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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.01.2020

CORAM

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

**W.P(MD)No.17565 of 2015**
**and**
**M.P.(MD).Nos.1 & 2 of 2015**

A.Paramachandran ... Petitioner

Vs.

1.The Managing Director,
State Express Transport Corporation,
Chennai - 600 002.

2.The General Manager,
State Express Transport Corporation,
Chennai - 600 002.

3.The Division Manager,
State Express Transport Corporation,
Nagercoil.

4.The Branch Manager,
State Express Transport Corporation,
Trivandrum. ... 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 relating to the impugned charge memo of the 2nd respondent in Ku.No.114444/TL8/AVPoka/14, dated 19.09.2014, the second impugned charge memo of the 2nd respondent in Ku.No.5254/TL8/AVPoKa/14, dated 26.09.2014 and the consequent impugned order No.5754/TL8/AVPOKA/2014, dated 07.11.2014 quash the same and consequently direct the respondents herein to disburse the arrears of salary payable for the month of August, 2014 and from 01.09.2014 till date of his retirement on 31.03.2015, retirement benefits, gratuity with 10% interest, provident fund and pensionary benefits together with interest on all monetary benefits within a reasonable time.

For petitioner : Mr.H.Thayumanaswamy

For respondents : Mr.Sathiya Singh

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**ORDER**

This writ petition has been filed by the petitioner challenging the two charge memos dated 19.09.2014 and 26.09.2014 and the order of punishment dated 07.11.2014 passed by the second respondent.

2. The learned counsel for the petitioner submitted that the petitioner was appointed as Conductor on 28.12.1984 and he had put nearly 31 years of continuous service. As per the direction of the 4th respondent dated 20.08.2014, the petitioner had attended training at Trichy from 21.08.2014 to 24.08.2014. After completion of training, the petitioner came to join duty on 25.08.2014, but the 4th respondent refused to allow him to join duty. On the same day, the petitioner submitted a written representation on 25.08.2014 itself to the 4th respondent to allow him to join duty. Though the same was acknowledged by the 4th respondent, he did not offer any explanation. While so, the 2nd respondent had issued a charge memo dated 19.09.2014 alleging two charges. They are (a) on 06.08.2014 the petitioner has deposited collection of Rs.6895/-, when the said route fetches a collection of Rs.22,600/- and thereby caused loss to the Corporation; and (b) after completion of training, he has failed to join duty on 25.08.2014. On 26.09.2014, the 2nd respondent has issued another charge memo alleging that on 18.07.2014, the petitioner collected only 1/4 ticket for a luggage, though he was obligated to collect 1/2 ticket. The petitioner has received both the charge memos only on 07.10.2014 and immediately submitted explanations to the charge memos separately on 12.10.2014. Even after receipt of the said explanations, the 2nd respondent has passed the impugned order dated 07.11.2014 holding that the petitioner has not submitted his explanation and imposed a cost of Rs.200/- as penalty for his misconduct alleged in the second charge memo.

3. The learned counsel for the petitioner would further submit that without even considering the explanation submitted by the petitioner, with regard to the second charge memo and without conducting any enquiry, the 2nd respondent has passed the impugned order dated 07.11.2014 and therefore, the same is liable to be set aside. So far as the first charge memo dated 19.09.2014 is concerned, the first charge is with regard to deposit of lowest collection. The highest range of collection in the said route is Rs.22,000/-, that too during festival season. The regular collection is not the amount as alleged in the charge memo. Further, the bus No.B464 Ruote No.794 starts from Trivandrum to Chennai via, Trichy. The petitioner attended duty from Trivandrum to Trichy and the other conductor attended duty from Trichy to Chennai. The other conductor has not been issued such memo. The petitioner alone has been discriminated. Without any inspection report and in general, the 2nd respondent has alleged the said charge and therefore, the same is liable to be set aside. The another charge is related to not

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joining duty on 25.08.2014. It is the respondents 2 and 3 who have not permitted duty. The petitioner has filed W.P.(MD).No.16750 of 2014 seeking a direction to the respondents to permit him to join duty and the same was disposed of by this Court with a direction to the 2nd respondent to consider the petitioner's representation dated 25.08.2014, but the same was not obeyed by the 2nd respondent. Hence, the petitioner has filed Contempt Petition in Cont.P.(MD). No.610 of 2015. Since the petitioner was allowed to retire from service on attaining the age of superannuation, that contempt petition was closed by this Court.

4.The learned counsel for the petitioner would further submit that the petitioner was allowed to retire without fixing any extent of monetary loss alleged to have been caused and there is also no material or evidence to prove the charge of any monetary loss alleged to have been caused to the respondents/Transport Corporation. Hence, withholding of entire retirement benefits, gratuity, provident fund and pensionary benefits is illegal and therefore, all the impugned orders may be set aside and the retirement benefits may be directed to be issued.

5. The learned counsel appearing for the respondents/Transport Corporation submitted that the petitioner has involved in several irregularities and in view of the stay order granted by this Court, the enquiry with regard to the charge memo dated 19.09.2014 has not been proceeded. As per the interim order granted by this Court dated 29.09.2015, the respondents have been giving provisional pension from 31.03.2015 to till date to the petitioner. The 2nd respondent has rightly issued charge memos to the petitioner and the same need not be interfered with. Until the conclusion of the enquiry proceedings, the petitioner is not entitled to receive retirement benefits. Thus, he prayed to dismiss this writ petition.

