



WEB COPY

W.A.No.278



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.2787 of 2021
and
CMP.No.18282 of 2021

The General Manager,
Tamilnadu State Transport Corporation Ltd.,
(Coimbatore Division), Erode Region,
Chennimalai Road, Erode - 638001.

.. Appellant

Versus

T.R.Loganathan

.. Respondent

Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 14.06.2021 made in WP.No.3665 of 2012.

For Appellant : Mr.M.Murali Vinodh,
Standing Counsel

For Respondent : Mr.S.Ayyathurai

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

This writ appeal has been filed against the order passed by the learned Judge

in W.P.No 3665 of 2012 on 14.06.2021.

<https://www.mhc.tn.gov.in/judis>



2.The respondent herein is the writ petitioner. He filed the aforesaid writ petition praying for a direction to the appellant Corporation not to deny him work without following the procedures established by law. It was contended by the respondent before the writ court that he joined the services of the appellant Corporation in March 2008 as a Reserve Conductor in Coimbatore Region and was thereafter transferred to Erode Region. Though he was diligently performing his duties, without any reason, he has been put off duty and has been deprived of employment. It was also contended that he has rendered more than 480 days of continuous service in less than 24 calendar months and hence, he is deemed to have attained permanent status. As such, the action of the appellant depriving him employment without following any procedure, is incorrect. On behalf of the appellant Corporation, a counter affidavit was filed *inter alia* stating that the respondent misappropriated the ticket amount in his duty on 06.10.2010 and based on the report received from the Checking Inspectors, disciplinary action was contemplated against him and thereafter, he was disengaged from service with effect from 05.07.2011. Since the respondent has not rendered satisfactory service and that too, he being a trainee, no show cause notice is required to be issued to him before termination of his service and hence, prayed for dismissal of the writ petition.

3.Considering the facts and circumstances of the case, the learned Judge

observed that the respondent worked for 943 days in the appellant Corporation; and



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that in case, the dispute has been taken up by the Labour Court, the appellant Corporation would have to disclose the information as to whether the respondent is a trainee and as to whether the employer extracted work from him and so on. It was further observed that the management of the Corporation has not issued notice or conducted any enquiry by issuing a charge memo to the respondent; and in order to wriggle out the situation, the Corporation has taken a plea before the Conciliation Officer that the respondent has not been disengaged from service. Holding that the appellant Corporation cannot take two different stands before different forums; and that, the Transport Corporation is a 'State' coming within the meaning of Article 12 of the Constitution of India, the learned Judge by order dated 14.06.2021, issued a direction to the appellant Corporation to reinstate the respondent into service on or before 01.09.2021, with continuity of service and other attendant benefits from 07.03.2008. It was also observed that his past services shall be taken into account for the purpose of granting terminal benefits and that, he will not be entitled to any monetary benefit during the said period.

4.Challenging the order so passed by the learned Judge, the present writ petition has been filed by the Transport Corporation.

5.The learned counsel for the appellant submitted that the respondent was not a workman as defined under section 2(s) of the Industrial Disputes Act, 1947 and his



service was not regularised and therefore, he was stopped from duty during the period of training, in view of his misconduct. However, the learned Judge erred in allowing the writ petition in favour of the appellant. It is further submitted that the report of the conciliation officer is yet to reach a finality and a decision is yet to be taken by the Government on the report as to whether the statements so far made by the conciliation officer can be taken as valid ones. Having the respondent / writ petitioner had commenced the proceedings under the Industrial Disputes Act, 1947, the writ of mandamus filed by him on factual matrix, had to be adjudicated based on the evidence before the competent court of law and therefore, the writ appeal is liable to be allowed.

6. On the contrary, the learned counsel for the respondent submitted that the learned Judge has passed the impugned order, after taking note of all the contentions raised by the parties in a proper manner and hence, the same need not be interfered with by this Court.

7. Heard the learned counsel on either side and perused the records.

8. There is no dispute with regard to the employment of the respondent in the appellant Transport Corporation. Admittedly, without any notice or enquiry, he was disengaged from service. According to the appellant Corporation, the report of the conciliation officer is yet to reach a finality and a decision is yet to be taken by the



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Government on the report of the Conciliation Officer. Further, the respondent's service was discontinued only on account of his misconduct and he being a trainee, adjudication on factual matrix in the writ petition cannot be done. On the other hand, the fact remained that the respondent had worked for 943 days in the appellant Corporation and in this regard, the learned Judge has correctly observed that in case, the dispute has been taken up by the Labour Court, the Corporation would have to disclose the information as to whether the respondent is a trainee or not and other related matters; and they have taken two different stands in different forums. That apart, it is settled law that the person against whom any adverse order is passed, requires to be given a reasonable opportunity of hearing, before passing such order. Whereas, in the present case, it is evident from the pleadings and records that before terminating the respondent from service, no notice was issued and no enquiry was conducted by issuing a charge memo by the appellant Corporation and therefore, the same is arbitrary, illegal and in violation of the principles of natural justice. Taking note of all these facts and circumstances of the case, the learned Judge has rightly directed the appellant Corporation to reinstate the respondent into service on or before 01.09.2021, with continuity of service and other attendant benefits from 07.03.2008, making it clear that his past services shall be taken into account for the purpose of granting terminal benefits and that, he will not be entitled to any monetary benefit during the said period. This Court is not inclined to interfere with the said findings rendered by the learned Judge.



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9. Accordingly, the writ appeal stands dismissed. No costs. Consequently,
connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]
17.11.2023

Index : Yes / No
Internet : Yes / No
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To

The General Manager,
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(Coimbatore Division), Erode Region,
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