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W.P.No.31626 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.31626 of 2018

R.Sukumaran

...Petitioner

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation (TNSTC) (Salem Division-I),
12, Ramakrishna Road,
Salem – 7.

..Respondent

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the respondent herein dated 18.07.2016 made in Ka.No.(290-292)-32183-D1 (321-D5) TNSTC - Salem – 216, quash the same and direct the respondent to impose a minor punishment with back wages and without affecting the petitioner's salary.

For Petitioner : M/s.S.Doraisamy
for Mr.V.Elangovan

For Respondent : Mr.R.Babu



ORDER

The punishment of stoppage of increment for five years with cumulative effect imposed in lieu of the original punishment of removal of service issued by the competent authority is under challenge in the present writ petition.

2.The petitioner served as a Conductor in the respondent Transport Corporation. Departmental disciplinary proceedings were initiated against him and charge memo was issued. Departmental enquiry was conducted and the major punishment of dismissal from service was imposed on the writ petitioner. The approval petition filed by the Management of the Transport Corporation was rejected by the Joint Commissioner of Labour and challenging the said order, the Management filed the writ petition before this Court in W.P.No.21108 of 2014. This Court considered the issues and passed an order as under:

11.Considering the overall circumstances of the case and the fact that the workmen were out of employment from the year 2010 onwards and one of the employees, viz., R.Sugumaran, did not even even have the benefit of wages under section 17-B of the Act, these are the fit cases where the petitioner / Management should consider imposing any other



lesser punishment other than dismissal and such re-consideration shall be made by the petitioner/Management within a period of three weeks from the date of receipt of a copy of this order.

12. With the above direction, the writ petitions are disposed of. No Costs. Consequently, the connected miscellaneous petitions are closed.

3. Pursuant to the directions issued by this Court, the authorities have reconsidered the punishment of dismissal from service and imposed a lesser punishment of stoppage of increment for five years with cumulative effect. The said two orders are under challenge in the present writ petition.

4. The learned counsel for the petitioner mainly contended that this Court has considered the merits of the case and directed the authorities to impose lesser punishment, since the original punishment was dismissal from service. Again the authorities have imposed the major penalty of stoppage of increment with cumulative effect. With cumulative effect would affect the future monetary benefit of the writ petitioner including his pensionary benefits and therefore, the said order of punishment is liable to be set aside. That apart, the back wages was also denied to the writ petitioner.



5. Let us consider the procedures and the principles to be followed in the matter of departmental disciplinary proceedings and the power of the judicial review of the High Court under Article 226 of the Constitution of India.

6. The High Court while exercising the power of judicial review has to ascertain the process through which a decision is to be taken by the competent authorities in consonance with the statutes and rules in force, but not the decision itself.

7. The disciplinary authority is competent to impose penalty on the charged official and the quantum of punishment if it is found disproportionate, then alone the High Court may interfere on certain circumstances. In normal circumstances, High Court would not interfere with the quantum of punishment as it is the prerogative of the disciplinary authority. It is for the competent authority to take a decision what would be appropriate punishment with reference to the proved charges in the departmental disciplinary proceedings.

8. As far as the petitioner is concerned, he is the workmen governed under



Section 12 (3) of Settlement of the Industrial Disputes Act. His service conditions are governed under the Settlement. No doubt, High court under certain exceptional circumstances may entertain writ petition without exhausting the alternate remedy contemplated under the Industrial Disputes Act. However, all the cases cannot be entertained in a routine manner by dispensing with the alternate remedy provided under the Industrial Disputes Act.

9. In disciplinary matters an adjudication of disputed facts is warranted. Such an adjudication cannot be done by the High Court in writ proceedings. Roving enquiry is to be conducted with reference to the documents and evidence in original. Therefore, in all circumstances, the workmen has to approach the Labour Court for effective adjudication of issues and to redress the grievances. The factual findings made by the Labour Court in its Award would be of greater assistance to the High Court for the purpose of exercise of the powers of judicial review in an effective manner. Contrarily, if disputed issues are adjudicated merely based on the affidavit filed in the writ petition, this Court is afraid that there is a possibility of miscarriage of justice. Thus, an effective adjudication of disputed issues are of paramount important. In the present case, challenging the order of dismissal from service, the Management filed an



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application for conciliation and approval and the said petition was rejected and therefore, the Management preferred a writ petition before this Court. In the said writ petition, this Court directed the authorities to reconsider the quantum of punishment which was done by the authorities and accordingly, they have reduced the punishment of dismissal from service as that of stoppage of increment for five years with cumulative effect. Under these circumstances, the petitioner has to approach the Labour Court for adjudication of disputed issues. Whether the punishment imposed is proportionate or not is also to be considered by the Labour Court and in this regard, the Labour Court is empowered to interfere under Section 11(A) of the Industrial Disputes Act. When the Labour Court is a judicial forum and the remedy provided is efficacious, High court in ordinary circumstances need not entertain writ petition for adjudication of disputed issues. As in the present case, the petitioner states that the major punishment once again imposed is not in consonance with the gravity of the allegations proved against the petitioner.

10. Thus, this Court is of the opinion that the petitioner has to approach the Labour Court for effective adjudication of issues. The principles in this regard are elaborately considered by this Court in the case of *P.Muthukrishnan and Others vs.*



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The Management of the Tamil Nadu State Transport Corporation (Madurai) and

Others reported in ***MANU/TN/4740/2019*** and accordingly, the petitioner is at liberty to approach the Labour Court for effective adjudication of issues. In the event of any such approach by the petitioner, the Labour Court concerned shall consider the period during which the writ petition was pending before this Court for condoning the delay if any and adjudicate the issues on merits and in accordance with law as expeditiously as possible.

11. With this liberty, this writ petition stands disposed of. No Costs.

17.10.2022

Index : Yes

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Internet : Yes

Speaking order : Yes

ssr

To

The Managing Director,
Tamil Nadu State Transport Corporation (TNSTC) (Salem Division-I),
12, Ramakrishna Road,
Salem – 7



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S.M.SUBRAMANIAM, J.

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