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

7. In the first charge memo dated 19.09.2014, which was served on 07.10.2014 to the petitioner, two charges were levelled against the petitioner. They are; (a) on 06.08.2014, when the petitioner was working as Conductor in the bus No.794, Route No.B464 ie., in the route Trivandrum to Chennai, he alleged to have deposited collection of Rs.6895/- when the said route fetches a collection of Rs.22,600/- and thereby, he caused loss to the Corporation and (b) after completing the training from 21.08.2014 to 24.08.2014, he failed to join duty. The first charge memo was stated to be received by the petitioner only on 07.10.2014. He immediately submitted his explanation to the charges on 12.10.2014.

8. So far as the first charge is concerned, according to the petitioner, the amount of Rs.22,600/- mentioned in the first charge is not regular collection amount in the said route and the said

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collection would be during the peak time of festival season and that out of two conductors attended duty in the said bus, the petitioner alone has been issued with the charge memo and no charge memo issued to the other conductor and thereby, the petitioner alone has been discriminated. The respondents have not filed counter affidavit denying the above averments made in the petition. The first charge against the petitioner appears to be general in nature. Even the amount of loss has not been mentioned in the charge. It is not the case of the respondents that the petitioner has been misappropriated the collection amount. It is not known on what basis such charge has been framed. The respondents have also not filed counter affidavit explaining reasons or countering the submissions of the petitioner. As the charge is very vague in nature and bereft of particulars and there is discrimination in issuing the charge memo, it cannot be sustained.

9. So far as the second charge is concerned, it is alleged that the petitioner has not attended duty after completion of training period. But, according to the petitioner, on 25.08.2014, the $4^{th}$ respondent prevented him to attend duty and hence, on the same day ie., on 25.08.2014, he submitted a representation to the $4^{th}$ respondent and the same was acknowledged by the $4^{th}$ respondent. The petitioner has also filed a copy of the said representation dated 25.08.2014 with acknowledgement seal, in the typed set of papers. It is seen that the petitioner has also sent various representations seeking to permit him to attend duty to the respondents and the same was also acknowledged by the respondents. Even after receipt of those representations of the petitioner, the $2^{nd}$ respondent has framed the $2^{nd}$ charge as if the petitioner has failed to attend duty, which is nothing but an utter lie. The above act of the $2^{nd}$ respondent would clearly disclose that only in order to make the petitioner suffer, the charge memo dated 19.09.2014 has been issued and therefore, the same is liable to be set aside.

10. In the charge memo dated 26.09.2014, which was served on 07.10.2014, it is alleged that "on 18.07.2014, when the petitioner was working in the Bus No.794, Route No.B660, there was an inspection at Kovilpatty by the Inspectors in the above bus proceeding from Nagercoil to Trivandrum and it was found that the petitioner collected only 1/4 ticket for a luggage, instead 1/2 ticket, due to which the authorities have forfeited the ticket value of Rs.60/-. The petitioner has submitted his explanation on 12.10.2014. The $4^{th}$ respondent has also acknowledged the receipt of the said explanation on 15.10.2014.

11. According to the petitioner, as per the Rules of the Corporation, 1/4 ticket can be issued for the luggage weighing 16 to 25 kgs and 1/2 ticket can be issued for the luggage weighing 26 to 50 kgs. Though the passenger stated that the luggage of grocery items weighing approximately weighing 15 kgs, the petitioner only after verifying it by lifting the luggage has charged 1/4 ticket.

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But, the Inspection Officer, during the inspection, without any evidence or material, has alleged that the petitioner has collected 1/4 ticket amount, instead 1/2 ticket amount. No statement obtained from the passenger concerned in support of the above charge. There is no proof for the above charge. The above charge memo was also issued as vindictive measure.

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12. As stated earlier, the respondents / Transport Corporation has not filed counter affidavit denying the above averments of the petitioner. There is also no document produced denying the above averments by the respondents/Corporation. It is seen that for the above misconduct, the 2nd respondent, by order dated 07.11.2014, has imposed a fine of Rs.200/- as penalty stating that the petitioner has not submitted his explanation. It is seen from the record that the petitioner has already submitted his explanation on 12.10.2014 and the 4th respondent has also acknowledged the receipt of the said explanation on 15.10.2014. Without any enquiry and without assigning any reason, the 2nd respondent has passed the impugned order dated 07.11.2014. The order dated 07.11.2014 is not only unjust but also contrary to the materials on record. Therefore, the said impugned order is also liable to be set aside.

13. It is seen that after issuing charge memos, the respondents have not chosen to retain the service of the petitioner for the purpose of conducting enquiry but allowed him to retire from service. However, showing pendency of charge memos, the respondents withheld the retirement benefits of the petitioner. The totality of the facts and circumstances would go to show that only with a *mala fide* intention to punish the petitioner, the 2nd respondent has issued the impugned charge memos dated 19.09.2014 and 26.09.2014 and passed the punishment order dated 07.11.2014. It is seen that only because of the interim order of this Court dated 26.09.2014, the petitioner has been receiving provisional pension from 31.03.2015 to till date. As the respondents alone prevented the petitioner from joining duty from 25.08.2014, this Court is inclined to direct the respondents to pay arrears of salary payable to him for the month of August 2014 and salary from 01.09.2014 to till the date of his retirement ie., till 31.03.2015.

14. In view of the above, all the impugned orders are set aside. The respondents are directed to pay arrears of salary payable to him for the month of August, 2014 and to pay salary from 01.09.2014 to till the date of his retirement ie., till 31.03.2015 and treat the said period as duty period and to pay retirement benefits to the petitioner with interest at the rate of 6% per annum. The above said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

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15. This Writ Petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (records)

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Sub Assistant Registrar(CS )

gcg

+1 CC to Mr.K.SATHIYA SINGH, Advocate ( SR-4001[F] dated 30/01/2020 )

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