



WEB COPY

W.P.(MD)No.4991 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.4991 of 2010

K.Jegadeesan

... Petitioner

vs.

1.The Presiding Officer,
Labour Court,
Trichy.

2.The Assistant General Manager,
(Works),
State Express Transport Corporation Limited,
(Tamil Nadu),
Trichy.

3.The Managing Director,
State Express Transport Corporation Limited,
(Chennai),
Annasalai, Chennai.

... 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 of the 1st respondent relating to the impugned order, dated 31.08.2009, made in I.D.No.1 of



W.P.(MD)No.4991 of 2010

WEB COPY

2008, to quash the same so far in respect of non-payment of back wages and other benefits as the same is illegal arbitrary ultravires and to direct the 2nd respondent to pay the petitioner the back wages and other benefits on and from 29.06.2001 till 20.05.2009.

For Petitioner : Mr.R.G.Shankar Ganesh

For R1 : Court

ORDER

This writ petition is filed for issuance of a writ of Certiorarified Mandamus, to quash the impugned order, dated 31.08.2009, made in I.D.No.1 of 2008 in so far as in respect of non-payment of back wages and other benefits as the same is illegal arbitrary ultravires and to direct the 2nd respondent to pay the petitioner the back wages and other benefits on and from 29.06.2001 till 20.05.2009.

2.The petitioner joined as Conductor and he was terminated from service on 13.04.1979. Based on the appeal, he was appointed afresh on 26.05.1986. He was made permanent after completion of 240 days. Again, he was terminated on 31.01.1995 on medical grounds. Thereafter, 18(1) settlement was entered on



W.P.(MD)No.4991 of 2010

WEB COPY

08.07.1996. Based on the settlement, he was working at Salem and thereafter, transferred to Trichy on his request and he was directed to work in the technical department. Since his health condition further deteriorated, he availed medical leave from 20.11.1999 to 26.12.1999. To avail medical leave he submitted a requisition requesting to grant leave. But respondents refused to accept the request. Hence, the petitioner sent a telegram on 20.11.1999. Again on 25.11.1999, the petitioner requested to grant leave by explaining his health condition. Thereafter, a charge memo, dated 10.12.1999 was issued. The petitioner submitted his explanation on 24.02.1999. Subsequently, joined duty on 28.12.1999 along with medical certificate. The second respondent failed to pay salary on 29.09.2000 and an enquiry was conducted. Without perusing the documents nor analyzing the petitioners' health condition, the enquiry officer without affording opportunity to the petitioner passed an order by holding the charges are proved. A show cause notice was issued by the disciplinary authority on 29.09.2000. Thereafter, the second respondent passed the final order on 29.06.2001, terminating the petitioner from service. Aggrieved over same, the



W.P.(MD)No.4991 of 2010

WEB COPY

petitioner preferred an appeal and the same was rejected on 13.08.2001. Second appeal was preferred and the same was dismissed on 21.04.2003. Aggrieved over the same, the petitioner filed W.P.No.17992 of 2006 and this Court directed the petitioner to approach the Labour Court. Thereafter, the petitioner withdrew the writ petition and filed a petition before that Labour Court. After conciliation proceedings failed, the petitioner filed I.D.No. 1 of 2008. The Labour Court set aside the order dated, 29.06.2001, however, refused back wages. In the meanwhile, the petitioner attained superannuation on 20.05.2009. The petitioner was out of service for the past 8 years.

3. The petitioner was charged for unauthorized absent and charges were framed. The contention of the petitioner is that he had filed the application along with medical certificate, when the respondent declined to accept the petitioner had taken efforts to submit the same through telegram. Even then the respondents failed to consider the case.



W.P.(MD)No.4991 of 2010

WEB COPY

4. The case was dismissed on 19.09.2019 for non-prosecution. The petitioner had filed restoration petition in W.M.P.(MD)No.21040 of 2022 and the writ petition was restored on 30.11.2022. In spite of notice to the learned standing counsel for the respondents, the learned standing counsel did not appear before this Court.

5. The learned Counsel appearing for the petitioner submitted that since the petitioner is aged about 70 years and he is in deathbed, he requested to take up the case for hearing and pass orders on merits. Moreover, the learned Counsel for the petitioner submitted that he was engaged by the Legal Aid Service.

6. The contention of the petitioner is that the petitioner could not attend his duty because he was ill and he was detected having jaundice. Hence, the petitioner in order to avail medical leave from 20.11.1999 to 26.12.1999, he submitted a requisition to the respondents to grant leave. But the second respondent refused to accept the requisition. The petitioner also submitted a



W.P.(MD)No.4991 of 2010

WEB COPY

telegram on 20.11.1999. Further on 25.11.1999, he submitted a detailed requisition explaining his health condition. The respondents ought to have accepted the request of the petitioner, when it was submitted along with the medical certificate. The medical certificate was marked before the Labour Court as Exhibit-1, dated 20.11.1999. When the medical certificate was submitted, the respondents ought to have referred the petitioner to the medical board to ascertain whether the petitioner needs medical assistance. Without referring the petitioner to be medical board, without asserting the said fact, the respondents ought not to have rejected the claim of the petitioner. Moreover, as per the contention of the respondents, absence is for only one month. In such circumstances, the punishment of termination from service is absolutely disproportionate. The Labour Court has held that the termination is illegal. However, denied backwages for the period from 2001 to 2009. The petitioner is aggrieved by the denial of the back wages and has preferred this writ petition. The Labour Court has further held that the petitioner is not entitled to back wages as well as the petitioner is not entitled to any other benefits and the petitioner is entitled to retirement benefits



W.P.(MD)No.4991 of 2010

WEB COPY

only.

6.The learned Counsel for the petitioner further submitted that the petitioner is seriously ill and he needs monetary benefits for his treatment. Considering all these factors, this Court is passing the following orders.

i. The Labour Court having held the termination as illegal, ought to have granted other benefits. Therefore, this Court is modifying the punishment of termination from service into compulsory retirement.

ii. For the period from date of dismissal to superannuation, the petitioner is entitled to 50% of the back wages.

iii. The petitioner is entitled to continuity of service for the other period except the non-employment period.

iv. For the non-employment period, he is entitled to 50% of continuity of service.



W.P.(MD)No.4991 of 2010

WEB COPY

v. The respondents shall grant terminal benefits by calculating the service as stated supra.

vi. The respondents shall implement this order within a period of 4 weeks from the date of receipt of a copy of this order.

7. With the above said modifications, the writ petition is disposed of. No costs.

Index : Yes / No

01.12.2022

Internet : Yes

Tmg

To

The Presiding Officer,
Labour Court,
Trichy.



WEB COPY



W.P.(MD)No.4991 of 2010

S.SRIMATHY, J

Tmg

W.P.(MD)No.4991 of 2010

01.12.2022