unauthorized absence from 25.05.2007 to 12.03.2009 as service period by considering his representation dated 03.03.2012 and this Court by order dated 13.06.2012 directed the second respondent therein to consider the representation of the petitioner dated 03.03.2012 and pass appropriate orders on merits and in accordance with law. As per the direction of this Court, the petitioner's representation dated 03.03.2012 was considered and passed an order on 31.07.2012. The petitioner has not approached the appropriate forum viz., Labour Court within the time prescribed and has not followed the procedures and approached this Court belatedly. When there is an alternate remedy available before the petitioner's retirement, he has not chosen to do avail the same. If the petitioner has approached the concerned authority, the same would have been considered on the basis of the available materials and evidences. Hence, the respondents prayed for dismissal of the same.

6. I have heard the learned counsel appearing on either side and perused the materials available on record.

7. As seen from the materials available on record, it is clear that due to collusion with the lorry, the petitioner had met with an accident and his left leg was amputated. In spite of giving him a medical leave, he has not chosen to report duty from 25.05.2007 to 12.03.2009 and in spite of his long absence, his case was considered properly by the authorities and an alternative employment was given to him. In spite of the said concession given, the petitioner has not approached the concerned authority for raising a dispute. It is also clear from the principles laid down by the Honourable Supreme Court that there is no work done by the petitioner, no salary can be awarded to him. Admittedly, the petitioner was given an alternative employment on 02.01.2010. When there is no material produced before this Court or before the



during the period from 25.05.2007 to 12.03.2009 and an enquiry was conducted by the authorities concerned in this regard properly and he has been punished for the same, the petitioner cannot seek remedy before this Court when alternative remedy available. Further, the wage sought for by the petitioner during that period is also hit by the principle of "no work no pay". Thus, the petitioner is not entitled to the relief. However, the respondent Corporation can consider the petitioner's request only with regard to calculation of the period of absence for pension if any has to be paid.

8. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Trp

To

1.The Managing Director,
Tamil Nad State Transport Corporation (Madurai) Ltd.,
Madurai.

2.The General Manager,
Tami Nadu State Transport Corporation (Madurai) Ltd.,
Dindigul Region,
Bye Pass Road,
Dindigul.

+1 CC to M/s.J.LAWRENCE, Advocate (SR-11868[F] dated 16/03/2020)

+1 CC to M/s.J.SENTHIL KUMARAI AH, Advocate (SR-12242[F] dated 18/03/2020)

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KB(22.06.2020) 4P 5C