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WP.Nos.13516 to 13519 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos. 13516 to 13519 of 2013

and

M.P.No. 1,1,1 & 1 and 2 of 2013

V.Thalapathy

....

Petitioner in all W.Ps

Vs

1. The Principal Secretary to Government,
Transport (RW1) Department,
Secretariat, Chennai – 600 009.

2. The Managing Director,
Tamil Nadu Metropolitan Transport Corporation,
Pallavan Salai, Pallavan Illam,
Chennai – 2.

3. The General Manager, Incharges,
Tamil Nadu Metropolitan Transport Corporation,
Pallavan Salai, Pallavan Illam,
Chennai – 2.

4. Mr.Prem Kumar, General Manager,
Tamil Nadu Metropolitan Transport Corporation,
Pallavan Salai, Pallavan Illam,
Chennai – 2.
Now working as a Director,
at IRT, Tharamani, Chennai.



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4. Mr.Krishna, Staff No.A23976,
The Branch Manager, Tondiarpet Depot-II,
Tamil Nadu Metropolitan Transport Corporation,
Chennai – 600 081.

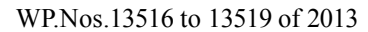
Now working at Madhavaram Branch Respondents in all W.Ps

Prayer in W.P.No.13516 of 2013:- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records from the third respondent relating to the impugned order in Reference No.27151/sa.Pi/Nee.Na/5/Ma Po Ka/2012 dated 18.04.2013 to quash the same as illegal and consequently directing the second and third respondents not to initiate any disciplinary proceedings against the petitioner.

Prayer in W.P.No.13517 of 2013:- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondent to produce the documents relating to disciplinary proceedings initiated against the petitioner so as to prove the fraud committed by the respondent and innocence of the petitioner within a time limit.

Prayer in W.P.No.13518 of 2013:- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the fourth respondent to submit the explanation as to why the fourth respondent failed to implement the order of this Court in W.P.No.12429 of 2012 dated 08.01.2013 within the prescribed time period.

Prayer in W.P.No.13519 of 2013:- Writ Petition is filed under Article 226



For Petitioner : No appearance

For R1 : Mr.L.S.M.Hasan Fizal
Additional Government Pleader

For R2 & R3 : Mr.R.Balaji

For R4 & R5 : No appearance

W.P.No.13516 of 2013 has been filed challenging the order passed by the third respondent dated 18.04.2013 in Reference No.27151/sa.Pi/Nee.Na/5/Ma Po Ka/2012, thereby rejected the request made by the petitioner to take appropriate action as against the officials.

2. W.P.No.13517 of 2013 has been filed for direction directing the respondent to produce the documents relating to disciplinary proceedings initiated against the petitioner so as to prove the fraud committed by the respondent and innocence of the petitioner within a time limit.

3. W.P.No.13518 of 2013 has been filed for direction directing the



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fourth respondent to submit the explanation as to why the fourth respondent failed to implement the order of this Court in W.P.No.12429 of 2012 dated 08.01.2013 within the prescribed time period.

4. W.P.No.13519 of 2013 has been filed for direction directing the first and second respondents to take necessary action against Mr.Prem Kumar, the General Manager and fourth respondent and Mr.Krishnan, the fifth respondent respectively as per the petitioner representation dated 23.04.2013 within time frame.

5. The petitioner was working as a Conductor. While he was in service, he had been imposed with 23 numbers of punishment. Out of such punishments, he was charged with misappropriation for 14 times and unauthorised absence for 4 occasions. He was also charged with disorderly behaviour on 5 occasions. During his service, he has indulged many misconducts and the same has caused loss of confidence on the petitioner. Under these circumstances, the petitioner had absented from duty unauthorisedly without any authorisation from 12.01.2012. Therefore, the Branch Manager sent a report dated 24.09.2012 complaining the unauthorised absence of the petitioner. Thereafter, he was served with



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charge memo dated 26.09.2012. In the meanwhile, the petitioner submitted a representation dated 09.04.2012. Thereafter, he filed a writ petition before this Court seeking for disposal of his representation and this Court directed the respondents to consider the representation made by the petitioner to grant him employment. Though the petitioner was given ample opportunity to participate in the enquiry on various dates, he failed to appear before the Enquiry Officer.

6. Based on the enquiry report, there was provisional conclusion and the petitioner was issued with a show cause notice. On receipt of the same, the petitioner filed these writ petitions, which are follows :

“(1) W.P.No.13516 of 2013 challenging the second show cause notice in Reference No.27151/sa.Pi/Nee.Na/5/Ma Po Ka/2012 dated 18.04.2013 to quash the same as illegal.

(2) W.P.No.13517 of 2013 Writ of Mandamus directing the respondent to produce the documents relating to disciplinary proceedings initiated against the petitioner so as to prove the fraud committed by the respondent and innocence of the petitioner.

(3) W.P.No.13518 of 2013 Writ of Mandamus directing the fourth respondent to submit the explanation as



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to why the 4th respondent failed to implement the order of this Court in W.P.No.12429 of 2012 dated 08.01.2013.

(4) W.P.No.13519 of 2013 Mandamus directing the first and second respondents to take necessary action against the General Manager and Branch Manager.

7. A perusal of the counter filed by the 2nd and 3rd respondents reveals that the documents filed in support of the writ petitions were neither received by the respondent nor there was such an application for leave received from the petitioner. It is pertinent that the above documents are created and fabricated for the purpose of the writ petition. The above writ petitions are not maintainable for the fact that the writ petitions against the provisional show cause notice is not maintainable in the eye of law. In the celebrated judgments the Hon'ble Supreme Court and High Court, it was held that the provisional show cause notice is not a final decision arrived by the employer and it is a mere show cause notice sent to the individual seeking his explanation to be conclusion arrived by the employer.

8. Further, the writ petition filed with a prayer of seeking documents is also not maintainable in the eye of law as the final report was sent to the individual along with a second show cause notice. If there was



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any claim for the documents pertaining to the enquiry, it shall be dealt with by the Enquiry Officer or by the disciplinary authority. The Courts have time and again has held that there is a classification of documents which can be sought by the individual in the enquiry. The writ petition complaining against the Superior Officer is also not maintainable in the eye of law as the same is relied on a summarize of facts narrated by the petitioner and it does not rest on any proof of evidence.

9. In view of the above, all the writ petitions are devoid of merits and are liable to be dismissed. Accordingly, these Writ Petitions stand dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

08.09.2023

Index:Yes/No
Internet:Yes/No
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To

1. The Principal Secretary to Government,
Transport (RW1) Department,
Secretariat, Chennai – 600 009.

G.K.ILANTHIRAIYAN,J.

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2. The Managing Director,
Tamil Nadu Metropolitan Transport Corporation,
Pallavan Salai, Pallavan Illam,
Chennai – 2.

3. The General Manager, Incharges,
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