



WEB COPY

W.P.(MD)Nos.12461 and 19702 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.12461 and 19702 of 2014

and

M.P.(MD)Nos.1 and 1 of 2014

W.P.(MD)No.12461 of 2014:

C.Alagarsamy

... Petitioner

vs.

1.The Managing Director,
Tamilnadu State Transport Corporation
(Madurai) Limited,
Byepass Road, Madurai-16.

2.The General Manager,
Tamilnadu State Transport Corporation
(Madurai) Limited,
Dindigul Region, Byepass Road,
Dindigul-4.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondents to reinstate the petitioner



W.P.(MD)Nos.12461 and 19702 of 2014

WEB COPY

with continuity of service with back wages and all other attendant and monetary and other service benefits in the light of the order passed by the authority under Section 33(2)(b) of Industrial Disputes Act in A.P.No.67 of 2010 rejecting the approval petition filed by the respondents.

For Petitioner : Mr.S.Govindan

For Respondents : Mr.J.Senthil Kumaraiah

W.P.(MD)No.19702 of 2014:

The General Manager,
Tamil Nadu State Transport Corporation
(Madurai) Limited,
Bye Pass Road,
District Collector Office Post,
Dindigul-624 004.

... Petitioner

vs.

1.The Special Deputy Commissioner
of Labour,
Office of Commissioner of Labour,
Chennai-600 006.

2.C.Alagarsamy

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the 1st respondent in his proceedings in approval petition A.P.No.67 of 2010, dated 27.12.2012, to quash the same.



WEB COPY

W.P.(MD)Nos.12461 and 19702 of 2014

For Petitioner : Mr.J.Senthil Kumaraiah
For R1 : Mr.P.Thambidurai
Government Advocate
For R2 : Mr.S.Govindan

COMMON ORDER

This writ petition in W.P.(MD)No.19702 of 2014 is filed for issuance of writ of Certiorari, to quash order of the 1st respondent passed in Approval Petition A.P.No.67 of 2010, dated 27.12.2012.

2.The brief facts of W.P.(MD)No.19702 of 2014 are that the 2nd respondent Mr.C.Alagarsamy was appointed as Daily Wages Driver. The contention of the petitioner Corporation is that the 2nd respondent while joining as Driver had suppressed the truth that he was accused for offences under Sections 147, 148, 324 and 307 of Indian Penal Code in Crime No.91 of 2003 on the file of Natham Police Station. It is an offence as per the Standing Order in section 16(5) of the Corporation. Hence, a charge memo was issued for the said misconduct. After following the principal Natural Justice, the 2nd respondent was dismissed from service by an order, dated 28.06.2010. After passing the order, the petitioner



W.P.(MD)Nos.12461 and 19702 of 2014

WEB COPY

Corporation filed an approval petition before the 1st respondent under section 33(2) (b) of the Industrial Dispute Act, 1947, requesting approval for the dismissal of the 2nd respondent. The above approval petition was taken on the file of the 1st respondent in Approval Petition No.67 of 2010. The contention of the petitioner Corporation is that the petitioner Corporation has filed all relevant documents pertaining to the disciplinary action. After hearing the both side arguments, 1st respondent passed the impugned order, dated 27.12.2012, refusing to grant approval. Aggrieved over the same the present writ petition in W.P. (MD)No.19702 of 2014 is filed.

3.The said Mr.C.Alagarsamy has filed W.P.(MD)No.12461 of 2014, for issuance of a writ of Mandamus, to direct the Corporation to reinstate him with continuity of service with back wages and all other attendant and monetary and other service benefits in the light of the order passed by the authority under Section 33(2)(b) of Industrial Disputes Act in A.P.No.67 of 2010.



W.P.(MD)Nos.12461 and 19702 of 2014

WEB COPY

4. In short the Corporation has filed W.P.(MD)No.19702 of 2014 to quash the order passed by the authority and Mr.C.Alagarsamy has filed W.P.(MD)No. 12461 of 2014 to implement the order passed by the authority.

5. Heard Mr.J.Senthil Kumaraiah, learned Counsel appearing for the Corporation in both the writ petitions, Mr.S.Govindan, learned Counsel appearing for Mr.C.Alagarsamy in both the writ petitions and Mr.P.Thambidurai, learned Government Advocate appearing for the official respondent in W.P.(MD)No. 19702 of 2014 and perused the records placed before this Court.

6. The said Mr.C.Alagarsamy was appointed as Driver and was facing criminal charge for the FIR filed in the year 2003. Admittedly, when the petitioner was joining the service, the FIR was pending. The learned Counsel appearing for Mr.C.Alagarsamy submitted even though the FIR was filed, the delinquent was finally acquitted in the criminal case. However, the acquittal order was passed in the year 2011. In the meanwhile, he was dismissed from service, vide order,



W.P.(MD)Nos.12461 and 19702 of 2014

WEB COPY

dated 28.06.2010, prior to the order of acquittal. Admittedly, there was a FIR pending for adjudication, at the time of joining service. The Labour Officer has refused approval for the reason that the management has not produced the enquiry report and the minutes of the enquiry report. The learned Counsel appearing for the Corporation submitted that the enquiry report and minutes of the enquiry report was submitted before the Labour Officer and it has been marked as Exhibit P5. Without considering the Exhibit P5, the Labour Officer has declined to grant approval. The Labour Officer has committed error which can never be allowed. It is an admitted fact that there was a FIR prior to the joining of service. The employee ought to have brought to the knowledge of the management prior to joining the service. The learned Counsel appearing for Mr.C.Alagarsamy submitted if there was delay in seeking approval, the writ petition filed by the Corporation should be dismissed. For the said plea of delay and laches, the petitioner delinquent relied on the judgment rendered in W.P.(MD)Nos.12859 and 14242 of 2018, dated 13.12.2021. The Labour Officer has passed the impugned order, dated 27.12.2012 and the management has preferred this writ petition in



W.P.(MD)Nos.12461 and 19702 of 2014

WEB COPY

2014. There was a delay of 23 months.

7. Therefore, this Court is of the considered opinion that this delay cannot grant any advantageous position to the employee. If there is a delay or mistake committed by the management, the management should be punished for such mistake. The mistake committed by the management cannot be advantageous to the employee. Moreover, the Labour Officer has not taken the enquiry report and the minutes of the enquiry report which was marked as exhibit P5, this is absolutely fatal to the order of the Labour Officer.

8. Since there are mistakes on either side, this Court in order to meet the ends of justice, is directing the management to recruit as fresh entrant and the delinquent is not entitled to all other benefits.

9. The writ petition filed by the management in W.P.(MD)No.19702 of 2014 and the writ petition filed by the employee W.P.(MD)No.12461 of 2014 are



W.P.(MD)Nos.12461 and 19702 of 2014

WEB COPY

disposed of as stated above. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes

23.11.2022

Tmg

To

The Special Deputy Commissioner
of Labour,
Office of Commissioner of Labour,
Chennai-600 006.



WEB COPY



W.P.(MD)Nos.12461 and 19702 of 2014

S.SRIMATHY, J

Tmg

W.P.(MD)Nos.12461 and 19702 of 2014

23.11.2022