



W.P.No.13419 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE J. SATHYA NARAYANA PRASAD

W.P.No.13419 of 2020

G. Venkatesan

... Petitioner

Vs.

1. The Chairman

State Express Transport Corporation and
Additional Chief Secretary to Government,
Transport Department,
Secretariat,
Chennai 600 009.

2. M/s.State Express Transport Corporation Ltd.,

Rep.by its Managing Director,
No.2, Pallavan Salai,
Chennai – 600 002.

... Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Mandamus to direct the respondents to reinstate the petitioner into service with effect from the date of dismissal i.e., from 08.02.2005 and pay the consequential benefits along with backwages by considering the representation of the petitioner dated 21.05.2012, 22.04.2014, 14.03.2016 and 20.05.2019.



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For Petitioner : Mr.D.Soundar Raj

For Respondents : Mr.L.S.M.Hassan Fizal for R1
Mr.D.Gopal
Government Advocate for R2

ORDER

This writ petition has been filed seeking to direct the respondents to reinstate the petitioner into service with effect from the date of dismissal i.e., from 08.02.2005 and pay the consequential benefits along with backwages by considering the representation of the petitioner dated 21.05.2012, 22.04.2014, 14.03.2016 and 20.05.2019.

2. The learned counsel for the petitioner submitted that the petitioner was appointed as Driver in the 2nd respondent Corporation during 1993 and on 04.05.2004, while driving vehicle Registration No.TN-040K6414 met with an accident with Mahindra Van on 04.05.2004 in Route No.791 and a domestic enquiry was conducted and then he was dismissed from service vide order dated 08.02.2005. Since the dispute was pending before the Joint Commissioner of Labour (Conciliation), the 2nd respondent filed an application for Approval Petition No.24 of 2005 of the petitioner's dismissal from service under Section 32 (2) (b) of Industrial Disputes Act, 1947 and after a detailed



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enquiry the Joint Commissioner of Labour (Conciliation) rejected the application of the 2nd respondent vide his order dated 24.01.2006 seeking approval for the dismissal of the petitioner who was working as driver, EDP No.D231031. While dismissing the application filed by the 2nd respondent it was held that the applicant has not followed the principles of natural justice, the findings of the enquiry officer was that the charges framed against the petitioner are not proved or proved is perverse and the 2nd respondent has not followed the mandatory conditions of Section 33 (2) (b) of the Industrial Disputes Act, 1947 regarding the simultaneous filing of the application seeking approval before this Court. Even though the order of rejection was passed on 24.01.2006 by the Joint Commissioner of Labour (Conciliation), the petitioner was not reinstated even after 2 ½ years, hence he approached this Court by way of filing the W.P.No.1784 of 2008 and this Court by order dated 27.03.2008 has passed the following order :-

“Considering the facts and circumstances of the case and the rejection order dated 24.01.2006 passed by the Joint Commissioner of Labour (Conciliation) Chennai in Approval Petition No.24 of 2005 filed by the respondent herein, this Court is of the view that the respondent has to be directed to reinstate the petitioner in service. Accordingly, the respondent is directed to reinstate the



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petitioner in service within a period of two weeks, from the date of receipt of a copy of this order.”

3. The learned counsel for the petitioner further submitted that aggrieved by the order of the Joint Commissioner of Labour (Conciliation), the 2nd respondent filed W.P.No.6683 of 2008 before this Court and this Court was pleased to dismiss the writ petition vide its order dated 13.06.2011 and even after the orders of this Court the petitioner was not reinstated into service by the 2nd respondent, hence the petitioner made representations to the 2nd respondent in person as well as in writing vide representations dated 21.05.2012, 22.04.2014, 14.03.2016 and 20.05.2019 to reinstate the petitioner into service by taking into account of the orders of this Court in W.P.No.1784 of 2008 dated 27.03.2008 and W.P.No.6683 of 2008 dated 13.06.2011. Despite the above orders, the representations of the petitioner was not considered and was not reinstated into service.

4. The learned counsel further submitted that W.P.No.16848 of 2019 was filed praying for a direction to reinstate the petitioner into service and the case came up for hearing on 27.09.2019, this Court instructed the petitioner to



withdraw the writ petition and file contempt petition with liberty. Subsequently the petitioner filed Contempt Petition No.23 of 2020 before this Court and the case came up for hearing on 03.03.2020 and this Court dismissed the contempt petition. Hence the present writ petition.

5. The respondents have not chosen to file the counter affidavit despite several adjournments granted by this Court viz., 28.04.2023, 16.06.2023, 07.07.2023, 24.07.2023, 31.07.2023,, 08.08.2023 and 24.08.2023.

6. Heard both sides and perused the materials available on record.

7. This Court by order dated 27.03.2008 in W.P.No.1784 of 2008 passed the following order.

“4. Considering the facts and circumstances of the case and the rejection order dated 24.01.2006 passed by the Joint Commissioner of Labour (Conciliation) Chennai in Approval Petition No.24 of 2005 filed by the respondent herein, this Court is of the view that the respondent has to be directed to reinstate the petitioner in service. Accordingly, the respondent is directed to reinstate the petitioner in service within a period of two weeks from the date of receipt of a copy of this order.”



