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W.P.No.16626 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.07.2023

PRONOUNCED ON : 17.10.2023

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

W.P.No.16626 of 2012

A.S.Gangadaran (Died)

2.Sasikala

3.Dharanidharan

4.Saranya : Petitioners

[Petitioners 2 to 4 substituted as LR's of the deceased sole
petitioner vide order dated 08.06.2023 in W.M.P.No.4857 of 2023]

-VS-

1.The Tamil Nadu State Transport
Corporation (Salem) Ltd.,
Rep. By its Chairman-cum-Secretary to
Government, Transport Department,
No.12, Ramakrishna Road,
Salem-636 007.

2.The Managing Director,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
No.12, Ramakrishna Road,
Salem-636 007. : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records



W.P.No.16626 of 2012

pertaining to the order in Pa.Mu.No.41-31314-D2-TNSTC-2008-1, dated 27.04.2010 passed by the second respondent imposing the petitioner the punishment of dismissal from service and the order of the first respondent dated 30.09.2011 rejecting his appeal which was communicated by the second respondent in his letter No.D2/3134/TNSTC (Salem) 2008-1, dated 24.10.2011 quash the same and consequently, direct the respondents to reinstate him into service on paper with continuity of service, back wages and all other attendant benefits from the date of dismissal to the date of superannuation and also to settle the petitioner forthwith all the terminal benefits including monthly pension with effect from 01.06.2010 with arrears and other consequential benefits together with interest, award costs.

For Petitioner : Mr.V.Ajoy Khose

For R1 : Mr.M.Muthusamy
Government Advocate

For R2 : Mr.R.Babu

ORDER

This Writ Petition has been filed by the petitioner to quash the dismissal order passed by the second respondent dated 27.04.2010 and other appeal and revision orders and consequently, reinstate his service on par with continuity and back wages and attending circumstances.



W.P.No.16626 of 2012

2. The service matrix of the petitioner that are required for the determination in this case, are as under:

2.1. The petitioner was appointed as Assistant and elevated to the rank of Senior Assistant under time bound review under Longevity Pay Scheme. The elevation in the hierarchy was not based on merit but on the efflux of prescribed time like 6 years and 8 years, the elevation was given effect.

3. The brief facts are:

3.1. The petitioner was promoted to the cadre of Deputy Manager during the tenure of his service as Deputy Manager (Personnel) in the Personnel Section at Dharmapuri Regional Office, Driver and Conductors were appointed at Dharmapuri Region in large numbers through Employment Exchange. During the retirement, in gross abuse of power by him tampering records, the petitioner maneuvered to send call letters to 19 candidates not sponsored by the Employment Exchange and 15 among them being appointed as Conductors in the respondent Corporation.

3.2. When the District Employment Officer, Dharmapuri vide



W.P.No.16626 of 2012

his letter dated 11.07.2008 requested to furnish him a copy of sponsored list as the same was not readily available in his office stating Tvl.S.Murugan S/o.Subramani and Sankar S/o.Munusamy, permanent residence of Kadathur, Dharmapuri District, have been issued order of appointment through not sponsored by the Employment Exchange. While inquiring into the above, it was noticed besides the above averted two persons as many as 19 persons not sponsored by the Employment Exchange have been issued call letters and 15 among them have been appointed. The call letters were sent for 19 persons taking advantage of double entries found in respect of 19 persons in the sponsored lists by the Employment Exchange.

3.3. The letter dated 11.07.2008 received from the District Employment Officer, Dharmapuri set the disciplinary action in motion. It is only when probing into details as to how to the two persons averted in the District Employment Officer letter were give appointment orders, though actually not sponsored by the District Employment Office, the further irregularities in another 17 cases came to light.

3.4. The petitioner was Deputy Manager in the personnel



W.P.No.16626 of 2012

Department during the material time. He was solely Managerial in-charge of recruitment of Drivers and Conductors in actual connivance and criminal conspiracy with the other staff by maneuvering and interpolating in the official documents he arranged to send call letters to 19 Conductors, not sponsored by the Employment Exchange and 15 among them being selected and appointed.

3.5. The charge sheet has been issued to the petitioner on 07.10.2008 and that the petitioner has not given any reply and the domestic enquiry was ordered to be conducted and in the enquiry, sufficient opportunities have been placed and charges are found to have been proved and second show cause notice was issued and explanation submitted by the petitioner found to be unsatisfactory and the proposed punishment was confirmed and he was dismissed from service on 27.04.2010. The departmental appeal and mercy petition have also been rejected and hence, the writ petition.

4. The alleged malpractice has been exposed in the newspaper and the District Employment Officer has asked for the copy of the list of



W.P.No.16626 of 2012

sponsor candidates sent by him that exposed the *Pandora* box.

