



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.01.2020

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD)No.3627 of 2014

P.Murugesan

... Petitioner

Vs.

1.The Management of State Express Transport Corporation (Tamil Nadu) Ltd.,
rep. by its Managing Director,
Pallavan Salai, Chennai -2.

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

3.The Branch Manager,
State Express Transport Corporation
(Tamil Nadu) Ltd.,
Madurai Branch, Madurai.

... Respondents

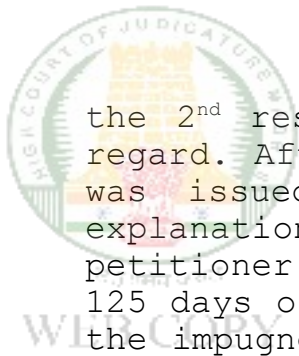
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 2nd respondent in Ref.No.8521/TL2/Aa.Vi.Po.Ka/2013, dated 05.09.2013 in treating the period of leave availed by the petitioner from 02.02.2013 to 16.02.2013 as leave on loss of pay and quash the same and to consequently direct the respondents to treat the said period of medical leave with wages.

For petitioner : Mr.A.Rahul
For 1st respondent : Mr.S.Dhayalan,
Government Advocate
For respondents 2 & 3 : Mr.K.Sathyasingh

ORDER

This writ petition has been filed by the petitioner challenging the order imposing penalty by treating the period of his absence from duty ie., from 02.02.2013 to 16.02.2013 as loss of pay and to direct the respondents to treat the period of his absence as Medical Leave and to pay salary for the said period.

2. The learned counsel for the petitioner submitted that the petitioner, while working as Selection Grade Senior Conductor, took medical leave for a period of 15 days from 02.02.2013 to 16.02.2013 due to ill-health and he also sent leave letter along with Medical Certificate on 02.02.2013 by way of registered post to the respondents 2 and 3. Though he was permitted to join duty on 17.02.2013 with Fitness Certificate, the 3rd respondent marked the attendance for the said period as absent from duty. Subsequently,



the 2nd respondent had issued a charge memo on 23.04.2013 in this regard. After getting the basic report dated 14.02.2013 on which he was issued the charge memo, the petitioner has submitted his explanation on 09.07.2013. At the time of availing leave, the petitioner had 14 days of Casual Leave, 68 days of Medical Leave and 125 days of Earned Leave in his credit. But, the 2nd respondent, by the impugned order dated 05.09.2013, without conducting any enquiry and without assigning any reason, has warned the petitioner as if he has violated clause 16(A)(C)(K) of the Standing Orders of the 1st respondent Corporation and treated the said period as loss of pay. He would further submit that as the impugned order has been passed in violation of the principles of natural justice, the same may be set aside and the respondents may be directed to treat the said period as Medical Leave and to grant salary for the said period.

3. The learned counsel appearing for the respondents in unison submitted that the petitioner was in the habit of absenting himself from attending duty frequently and as such, he absented duty for the period 02.02.2013 to 16.02.2013 without informing and submitting any leave letter, which caused great difficulty in running the administration and by unauthorised absence from duty, the petitioner has committed violation of the Standing Orders of the Transport Corporation and therefore, the respondents imposed penalty by treating the period of his absence as loss of pay and the same need not be interfered with. Thus, they prayed to dismiss this Writ Petition.

4. Heard the learned counsel for both sides and perused the records carefully.

5. Admittedly, in this case, the petitioner had sufficient, Casual Leave, Medical Leave and Earned Leave in his credit at the relevant point of time. According to the petitioner, he has availed medical leave from 02.02.2013 to 16.02.2013 for stomach ailment, for which he has also sent leave letter with Medical Certificate on 02.02.2013 through registered post to the respondents 2 and 3. But, it is seen that the 2nd respondent has issued a charge memo on 23.04.2013 stating that the petitioner has absented himself from 02.02.2013 to 16.02.2013 without submitting any leave application. The petitioner has substantiated his contention by producing copy of the postal receipts dated 02.02.2013. The respondents have not disputed the above postal receipts, availability of leaves in the credit of the petitioner at the relevant time, etc., by filing any counter affidavit till date. Moreover, when the similar issue with regard to submission of leave application along with Medical Certificate through registered post, had arisen for consideration, a learned Single Judge of this, by order dated 21.01.2019 in WP(MD) No.24437 of 2018, has held as follows:

"5. The leave application along with medical certificate was sent to third respondent by post.

<https://hcservices.ecourts.gov.in/hcservices/> 7th respondent has refused to receive the



same. Therefore, the third respondent cannot claim that he had knowledge of the contents of the cover, which he had admittedly refused to receive. The third respondent claims that the petitioner has sought medical leave in order to avoid disciplinary action. The third respondent would also submit that the petitioner having stayed within two kilometers from the depot could have come in person and made an application or he would have contacted him over phone and informed him about the medical condition and sought for medical leave.

6. The mode, through which leave has to be sought for by the employees is not prescribed in the rules. The petitioner has adopted a recognized mode viz., the petitioner had requested for medical leave in writing along with the medical certificate by registered post. The third respondent had refused to receive the same. Though the third respondent would claim that he was away from the depot on the said date, the same cannot be accepted as reasonable explanation for refusing to receive the letter. If, the third respondent was not available in his office, some other person available could have received the letter addressed to the Branch Manager, TNSTC and not to an individual.

6. As stated in the above decision, as the mode, through which leave has to be sought for by the employees, is not prescribed in the rules, the petitioner has every right to send the leave application with medical certificate to the respondents 2 and 3 through registered post. In this case, though in the charge memo dated 23.04.2013 it is alleged that the absented duty from 02.02.2013 to 16.02.2013 without submitting any leave application, a perusal of the basic report dated 14.02.2013 stated to be submitted by a Guard reveals that after receipt of leave application with medical certificate from the petitioner, the Guard went to see the petitioner and enquired about his health, and not satisfying with the reply given by the petitioner, he submitted the said report to the third respondent as if the petitioner had stated to him that he took leave for his personal affairs. In the reply, the petitioner has totally denied the above version and he submitted that only due to his stomach ailment, he took medical leave with the advice of the Doctor. But, the 2nd respondent, by the impugned order dated 05.09.2013, without assigning any reasons, has simply rejected the reply given by the petitioner and without conducting any further enquiry and without giving any further opportunity to the petitioner, has imposed penalty by treating the said period as loss of pay. The above factum would show that the respondents have issued



to victimize the petitioner. Hence, the impugned order is liable to be set aside.

7. As the petitioner has proved that he has submitted his leave application along with medical certificate through registered post and the petitioner had sufficient medical leaves in his credit at the time of availing the medical leaves during the relevant period, this Court is inclined to direct the respondents to treat the relevant period ie., 02.02.2013 to 16.02.2013 as Medical Leave and to pay salary for the said period to the petitioner.

8. In view of the above, the impugned order is set aside and the respondents are directed to treat the relevant period ie., 02.02.2013 to 16.02.2013 as Medical Leave and to pay salary for the said period within a period of two weeks from the date of receipt of a copy of this order.

9. This Writ Petition stands disposed of accordingly. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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+1 CC to M/s.A.RAHUL, Advocate (SR-1164[F] dated 09/01/2020)

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SMA/14/02/2020/4P/2C