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8. The 2nd respondent filed W.P.No.6683 of 2008 challenging the order passed by the Joint Commissioner of Labour (Conciliation) rejecting the approval application and the same was dismissed by this Court on 13.06.2011. Despite the orders passed by this Court in the above writ petition, the petitioner was not reinstated into service by the 2nd respondent. Hence the petitioner filed a Contempt Petition in Cont.P.No.23 of 2020 and this Court by order dated 03.03.2020 passed the following orders:-

3. Firstly, when this Court in its earlier order dated 27.03.2008 passed a Writ Petition No.1784 of 2008 gave a direction to the respondent to reinstate the petitioner in service, it is not known why the petitioner kept quiet for about eleven long years. Since the limitation provided under the Act for initiating contempt proceedings is only one year, the explanation offered by the petitioner that he was renewing his request for eleven long years, cannot be accepted, for the reason that in the meanwhile, the period of limitation prescribed under the Contempt of Courts Act for initiating contempt proceedings, also stood expired.

4. Secondly, the learned standing counsel for the respondent, relying upon the counter affidavit, taking a stand that the petitioner, while serving as temporary daily wage Driver in the respondent Corporation, on 04.05.2004,



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due to his rash and negligent driving caused a gruesome accident dashing against the Mahindra Van coming in the opposite direction and resultantly, caused a fatal accident killing six persons. It is at this stage, replying to the above the learned counsel for the petitioner stated that the petitioner was not serving as daily wage Driver, but he was a regularised employee.

5. Be that as it may. When the petitioner, due to his act of rash and negligent driving, had caused the death of six innocent persons, the respondent is right in denying employment to the petitioner. Therefore, this Court is not inclined to entertain the contempt petition, for the reason that it is highly belated. Moreover, the conduct of the petitioner to seek for reinstatement is also not satisfactory. Hence, the contempt petition fails and it is dismissed.

9. From the above order, it is crystal, clear and evident that an order was passed by this Court directing the respondents to reinstate the petitioner as early as on 27.03.2008 within a period of two weeks from the date of receipt of a copy of the order and despite the above order, the petitioner was not reinstated into service by the 2nd respondent. It is pertinent to note that since the above order of this Court was not complied with, the petitioner ought to have approached this Court much earlier by



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way of filing writ petition seeking direction to the respondents to comply the order of this Court but he has not chosen to do so and he has preferred the writ petition only in the year 2019 vide W.P.No.16848 of 2019 belatedly after a lapse of eleven years and this Court dismissed the writ petition with liberty to file a contempt petition. The Cont.P.No.23 of 2020 was also dismissed by this Court on 03.03.2020 on the ground that the reason is not known why the petitioner has kept quiet for eleven long years and the limitation period provided under the Act for initiating contempt proceedings is only one year and the explanation offered by the petitioner that he was renewing his request for 11 long years cannot be accepted and more over the period of limitation prescribed under the contempt of Courts Act for initiating contempt proceedings was also stood expired.

10. The next ground taken by this Court for dismissing the contempt petition is that the petitioner while serving as temporary daily wage Driver in the respondent Corporation, on 04.05.2004 due to his rash and negligent driving caused a gruesome accident dashing against the Mahindra Van coming in the opposite direction and resultantly caused a fatal accident killing six persons. **Since the petitioner due to his act of his rash and negligent driving**



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caused death of 6 innocent persons and the 2nd respondent has rightly denied the employment to the petitioner.

11. Hence this Court is not inclined to entertain this writ petition for the following reasons:-

1. The order passed by this Court in W.P.No.1784 of 2008 dated 27.03.2008 directing the respondents to reinstate the petitioner was not complied by the 2nd respondent and the petitioner has not chosen to take any steps for compliance of the said order in the manner known to law.
2. The petitioner has approached this Court as rightly observed by this Court while dismissing the Cont.P.No.23 of 2020 dated 03.03.2020 belatedly **after eleven years**.
3. The age of the petitioner at the time of filing the writ petition was 51 years old and as on date he is 53 years old and having obtained the order as early as in the year 2008 **exactly 15 years back**, the petitioner has not chosen to take any steps for getting reinstated into service in the 2nd respondent Corporation.
4. The writ petition is liable to be dismissed on the ground of delay and laches.



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11. In view of the above factual matrix of the case and for the above mentioned reasons, this Court is not inclined to entertain the above writ petition.

12. In the result, the writ petition stands dismissed. No costs.

26.09.2023

Index : Yes/No

Speaking order/Non-speaking order



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J. SATHYA NARAYANA PRASAD, J.

dpq

To

1. The Chairman
State Express Transport Corporation and
Additional Chief Secretary to Government,
Transport Department,
Secretariat,
Chennai 600 009.
2. M/s.State Express Transport Corporation Ltd.,
Rep.by its Managing Director,
No.2, Pallavan Salai,
Chennai – 600 002.

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