



W.P(MD)No.22426 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.10.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD).No.22426 of 2016

and

W.M.P(MD).No.16060 of 2016

R.Pandi,

: Petitioner

Vs

1. The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai) Limited.,
Bye Pass Road,
Madurai

2. The General Manager,
Tamil Nadu State Transport Corporation
(Madurai) Limited,
Dindigul Region,
Bye Pass Road,
Collectorate Post, Dindigul

: Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the 2nd Respondent in his



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proceedings in Ref.Sa.Thu.A1:5875, dated 31.01.2015 and quash the same as illegal and consequently direct the Respondent herein to regularize the period of alleged unauthorized absence from the duty of the Driver from 25.07.2011 to 23.11.2011, 24.11.2011 to 03.06.2012 and 10.08.2013 to 12.08.2014 as service period of the Petitioner and consequently pay all the service and monetary benefits for the said period.

For Petitioner : Mr.J.Lawarance

For Respondents : Mr.J.Senthil Kumaraiah

Standing Counsel

ORDER

This writ petition had been filed in the nature of Certiorarified Mandamus to quash the impugned order passed by the 2nd Respondent in his proceedings in Ref.Sa.Thu.A1:5875, dated 31.01.2015 and consequently to direct the respondent herein to regularize the period of alleged unauthorized absence from the duty of the Driver as service period of the Petitioner and pay all the service and monetary benefits.



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2. The brief facts of the case are that the petitioner was appointed as Driver on 10.05.1996 and was regularized with effect from 01.07.1997. On 19.09.2009, the petitioner underwent medical examination, wherein, it was informed that he had eye defects. Therefore, the petitioner was not allowed to join work from 07.10.2009. Though the petitioner suffered with eye defects, the second respondent has not provided any alternative employment. The petitioner submitted the representations, dated 13.10.2009 and 23.10.2009, seeking alternative employment. Thereafter, the petitioner has approached this court by filing a petition in W.P(MD)No.12040 of 2009 for Mandamus. By invoking Section 47 of the Persons with Disabilities (Equal, Opportunities, Protection of Rights and Full Participation) Act, 1995, wherein, this court disposed that writ petition vide order dated 23.11.2009 and directed the respondent Corporation therein to provide suitable alternative post with continuity of service w.e.f. 07.10.2009. Thereafter, the second respondent directed the petitioner to appear before the Medical Board on 18.12.2009 and the Medical Board submitted a report to the second respondent, dated 06.01.2010 and stated that the petitioner has color vision defect. Thereafter, the petitioner was not allotted any work permanently. In the meanwhile, the petitioner was transferred to Batlagundu Branch, wherein,



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the Branch Manager, orally directed the petitioner to do work from 01.01.2010 to July 2010. Thereafter, the petitioner was directed to do some technical work and other works temporarily. Even though the petitioner was not having any technical knowledge, the petitioner was directed to do some technical work. The second respondent issued a notice as if the petitioner was absent from the duty. Hence the petitioner has given another representation to provide alternative employment. The petitioner was given on and off work by the respondents. Finally, the petitioner was granted a permanent post as alternative employment vide order dated 11.08.2014. The petitioner had joined his service from 13.08.2014. This has led to issue of several charge memo. All the charge memos have ended in punishment of warning. Now, the issue before this Court is in the impugned order, dated 31.01.2015, for three spells of unauthorized absence, the respondents have regularized the said period as loss of pay.

3.The contention of the petitioner is that this period is not at all unauthorized absence period because the respondents have not provided any alternative employment. The petitioner was not in a position to render his duty. The respondents have provided alternative employment in a temporary



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post on and off. Finally, he was granted a permanent post of alternative employment from 13.08.2014. Since it is not the mistake of the petitioner, the impugned order regularized the three spells of absence as loss of pay, which will seriously affect his pensionary benefits and other benefits. Therefore, the petitioner has come out with this petition.

4.The respondents have filed counter stating that the petitioner was granted alternative remedy in the year 2010 itself. But the petitioner has refused to do his duty. Subsequently, he was transferred to Bathlagundu and he has rendered his duty from 2012 to 2013. When the petitioner was directed to appear before the Medical board, he has challenged the same in W.P(MD)No.14373 of 2012 and the second medical examination notice was quashed by this Court. Thereafter, the petitioner was granted alternative employment in a permanent post from 11.08.2014. Prior to 11.08.2014, the petitioner refused to carry out work, whenever technical work was assigned to the petitioner. Therefore, the respondents have regularized the said period as loss of pay. Since the petitioner has not worked during that period, “no work no pay” principle is applicable to the petitioner. The said period was considered as loss of pay. Therefore, the respondents prayed to dismiss this



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5.Heard the learned Counsel appearing on either side and perused the records.

6.The contention of the petitioner is that the Branch Manager would deny to grant temporary work since there was no proper communication from the Main Office to provide alternative employment. In such circumstances, the petitioner was transferred to some other place. In one such circumstance, the petitioner has challenged the transfer in W.P(MD)No.15219 of 2013 and this Court dismissed that petition and directed the respondents therein to provide alternative employment to the petitioner. In such circumstances, three spells of absence cannot be considered as if the petitioner was voluntarily absented. In other words, the petitioner has not absented unauthorizedly.

7.Therefore, the impugned order of regularizing the said period as loss of pay is illegal. Hence the impugned order is set aside. Even according to the respondents, the punishment, which was imposed on the petitioner is only a warning. If there was huge authorized absence, the respondents would have



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imposed major punishment. Since it is only a warning, regularizing as loss of pay is not necessary. This would amount to another punishment. Therefore, this Court directs the respondents to regularize the said disputed period with all consequential benefits, including monetary, service and other attendant benefits and the said exercise shall be completed within a period of six weeks, from the date of receipt of a copy of this order.

8. With the above direction, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes/ No
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To
1. The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai) Limited.,
Bye Pass Road,
Madurai



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S.SRIMATHY, J.

lr

2. The General Manager,
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