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W.P.No.23410 of 2017



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.09.2023

Coram:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.23410 of 2017

1 A.Chandran

... Petitioner

Vs.

1 The Managing Director
Tamilnadu State Transport Corporation
(Salem) Ltd. 12 Ramakrishna Road
Salem 636 001

2 The General Manager
Tamilnadu State Transport Corporation
(Salem) Ltd. 12 Ramakrishna Road
Salem 636 007

.... Respondents

Prayer: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records connected with the order of dismissal dated 27.8.2015 passed by the 2nd respondent in Proc. Pa.Mu.No.146-11189- D5- TNSTC -2013-15 quash the same and also direct the respondents/management to reinstate the petitioner with continuity of service backwages and all other attendant benefits and also on his reinstatement the respondents may be further directed to consider the plea of the petitioner for medical discharge or VRS duly taking into account his medical disability to continue in the post of conductor.



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For Petitioner : Mr.S.Girija

For Respondents : Mr.R.Babu
Standing Counsel**ORDER**

This Writ Petition has been filed in the nature of Certiorarified Mandamus seeking records connected with the order of dismissal dated 27.8.2015 passed by the second respondent, the General Manager, Tamilnadu State Transport Corporation (Salem) Ltd. Salem 636 007, in Proc. Pa.Mu.No.146-11189- D5- TNSTC -2013-15, quash the same and also direct the respondents/management to reinstate the petitioner with continuity of service backwages and all other attendant benefits. The petitioner also seeks an alternate prayer to consider his request for medical discharge or for voluntary retirement.

2. The petitioner had been appointed as conductor in the second respondent corporation on 11.08.1994. He continued working in that post till 25.02.2013. While on duty as conductor in the bus, which was travelling from Salem to Madurai, on 08.03.2010, an old man had crossed the road and to avert an accident, the driver had applied the brake, as a result of which, the petitioner had hit the standing bar and lost balance. This resulted in an injury to his left ear. He suffered hearing impairment consequent to such injury.

Due to such injury, it was not possible for him to communicate with



passengers with regard to issuance of tickets and collecting correct change.

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3. While this being so, the respondents had directed the petitioner to appear before the Regional Medical Board of Government Mohan Kumaramangalam Medical College Hospital on 25.02.2013, wherein it was found that he was suffering from '*Monicrs Disease*' and that he was unfit for the post of conductor and it was recommended that he should be given light duty.

4. However, taking advantage of the fact that he had been moving up and down to the hospital and the Regional Medical Board, a charge memo was issued stating that he was on unauthorised absence, even on 25.02.2013, the very particular day when he was physically present before the Regional Medical Board.

5. Enquiry was conducted and the petitioner was not aware of it and was not also in a position to attend the same. Finally, the charges were held to be proved and the petitioner had been removed from service. Questioning that particular order, the present Writ Petition has been filed.

6. Learned counsel for the respondents justified the passing of the impugned order, since quite apart from the unauthorised absence for which the punishment was actually imposed, it is stated that there was also an earlier charge against the petitioner herein wherein, on 12 separate occasions, minor



punishments had been imposed for either coming late to office or for being absent without proper leave.

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7. But if the respondents have in their minds that the petitioner was in the habit of absconding himself from duty, then he should be proceeded against at that particular point in time and they could not have taken advantage of the present incident and removed him from service claiming that he was deliberately absent.

8. It is relevant to note at this juncture that the petitioner was injured while on official duty and in the course of employment and was referred to Regional Medical Board only on the instructions of the respondents. Hence, the enquiry which had been conducted is only a sham process with the aim to remove the petitioner alone.

9. Learned counsel for the petitioner placed an alternate argument that instead of being given alternate employment to which the petitioner would always be eligible under the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995, the petitioner could have been discharged from service on medical grounds, since it was found that he was unfit for the post of conductor.

10. The petitioner had retired from service on attaining the age of superannuation on 30.05.2019 and therefore, there is no possibility of giving



him any other work and putting him back to service. The only relief that the petitioner should be given is retirement from service on medical grounds instead of removal from service. This would entitle the petitioner to get all terminal benefits.

11. Accordingly, the punishment imposed is modified from removal from service to one of retired from service on medical grounds. The respondents are directed to pass necessary orders in this regard and grant the petitioner all terminal benefits, eligible on retirement, within a period of sixteen (16) weeks from the date of receipt of a copy of this order.

12. This Writ Petition stands disposed of accordingly. No costs.

Sl

08.09.2023

Index: Yes/No

Speaking/Non-speaking order

Neutral citation: Yes/No

To

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C.V.KARTHIKEYAN,J.

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