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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.3665 of 2012

T.R.Loganathan

... Petitioner

-vs-

The General Manager,
Tamil Nadu State Transport Corporation Ltd.,
(Coimbatore Division), Erode Region,
Sennimalai Road,
Erode 638 001.

... Respondent

Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus, directing the Respondent Management not to deny work to the Petitioner without following the procedures established by law and award costs.

For Petitioner	:	Mr.S.Ayyathurai
For Respondent	:	Mr.A.Sundaravadhanan

ORDER

Petitioner has come up with this Writ Petition seeking a direction to the Respondent Corporation not to deny him work without following the procedures established by law.

2. According to the Petitioner, on being sponsored by the Employment Exchange, he joined the services of the Respondent Corporation in March 2008 as a Reserve Conductor in Coimbatore Region and thereafter transferred to Erode Region. It is his case that, though, he was diligently performing the duties of a Conductor, without any rhyme or reason, he has been put off duty and has been deprived employment. It is stated by the Petitioner that, he has rendered more than 480 days of continuous service in less than 24 calender months and is deemed to have attained permanent status and that, the action of the Respondent Corporation in depriving him employment without following any procedure, is bad. It is his contention that, not even a Charge Memo was issued and an enquiry conducted, in case of any charges.

3. Respondent Corporation has filed counter stating that,



the Petitioner was engaged as a Reserve Conductor in Coimbatore Region and thereafter transferred to Erode Region. The Petitioner has deliberately not disclosed any material information about the misappropriation of the amount of tickets in his duty and the true facts about his disengagement. According to the Respondent, on 06.10.2010, while the Petitioner was performing the duties of a Conductor in the bus plying from Erode to Coimbatore, at Chengapalli Bus Stop, Checking Inspectors found that, the Petitioner issued ticket to one passenger travelling from Vijayamangalam to Coimbatore for the value of Rs.23/-, however, the same was not entered in the Invoice and the vehicle had crossed two bus stops, approximately 10 kms with 23 passengers on board. It is the contention of the Respondent that, if checking had not been made, the Petitioner would have re-issued the ticket already given to the passenger.

4. Based on the Report received from the Checking Inspectors, disciplinary action was contemplated against the Petitioner and he confessed his misconduct. Based on the proven charges, the Petitioner was disengaged from service w.e.f. 05.07.2011, in his training period as per the condition laid down in S.No.7 of the temporary Training Order issued to him.

5. According to the Respondent Corporation, the Petitioner has not justified his act and has not rendered satisfactory service and that, no Show Cause Notice is required to be served on a trainee before the termination of his service, when the Petitioner herein was orally disengaged from service. The Respondent further contended that, the Petitioner has raised the dispute after a lapse of two years, and that, the conciliation ended in failure. He went on to contend that, the Petitioner has got an alternative remedy and that, without approaching the Labour Court, he has approached this Court and that, this Court has no jurisdiction to entertain the Writ Petition.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. It is not in dispute that, the Petitioner joined the services of the Respondent Corporation as a Reserve Conductor initially at Coimbatore Region and thereafter, transferred to Erode Region. The Petitioner also has not disputed about the charges made against him. However, admittedly, no Show Cause Notice was issued to the Petitioner and enquiry conducted. The only stand taken by the Respondent Corporation is that, the Petitioner was appointed only as a trainee and hence, he need not be issued with any Charge Memo moreso, with regard to serious misconduct.

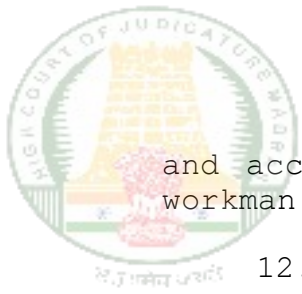


8. Admittedly, the Petitioner is a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. It is not in dispute that, the Petitioner worked for 943 days in the Respondent Corporation. Whether the Petitioner is actually a trainee and whether the Respondent Corporation has extracted work from him ought to have been stated by the Respondent before the appropriate Labour Court, in case, the dispute has been taken up before the Labour Court. Also, the Management of the Respondent Corporation has not conducted any enquiry by issuing a Charge Memo to the Petitioner. However, in order to wriggle out of the situation, the Respondent Corporation has taken a plea before the Conciliation Officer that, the Petitioner has not been disengaged from service.

9. But, in the counter Affidavit, a contradictory stand has been taken by the Respondent Corporation that, the Petitioner has been disengaged from service. Had the stand taken by the Respondent Corporation in the counter Affidavit been taken before the Conciliation Officer, based on the Report submitted by the Conciliation Officer, the Petitioner would have approached the Labour Court for necessary relief. But, the Management cannot blow hot and cold. Since, the Management has taken a stand that, there was no termination of the Petitioner, even assuming that, the plea taken in the counter Affidavit is correct, it cannot be accepted, as the Respondent Corporation cannot take different stand before different forums and drive the employee from pillar to post. That apart, the Transport Corporation is a 'State' within the meaning of Article 12 of the Constitution of India and is amenable to the jurisdiction of the Court. The contention of the Respondent Corporation that, there is violation of Section 25M and Section 25N of the Industrial Disputes Act, 1947, is rejected.

10. Dehors alternative remedy, this Court is empowered to take up the matter and decide the issue in the light of the judgment of this Court rendered in the case of K.S. Gurumurthy Vs. The Additional Commissioner for Workmen Compensation reported in (1987) 2 MLJ 335. In that case, jurisdiction arose under the Tamil Nadu Shops and Establishment Act, 1947 (in short 'Shops Act'). The Authority has held that, disengagement cannot be tried under Section 41 of the Shops Act, as Nationalized Banks are exempted from the purview of the Shops Act, 1947.

11. When the said matter came up before the Division Bench in the case of Indian Bank, represented by its General Manager, Madras vs. K.S.Gurumoorthy and another reported in 1990 II LLN 355, the Court posed a question that, even though, Shops Act is not applicable, since Indian Bank is amenable to the jurisdiction of this Court, this Court is empowered to set right the error committed and grant relief to the parties concerned,



and accordingly, interfered with the punishment imposed on the workman therein.

12. Similarly, in the present case on hand, as stated supra, when the Transport Corporation is a 'State' within the meaning of Article 12 of the Constitution of India, and taking note of the fact that, no Charge Memo was issued to the Petitioner and no enquiry was conducted, the Petitioner has to be reinstated in service, even though the Respondent Corporation has taken a plea before the Conciliation Officer that, there was no termination.

13. Since the Petitioner herein is willing to give up backwages and join duty, so also, the Respondent Corporation has not followed the procedures, this Court is of the view that, the Petitioner shall be reinstated in service on or before 01.09.2021, with continuity of service, with continuous and other attendant benefits from 07.03.2008 and that, he shall be entitled to wages from 01.09.2011 onwards.

14. It is made clear that, the past services of the Petitioner shall be taken into account for the purpose of grant of terminal benefits and notional fixation of wages and it is reiterated that, the Petitioner will not be entitled to any monetary benefits for the past period.

The Writ Petition is allowed on the above terms. No costs. Consequently, connected M.P.Nos.1 and 2 of 2012 are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

(aeb)

To:

The General Manager,
Tamil Nadu State Transport Corporation Ltd.,
(Coimbatore Division), Erode Region,
Sennimalai Road,
Erode 638 001.

+1cc to Mr.S.Ayyathurai, Advocate, S.R.No.28057

W.P.No.3665 of 2012

GPL(CO)
SB(14/06/2021)



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