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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2021

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THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P No.25578 of 2008
and M.P No.1 of 2008

N.Pichandi

... Petitioner

Vs.

1. Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
Rep. by its Managing Director
Vazhudhareddy,
Villupuram.

2. The General Manager
Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
Vellore Region, Rangapuram,
Vellore.

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order dated 17.09.2008 in Memo No.161304/Sa6/TNSTC/07 passed by the second respondent, quash the same and consequently direct the respondents to treat the period of suspension of petitioner as duty with pay with all consequential benefits.

For Petitioner : Mr.V.Ajoy Khose

For Respondents : Mr.C.S.K.Sathish

O R D E R

The present Writ Petition has been filed for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order dated 17.09.2008 in Memo No.161304/Sa6/TNSTC/07 passed by the second respondent, quash the same and consequently direct the respondents to treat the period of suspension of petitioner as duty with pay with all consequential benefits.



2. The petitioner, while working as a Conductor, was issued with a charge memo for having misappropriated funds over a period of time through resale of tickets. This misconduct was found during an Audit Inspection conducted by the respondent Corporation. After an enquiry, the petitioner was imposed with a punishment of reduction of basic pay from Rs.9,775/- to the lowest one of Rs.5,305/- for a period of five years and thereafter, to restore the basic pay back to Rs.9,775/-, but, the petitioner had retired within a period of two years from service. The petitioner has challenged the impugned order without exhausting the available alternative remedy of appeal and filed the present Writ Petition.

3. The learned counsel for the respondents have taken a preliminary objection as to the maintainability of the Writ Petition for it is filed without exhausting the alternative remedy. In support of his contention, he relied on a judgment of the Delhi High Court in the case of PTI Employees Union Vs. Press Trust of India Ltd., (2020 SCC OnLine Del 1216) and another judgment of the Hon'ble Supreme Court in the case of State of Uttar Pradesh and Another Vs. Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti and Others [(2008) 12 SCC 675].

4. According to the learned counsel for the respondent, only when there is an exceptional circumstance, the Court can entertain the Writ Petition without insisting on alternative remedy. Only because the Writ Petition is admitted, that will not entitle the petitioner to entertain the petition on merits.

5. I have heard the submissions made on either side and perused the materials placed before this Court.

6. At the outset, this Writ Petition has been preferred challenging the jurisdiction of the respondent in imposing the punishment. Whenever a Writ Petition is filed challenging an order passed without jurisdiction or in violation of principles of natural justice or in an exceptional circumstance, where urgent orders are required and when the alternative remedy is not an efficacious one, the Writ Petition can be entertained. In the instant case, the Standing Order of the respondent Corporation enumerates the following punishments:-

"25. Punishments for Misconduct:

1. The following shall be prescribed as punishment that may be awarded to workman.

- i. Censure (Minor)
- ii. Fine subject to the provisions of Payment of wages Act (Minor)
- iii. Stoppage of increment : Stoppage of increment or without cumulative effect.



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iv. a. Recovery from wages whole or part of any pecuniary loss, caused to the Corporation by the negligence or breach of orders of the workers.

b. Recovery from pay to the extent necessary of the monetary value equivalent to the amount of increments ordered to be withheld, where such an order cannot be given effect.

c. Recovery from pay to the extent necessary of the monetary value equivalent to the amount of deduction to a lower stage in a time-scale ordered where such an order cannot be given effect to.

Explanation : In cases of stoppage of increment with cumulative effect the monetary value equivalent to three times the amount of increment ordered to be withheld may be recovered.

v. Demotion of lower post or lower grades No workman shall be demoted to any post or grade lower than to which he was initially recruited under the Corporation.

vi. Suspension as a specific punishment not exceeding 30 days.

vii. Removal from service or discharge.

viii. Dismissal from service.

