



W.P.No.19399 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.19399 of 2016

All India Loco Running Staff Association,
Rep. by its Divisional Secretary,
(Now Divisional President),
116-D, Railway Colony, Erode - 2.

...Petitioner

Vs.

1. The Divisional Railway Manager,
Salem Division, Southern Railway,
Salem.
2. The Sr. Divisional Electrical Engineer (TRD),
Salem Division, Southern Railway,
Salem.
3. The Chief Crew Controller,
Crew Booking Office, Southern Railway,
Salem.
4. The Control Government Industrial Tribunal
Cum Labour Court (CGIT), Chennai,
Rep. by its Presiding Officer,
1st Floor, B-Wing, Shastri Bhavan,
26, Haddows Road, Chennai - 600 006.

...Respondents



W.P.No.19399 of 2016

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records: (i) to quash the Award dated 03.09.2014 passed by the 4th respondent in Industrial Dispute No.51/2013 and copy of the same received by the petitioner on 23.10.2014 and (ii) to direct the respondents to treat the period from 02.04.2012 to 05.07.2012 (both days inclusive) as duty in respect Mr.N.Balamurugan, Assistant Loco Pilot (now Loco Pilot-Goods) and consequently to draw salary for the said period with 12% interest per annum to award costs.

For Petitioner : Mr.R.Pandian

For Respondents : Mrs.T.P.Savitha, SC, for R1 to R3

ORDER

This Writ petition has been filed seeking quashment of the Award passed by the 4th respondent In I.D.No.51 of 2013 dated 03.09.2014 and to consequently direct the respondents to treat the period from 02.04.2012 to 05.07.2012 as duty in respect Mr.N.Balamurugan, Assistant Loco Pilot (now Loco Pilot-Goods) and draw salary for the said period with 12% interest per annum to award costs.

2. The case of the petitioner is that one Mr.N.Balamurugan (for short, the employee) was initially appointed as an Assistant Loco Pilot-Goods in 2004 in Palghat Division. After bifurcation, he was brought under the



W.P.No.19399 of 2016

administrative control of the Salem Division. Thereafter, he was promoted to the post of Senior Assistant Loco Pilot-Goods in the year 2010. The next promotions would be to the post of Loco Pilot (Shunting) and to the post of Loco Pilot (Goods). As per Para 213 of the Indian Railway Establishment Manual (IREM), a person can be promoted to the higher post after due selection process and after imparting the prescribed training. Further as per Note 1 under Para 224 of the IREM Vol.I, an employee can seek postponement of promotion for a short period on account of grave domestic difficulties and other humanitarian considerations. Though the employee successfully completed the promotional course for being eligible to the higher post even in the year 2010, he was not granted promotion. From 2012, the said Mr.N. Balamurugan had been facing family problems. Hence, he sent a letter to the 3rd respondent on 20.02.2012, seeking not to engage him in the higher post of Loco Pilot (Shunting). However, he was directed to work as Loco Pilot (Shunting). In turn, the employee requested the 2nd respondent to allow him to take up the higher responsibility on a later date and sought leave for a month i.e., from 02.4.2012 to 02.5.2012. However, no intimation was given to him as to either sanctioning or rejection of the leave sought for. Therefore, the employee reported himself for duty on



W.P.No.19399 of 2016

04.4.2012. However, he was not allotted any work. Therefore, he signed in the Crew Management System Register (CMSR) so as to report readiness to take up work and he continued to sign CMSR from 02.04.2012 to 05.07.2012. However, to his shock and surprise, the 3rd respondent put absent mark for the period from 02.04.2012 to 05.07.2012 so as to deny salary. Hence, the petitioner association initiated conciliation proceedings and only after the oral instruction of the Conciliation Officer, the 3rd respondent started allotting duty to the employee from 06.07.2012 onwards. Subsequently, the conciliation ended in failure and that is how the matter landed up before the 4th respondent. The petitioner association filed a detailed claim supported by documentary evidence. However, the 4th respondent, without considering the same, passed the impugned award dated 03.09.2014, refusing the claim of the petitioner association seeking payment of salary from April to June 2012 on the ground that, the employee defied the authority and that he refused to be on duty in spite of rejection of his application for leave and that there was no justification for the period, during which, he was absent. Challenging the same, the petitioner is before this Court.



WEB.COM

3. Learned counsel for the petitioner submitted that, since the said Mr.N. Balamurugan had been facing family problems, he requested the 3rd respondent not to engage him in the higher post of Loco Pilot (Shunting), however, he was directed to work as Loco Pilot (Shunting). In turn, the employee requested the 2nd respondent to allow him to take up the higher responsibility on a later date and sought leave for a month i.e from 02.4.2012 to 02.5.2012. However, as there was no intimation given to the petitioner as to either sanctioning or rejection of the leave sought for by him, the employee reported himself for duty on 04.4.2012. Though the employee appeared for duty and signed the registers maintained for the said purpose showing his readiness to take up the duty, he was not allotted any work and the 3rd respondent put absent mark for the period from 02.4.2012 to 05.7.2012 so as to deny salary.

4. He further relied upon the Indian Railway Establishment Code, wherein it is clearly stated that, *the General principle should, however, be that after the leave has been recommended by the Railway servant's immediate controlling authority, the leave may be deemed to have been*



W.P.No.19399 of 2016

sanctioned unless he is given an intimation to the contrary. In the present case, as no rejection order was issued till 02.04.2012, it is deemed that, there is no objection for taking leave. In order to substantiate the request of the employee seeking not to promote him to higher post due to some domestic problems, the petitioner relied upon the Indian Railway Establishment Manual, wherein it is clearly stated that, *Administration can, however, entertain request from employee for postponement of promotion for very short period on account of grave domestic difficulties or other humanitarian considerations. The employee concerned will be promoted after the period provided there is a vacancy and he will take his seniority from the date of promotion.* In the present case, though the employee was facing grave domestic difficulties, and only sought a short time to solve the said difficulties by taking leave, his request of not to promote to higher position as well as the leave was not considered by the management and further though the employee shown his readiness to take up the work, he was not provided with job/or allotted work.