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5. In short, the prime allegation is that in the sponsor list, the name of the candidates, there has been some repetition to the extent of 19 people and wherever there is a repetition, those 19 people names have been deleted and non-sponsored names have been included and interview card has been dispatched. Out of the 19 people, two persons did not attend the interview, two persons were not selected, however, 15 persons were selected. It remains to be stated that these 15 people are not at all sponsored by the District Employment Officer, however, due to some process, the names have been included as stated *supra*.

6. On publication of certain complaints in the local newspaper, the District Employment Officer had addressed a letter to sent the lists forwarded by him to the first respondent, which has opened in the *Pandora* box. On enquiry, the enquiry officer, held that the charges are proved and after issuance of show cause notice, namely, the second show cause notice, the petitioner was dismissed from service. At that time of passing of such



W.P.No.16626 of 2012

order, the petitioner had 33 days, while the other officer by name, Thatchanamoothy, who is the petitioner herein in W.P.No.9618 of 2012 had six months to retire. The departmental appeal was dismissed and mercy petition was also dismissed and hence, the above the writ petition. The present petitioner died pending the writ petition and his legal representatives are brought on record.

7. The learned counsel for the second respondent has also filed counter in this case.

8(a). After hearing the submissions and also the back records, this Court finds that the petitioner has signed in the note file invariably at all places when orders were sought for sending call letters to 3466 persons for the period from 17.04.2007 to 05.06.2007.

8(b). From the above, it is established that call letters have been sent invariably on all occasions only after the approval of petitioner and that the petitioner had been indifferent in discharge of his duties, is further established and that he has mechanically without application of mind put his signatures denoting approval, without caring to verify whether draft call letters together with list of names have been put up or not. Why did the



W.P.No.16626 of 2012

petitioner deemed fit to insist putting up draft call letters with list of candidates at all corresponding places when note seeking approval to issue call letters was sought more especially to begin with that was the practice observed.

8(c). It is needless to state that the petitioner was a Deputy Manager (Personnel) with thirty five years experience can least be expected to approve a blanket note, leaving others to fill up details. By his willing slothfulness, he abetted others to commit mischief and committed mistakes himself to so allowing. It is true, relevant note file contains date and reference under which employment exchange list was received.

8(d). A duty is cast upon him to ensure that call letters were issued only to those for whom approval was obtained and without personally satisfying himself by physically verifying names of individual candidates, petitioner has simply signed on the dotted lines.

8(e). The domestic enquiry officer gave a categorical finding based upon the records that since in the first few pages of relevant note file, orders were obtained putting up corresponding drafts concerned. For the sudden topsy-turvy swerving in the subsequent pages, no satisfactory explanation is coming forth from the petitioner and it is only in the



W.P.No.16626 of 2012

subsequent pages mischief stealthily crept in and got manipulated. Call letters for nineteen conductors not sponsored by Employment Exchange were sent in the later part of the note file, wherein, the petitioner signed without understanding its significance.

8(f). Hence, the petitioner being a manager of personnel, has failed to make effective supervision and paved way for the mischief to take place and he failed and neglected to discharge his duties in the capacity of managerial and in abuse of power, he has committed irregularities in the appointments made for the post of 15 conductors in total infringement of rules. Admittedly, for sending the call letters, preparation of computer penal list and appointment order etc., they had resulted in substitution of names of 19 Conductors, those names were not sponsored through Dharmapuri Employment Exchange resulted in selection of 15 out of them.

9. The petitioner has simply shifted the onus of burden on the shoulders of his subordinate officers. The petitioner has indicted for dereliction of duty. For dereliction of duty, existence of duty is the foundation. The petitioner had a duty to be careful and diligent, which he failed to observe. The ascertainable duty the petitioner owed to management as Section Head of Personnel Wing and member of interview committee for



W.P.No.16626 of 2012

recruitment have been breached by him. Nevertheless, in utter defiance, he has found fault with his subordinates. The fact remains that the petitioner has failed to ensure that the selection orders were issued only to the candidates sponsored by employment exchange.

10. Negligence in legal sense is rather negative than positive concept. In any given circumstances, as stated *supra*, it is the failure to exercise the care which circumstances demands and taking note of the entire factual finding rendered by the domestic enquiry, the petitioner's service benefit that his subordinates would have checked up its correctness and accuracy cannot be an extenuating factor and thus, I find that the charges that stand proved in the domestic enquiry and the resultant punishment inflicted by the authorities are in commensurate with the proved charges and hence, I am not inclined to interfere with the same.

11. In this view of the matter, this Writ Petition is dismissed.

No costs.

17.10.2023

Index: Yes / No

Internet: Yes / No



W.P.No.16626 of 2012

NCC : Yes/No

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To

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The Chairman-cum-Secretary to Government,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
Transport Department,
No.12, Ramakrishna Road,
Salem-636 007.



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W.P.No.16626 of 2012

RMT. TEEKAA RAMAN, J.

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Pre-Delivery Order made in
W.P.No.16626 of 2012

17.10.2023