



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.09.2021

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD)No.8869 of 2016

and

W.M.P. (MD)Nos.7078 and 7079 of 2016

WEB COPY

M.Sadaiyandi

... Petitioner

vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation,
Bye Pass Road,
Madurai District.

2.The General Manager,
Tamil Nadu State Transport Corporation (Madurai),
Bye Pass Road,
Dindigul, Dindigul 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 in Ref: LD: A1/5069 dated 13.08.2015 passed by the second respondent and to quash the same and consequently to direct the respondents to reinstate the petitioner in service by providing alternative employment with continuity of service and full back wages and all other attendant benefits.

For Petitioner : Mr.J.Lawrance

For Respondents : Mr.J.Senthil Kumariah

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the second respondent, dated 13.08.2015 and to direct the respondents to reinstate the petitioner in service by providing alternative employment with continuity of service and full back wages with all other attendant benefits.

2.Heard Mr.J.Lawrance, the learned Counsel for the petitioner and Mr.J.Senthil Kumariah, learned Counsel for the respondents.

3.The petitioner was appointed as a Conductor in the first respondent Corporation. The petitioner was given a charge memo on 08.10.2014 alleging that while he was on duty on 04.10.2014, he



failed to issue tickets to seven persons after collecting ticket fair of Rs.10/- from each. An enquiry was conducted and based on the enquiry report, the petitioner was removed from service.

4.Earlier, the petitioner filed a Writ Petition in W.P.(MD) No.12640 of 2015 for issuing a direction to the respondents to allow him to go on voluntary retirement with all attendant benefits. The said Writ Petition was disposed of with a direction to the respondents to take a decision on the petitioner's representation, dated 03.07.2015. Instead of challenging the impugned order by raising an industrial dispute, the petitioner has preferred the above Writ Petition on the ground that the respondents have failed to follow the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and failed to consider the legal obligation of the respondents under Section 47 of the Disabilities Act, 1995.

5.As against the charges framed against the petitioner, it was the explanation from the petitioner that he suffered from physical ailments, which precluded from discharging his normal duty and that therefore, he applied for providing alternative employment in terms of Section 47 of Disabilities Act, 1995. It is stated further that the respondents did not consider the explanation offered by the petitioner and that therefore, the removal of petitioner from the service is not only arbitrary, but also opposed to moral principles.

6.It is not the case of the petitioner that the order of removal is vitiated for violation of principles of natural justice. It is also not pleaded in the affidavit filed in support of this Writ Petition that the impugned order is passed by a person without authority or the impugned order is not sustainable on any other grounds vitiating the whole proceedings. Hence, this Court will not entertain the Writ Petition directly, as an effective and efficacious alternative remedy is available to the petitioner. However, the learned Counsel for the petitioner submitted that the respondents did not get approval before the Special Deputy Commissioner of Labour, Chennai for imposing such punishment. In the counter affidavit, it is specifically stated that the approval petition, dated 28.08.2015 submitted before the concerned Officer was returned to the respondent Corporation on the ground that there is no dispute pending before the Special Deputy Commissioner of Labour, Chennai.

7.From the reading of Section 33(2)(b) of Industrial Disputes Act, 1947, there is no requirement for getting approval, when no dispute is pending before the Special Deputy Commissioner of Labour, Chennai. Hence, the only ground raised by the learned



Counsel for the petitioner regarding competency of the second respondent or regarding jurisdiction is not sustainable. As a matter of fact, the learned Counsel fairly admitted that no specific ground is raised in the Writ Petition raising an objection with reference to Section 33(2)(b) of Industrial Disputes Act, 1947. For all the above reasons, this Court is of the view that the Writ Petition is not maintainable and hence, liable to be dismissed.

8. Accordingly, this Writ Petition is dismissed. However, liberty is given to the petitioner to approach the Labour Court by raising an industrial dispute. Since, it is brought to the notice of this Court that the Writ Petition was filed in 2016 and pending for more than five years, the petitioner may have an obstacle because of limitation. The Labour Court concerned may specifically exclude the time during which this Writ Petition is pending for the purpose of limitation. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

tmg/cmr

To

1. The Managing Director,
Tamil Nadu State Transport Corporation,
Bye Pass Road,
Madurai District.
2. The General Manager,
Tamil Nadu State Transport Corporation (Madurai),
Bye Pass Road,
Dindigul, Dindigul District.

+1 CC to M/s. J. LAWRENCE, Advocate (SR-30081[F] dated 23/09/2021)

W.P. (MD) No.8869 of 2016
23.09.2021

NSN (CO)
SB (05.10.2021) 3P 4C