



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 24.01.2020
(Reserved on 18.12.2019)
CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.2718 of 2014

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Johnson Jeyakumar

... Petitioner

vs.

1)The General Manager (Operation),
State Express Transport Corporation Tamil Nadu Ltd.,
Chennai-2.

2)The Branch Manager,
State Express Transport Corporation Tamil Nadu Ltd.,
Tirunelveli Branch,Vannarpet,
Tirunelveli.

3)The Special Deputy Commissioner of Labour,
Officer Designated under 33(2) B of
Industrial Disputes Act,
Chennai-600 006.

... Respondents

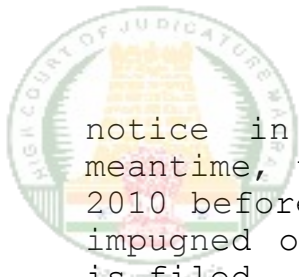
Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records relating to the impugned order passed by the 3rd respondent in A.P.No.56 of 2010 dated 19.04.2013 and quash the same.

For Petitioner : Mr.T.A.Ebenezer
For R1 & R2 : Mr.K.Sathiyasingh

ORDER

The prayer in the writ petition is for issuance of a Writ of Certiorari, calling for the records relating to the impugned order passed by the 3rd respondent in A.P.No.56 of 2010 dated 19.04.2013 and quash the same.

2.Learned counsel for the petitioner would state that the petitioner was working as a driver in the respondent corporation from 1990. On 23.06.2009, he received the transfer order dated 10.06.2009, transferring him from Tirunelveli Branch to Trivandrum Branch. He challenged the same in W.P(MD)No.7226 of 2009 and this Court by order dated 31.07.2009 had granted interim stay. According to the petitioner, the 2nd respondent did not obey the above interim order and not permitted him to join duty at Tirunelveli and hence, he filed contempt petition. Pending contempt, he was permitted to join duty in the 2nd respondent from 15.02.2010. The period in which, he was not permitted to join duty, was treated as unauthorised absence and the charge of unauthorised absence was framed against the petitioner. After enquiry, final show cause notice proposing punishment of dismissal from service was served on the petitioner. The petitioner challenged the final show cause



notice in W.P(MD)No.6924 of 2010 and it is pending. In the meantime, the 1st respondent filed approval petition in A.P.No.56 of 2010 before the 3rd respondent who granted approval for dismissal by impugned order dated 19.04.2013, against which, this writ petition is filed.

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3.Learned counsel for the petitioner would contend that the alleged unauthorised absence from 21.06.2009 to 14.02.2010 was only due to the wilful disobedience of the 2nd respondent in not complying with the order of this Court by not permitting the petitioner to join duty at Tirunelveli and the 3rd respondent without considering that the management has dismissed the petitioner only to wreck vengeance, erroneously granted approval for the dismissal and though the approval order signed on 19.04.2013, it was supplied to the petitioner only in January 2014. Thus, he would pray for setting aside the impugned order.

4.Learned counsel for the respondent corporation would state that the petitioner was absented from service continuously from 21.06.2009 without prior permission and therefore, desertion notice dated 07.08.2009 was issued against him and lateron, charge memo dated 10.11.2009 was issued and the petitioner acknowledged the same. Thereafter, a domestic enquiry officer conducted enquiry and found the charges against the petitioner as proved and therefore, a final show cause notice proposing the punishment of dismissal from service was issued against the petitioner on 16.02.2009. He would further state that the petitioner on earlier occasions committed various irregularities and was charge sheeted for 15 cases and after conducting domestic enquiry for all the above cases, the charges were held to be proved and the present dismissal order was served after observing the principles of natural justice and as per the rules and regulations of the corporation, approval petition in A.P.No.56/2010 was filed under Section 32(2)(b) of the Industrial Disputes Act and the 3rd respondent has rightly granted approval for dismissal and therefore, he would pray the interference of this Court is not necessary.

5.Heard the learned counsel for the petitioner as well as the learned counsel for the respondents 1 and 2.

6.Perusal of record shows that admittedly, the petitioner was transferred on 10.06.2009 from Tirunelveli to Trivandrum and the relieving order was given on 20.06.2009. It appears that the petitioner in the earlier round of litigation has come before this Court challenging the said transfer order by filing W.P(MD)No.7226 of 2009 on 27.07.2009, where, interim order of stay of the transfer has been granted on 31.07.2009 and according to the petitioner, the corporation did not obey the said order by not permitting him to join duty at Tirunelveli and the said period of non joining is now framed as the charge of unauthorised absence. Therefore, the only



issue to be decided is whether there was any unauthorised absence by the petitioner.

7.It appears from the records that the respondent corporation did not obey the order of stay granted in W.P(MD)No.7226 of 2009 dated 31.07.2009 and not permitted to join duty at Tirunelveli. Only after filing of the Contempt Petition No.418 of 2009 on 08.09.2009, the corporation passed an order dated 13.02.2010 permitting the petitioner to join duty in the 2nd respondent and the petitioner joined duty on 15.02.2010. Therefore, in my considered opinion, the alleged period of unauthorised absence from 21.06.2009 to 14.02.2010 was due to the inaction of the respondents 1 and 2 by not permitting the petitioner to report duty at Tirunelveli as per the interim order of this Court and hence, the approval granted by the 3rd respondent for the punishment of dismissal from service, in my opinion, is only an act of victimising the petitioner and therefore, I am inclined to interfere with the impugned order.

8.Accordingly, the impugned order passed by the 3rd respondent in A.P.No.56 of 2010 dated 19.04.2013 is quashed and the respondents 1 and 2 are directed to reinstate the petitioner into service as if the petitioner had continued in service and confer all consequential benefits.

With the above direction, the writ petition is allowed. No costs.

Sd/-

Assistant Registrar (Crl.side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1)The General Manager (Operation),
State Express Transport Corporation Tamil Nadu Ltd.,
Chennai-2.

2)The Branch Manager,
State Express Transport Corporation Tamil Nadu Ltd.,
Tirunelveli Branch,Vannarpet,
Tirunelveli.

3)The Special Deputy Commissioner of Labour,
Officer Designated under 33(2) B of
Industrial Disputes Act,Chennai-600 006.

+1 CC to M/s.T.A.EBENEZER, Advocate (SR-3206[F] dated 27/01/2020)

PRE-DELIVERY ORDER MADE IN

W.P(MD)No.2718 of 2014

DATED : 24.01.2020

SMA/03/02/2020/3P/5C

<https://hcservices.ecourts.gov.in/hcservices/>