5. Learned counsel appearing for the respondents 1 to 3 submitted



W.P.No.19399 of 2016

that, from the date of formation of the Salem Division, there existed acute shortage of staff in Loco Running Cadre. Notwithstanding the same, the employee was granted leave in 2010, 2011 and 2012 by way of either sick leave or leave on average pay or casual leave. Though the leave sought for by the employee for the period from 02.4.2012 to 02.5.2012 was rejected by the Controlling Authority on 09.4.2012 and it was exhibited in the Notice Board of the Crew Booking Centre, Erode, the employee continued to remain absent unauthorizedly for the said long period attracting misconduct. Thereafter, a charge memo dated 02.6.2012 for minor penalty was issued and after considering his explanation dated 19.6.2012, the Disciplinary Authority imposed penalty of reduction of pay to one lower stage in the time scale of pay for a period of two years with cumulative effect vide penalty advice dated 14.7.2012. Further, the register, in which, the employee was said to have signed was the CMSR for home station crew. He was supposed to sign in this register only after receiving a train order, subsequent to which, the Crew Controller used to generate train order in the Crew Management System. Only thereafter, the running staff had to sign in CMSR and it had to be approved. The duty of the running staff would commence the moment he put his signature 'on'. However, the employee signed in the said register



W.P.No.19399 of 2016

without any train order by writing in some columns and it would amount to unauthorized act and the same could not be

considered as duty. He also signed the spare book unauthorizedly, for which, he was imposed with a penalty of withholding of increment vide penalty advice dated 19.8.2009.

6. While such being the case, the petitioner initiated conciliation proceedings alleging that the employee was forced to shoulder higher responsibility without promoting him either on regular basis or on officiating capacity, for which, proper reply was given. As there was some delay in sending the failure report, the petitioner approached this Court by filing W.P.No.2761 of 2013, during the pendency of which, the failure report was submitted. Pursuant to the orders of this Court, the matter was referred to the 4th respondent. The employee submitted his leave application dated 01.04.2012 without any convincing reasons. Receiving privilege passes and consumable materials from the Railway Administration could not be treated as a proof of attending duty. Though the employee was served with a call to take learning of road to officiate as Loco Pilot (Shunting) on 01.4.2012 and again on 03.4.2012, he refused to take the same and the 4th respondent had



W.P.No.19399 of 2016

rightly rejected the claim of the petitioner, which does not warrants interference of this Court.

7. Heard learned counsel on either side and perused the materials available on record.

8. A perusal of the material documents placed on record, particularly the impugned award reveals that, the petitioner Association raised Industrial Dispute on behalf of one Balamurugan, on the ground of denial of salary for the months April and May 2012. The said Balamurugan entered into the service of the respondent as an Assistant loco Pilot in the year 2004 and was subsequently promoted as Senior Assistant Loco Pilot with effect from 01.05.2010. As the said Balamurugan had already undergone training and completed the promotional course and certified fit for work as Loco Pilot, the office order dated 10.02.2012 came to be issued, officiating him for the post of Loco Pilot/Shunting and though he was served with calls to take learning road to officiate as Loco Pilot/shunting, he refused the same and continued to be absent from duty. Though the petitioner referred to Note-1 of Rule 224 of Indian Railway Establishment manual to show that the administration can entertain request from employee for postponement of



promotion, in the present case, the said Balamurugan had only submitted leave application and not an application for postponement of promotion, which was also already rejected by the respondent and the same is evident from notice dated 12.04.2012 exhibited in the notice board, despite which he remained absent from duty, which is a clear misconduct. Further, the post of the said Balamurugan is Loco running cadre and the posts in the cadre are classified as Safety Posts, which posts are required for smooth running of railways and safety of the general public and though there was an acute shortage of staff in Salem Division, despite the same, the said Balamurugan has been granted leave of 19 days in the year 2010, 42 days in the year 2011 and 6 days till 02.04.2012.

9. Though the petitioner submitted records to show that the employee was present on 04.04.2012 and 05.05.2012, however, in the very same document, in the last column, it is record as party is absent. Further, the said employee did not take any steps to challenge the order of rejection of his leave.

10. Hence, taking into consideration all the above said facts, the 4th



W.P.No.19399 of 2016

respondent passed the present impugned award as against the said Balamurugan, holding that, he is not entitled for salary during the leave period i.e, from April to May 2012, in which this Court does not find any fault and thereby, not inclined to interfere with the same.

11. For the reasons aforesaid, this Writ Petition stands dismissed. No costs.

04.07.2023

skt

NCC : Yes / No
Speaking Order : Yes / No
Index : Yes / No

To

1. The Divisional Railway Manager,
Salem Division, Southern Railway,
Salem.
2. The Sr. Divisional Electrical Engineer (TRD),
Salem Division, Southern Railway,
Salem.
3. The Chief Crew Controller,
Crew Booking Office, Southern Railway,
Salem.
4. The Control Government Industrial Tribunal

11/13



WEB COPY

Cum Labour Court (CGIT), Chennai,
Rep. by its Presiding Officer,
1st Floor, B-Wing, Shastri Bhavan,
26, Haddows Road, Chennai - 600 006.



W.P.No.19399 of 2016

M.DHANDAPANI., J.

skt

W.P.No.19399 of 2016



WEB COPY



W.P.No.19399 of 2016

04.07.2023