



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.12.2021

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.3177 of 2016

and

W.M.P.(MD)Nos.2781 and 2782 of 2016

WEB COPY

G.Nagendran

... Petitioner

vs.

1.The General Manager,
Tamil Nadu State Transport Corporation
Limited, Karaikudi Division
Karaikudi, Sivagangai District.

2.The Branch Manager,
Tamil Nadu State Transport Corporation Limited,
Rameshwaram,
Karaikudi Division, Ramanathapuram District.

3.The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Kumbakonam, Thanjavur District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the third respondent in the proceedings in REF:TNSTC/DS/D5/39, dated 18.01.2016, communicated on 04.02.2016 and to quash the same as illegal and consequently to direct the respondents to give all service and attendant benefits to the petitioner in accordance with law.

For Petitioner : No representation

For Respondents : Mr.D.Sivaraman

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order in REF:TNSTC/DS/D5/39, dated 18.01.2016 and consequently to direct the respondents to give all service and attendant benefits to the petitioner in accordance with law.

2.The petitioner was working in the respondent Corporation. A charge memo was issued on 02.08.2014, then an enquiry notice was issued on 07.05.2015. Thereafter the petitioner submitted letter dated 09.05.2015, requesting material documents. An Enquiry Officer



was appointed and the enquiry was conducted on 09.05.2015. In the enquiry, the petitioner sought material documents but, the Enquiry Officer refused to give the documents. The petitioner submitted another representation on 11.05.2015. Again, an enquiry notice was issued but, the petitioner refused to appear for the enquiry. In spite of so many adjournments, dated 16.06.2015, 01.07.2015 and subsequent days, the petitioner did not appear. Thereafter, the enquiry was concluded and the charges were held to be proved.

3.The Enquiry Officer's findings were sent to the petitioner on 31.07.2015 and then on 03.12.2015 the petitioner was dismissed from service. Aggrieved over the order of dismissal, the petitioner preferred an Appeal before the Managing Director of the Corporation. The Managing Director has passed an order, dated 18.01.2016, and confirmed the punishment.

4.Today i.e., on 08.12.2021, when the Writ Petition was taken up for hearing, the petitioner was not present. The petitioner was not represented by any learned Counsel on the earlier occasions also.

5. The respondents have filed counter and heard Mr.D.Sivaraman, learned Counsel appearing for the respondents.

6.It is seen that the petitioner has not availed the opportunities granted to him and has simply stated that he needs documents. The learned Counsel appearing for the respondents submitted that the petitioner has a right to file petition before the Labour Court and the Appeal filed before the Managing Director is illegal, since the Managing Director has no appellate power.

7.The learned Counsel appearing for the respondents relied on a judgment rendered in **Transport and Dock Workers Union and others vs Mumbai Port Trust** and reported in **(2011) 2 SCC 575**. Since there is an alternative effective remedy before the Labour Court, which is a fact finding authority, exercising jurisdiction under Article 226 of the Indian Constitution is not permissible.

8.The respondents also relied on a judgment reported in **2004 (3) CTC 1** and also relied on **W.A. (MD)No.1088 of 2021**, wherein it was held that if there is disputed question of fact, then the appropriate forum is the Labour Court. Therefore, this Court is of the view that the present Writ Petition is not maintainable.

9.Hence, this Writ Petition is dismissed. However, liberty is granted to the petitioner to approach the Labour Court. Since this Writ Petition is pending for so many years, this Court is inclined to condone the delay from 11.12.2016 (the date of filing of this writ petition) until this order, dated 08.12.2021. The Labour



Court shall entertain the petition, if the petition is filed, thereafter decide the case in accordance with law.

10. Accordingly, the Writ Petition is dismissed with liberty to file petition before Labour Court. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Tmg

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

TO:

1. The General Manager,
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2. The Branch Manager,
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Kumbakonam, Thanjavur District.

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-37892[F] dated 09/12/2021)
W.P.(MD)No.3177 of 2016
08.12.2021

RD(22.12.2021) 3P 5C