2. Suspension Pending Enquiry :

a. Where disciplinary proceedings against a workman is contemplated or is pending or where criminal proceedings against him in respect of any offence are in progress and the Management is satisfied that it is necessary or desirable to place the workman under suspension, he may, by order in writing suspend him with effect from such date as may be specified in the order. A statement setting out in detail the reason for such suspension shall be supplied to the workman within a week from the date of suspension.

b. A workman, who is placed under suspension under clause (a) shall, during the period of suspension be paid a subsistence allowance as per the Tamil Nadu Payment of Subsistence Allowance Act, 1981.

c. If on the conclusion of the enquiry, or as the case maybe of the criminal proceedings, the workman has been found guilty of the charges framed against him and it is considered after giving the workman concerned a reasonable opportunity of making representation on the penalty proposed that an order of dismissal or suspension or fine or



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stoppage of annual increment or reduction in rank would meet the ends of justice, the employer shall pass an order accordingly.

i. Provided that when an order of dismissal is passed under this clause, the workman shall be deemed to have been absent from duty during the period of suspension and shall not be entitled to any remuneration for such period and the subsistence allowance already paid to him shall not be recovered.

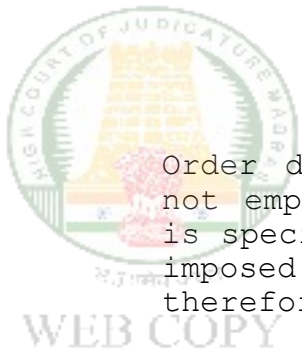
ii. Provided also that when an order imposing fine or stoppage of annual increment or reduction in rank is passed under this clause, the workman shall be deemed to have been on duty during the period of suspension and shall be entitled to the same wages as he would have received if he had not been placed under suspension, after deducting the subsistence allowance paid to him for such period.

iii. Provided further that when an order of suspension is passed under this clause and the period between the date on which the workman was suspended from duty pending enquiry or investigation or trial and the date on which the final orders or suspension was passed exceeds 30 days, the workman shall be deemed to have been suspended only for 30 days for such short period as is specified in the said final orders of suspension, and for the remaining period he shall be entitled to the same wages as he would have received if he had not been placed under suspension after deducting the subsistence allowance paid to him for such period.

d. If on the conclusion of the enquiry, or as the case may be, of the criminal proceedings, the workman has been found to be not guilty of any of the charges framed against him, he shall be deemed to have been on duty during the period of suspension and shall be entitled to the same wages as he would have received if he had not been placed under suspension after deducting the subsistence allowance paid to him for such period.

e. The payment of subsistence allowance under the Standing Order shall be subject to the workman concerned not taking up any employment during the period of suspension.

The punishment imposed by the respondents in the impugned order does not find a place in the Standing Order. When the Standing



Order does not specify such a punishment, the respondents are not empowered to impose a different punishment other than what is specified therein. In that view of the matter, the punishment imposed by the respondents is without jurisdiction and therefore, the Writ Petition is maintainable.

7. Secondly, the disciplinary proceedings were initiated on the basis of the audit objection after a long period. However, this Court is not inclined to delve into the merits of the matter. Even though conflicting issues are raised by both the sides, the allegation made by the Management cannot be brushed aside at one stroke. However, in order to strike a balance between the parties, this Court is inclined to modify the punishment corresponding to the Standing Order. In similar circumstances, this Court in W.P.No.26392 of 2004, dated 07.02.2012, had modified the punishment into one of stoppage of increment for a period of one year with cumulative effect.

8. Considering the charge in hand, I am inclined to modify the punishment of reduction to the lowest stage for five years into one of stoppage of increment with cumulative effect for a period of two years. Since the petitioner has already attained the age of superannuation, the respondents are directed to recalculate the monetary value of the punishment and disburse the balance of terminal benefits to the petitioner within a period of three (3) months from the date of receipt of a copy of this order.

The Writ Petition is disposed of with the above directions. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

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



2.The General Manager
Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
Vellore Region, Rangapuram,
Vellore.

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+1cc to Mr.C.S.K.Sathish, Advocate Sr No.34906
+1cc to Mr.Ajoy Khose, Advocate Sr No.34814

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and M.P No.1 of 2008

PCH (CO)
PR (20/09/2021)